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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For The Fiscal Year Ended October 31, 2006

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For The Transition Period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 1-8929

**ABM INDUSTRIES INCORPORATED**

(Exact name of registrant as specified in its charter)

**Delaware**

(State of Incorporation)

**94-1369354**

(I.R.S. Employer Identification No.)

**160 Pacific Avenue, Suite 222, San Francisco, California**

(Address of principal executive offices)

**94111**

(Zip Code)

**(Registrant's telephone number, including area code) 415/733-4000**

**Securities registered pursuant to Section 12(b) of the Act:**

Title of Each Class

Name of Each Exchange on Which Registered

**Common Stock, \$.01 par value**  
**Preferred Stock Purchase Rights**

**New York Stock Exchange**  
**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to the filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

(Check one): Large accelerated filer  Accelerated filer  Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of April 30, 2006 (the last business day of registrant's most recently completed second fiscal quarter), non-affiliates of the registrant beneficially owned shares of the registrant's common stock with an aggregate market value of \$740,659,434, computed by reference to the price at which the common stock was last sold.

Number of shares of common stock outstanding as of November 30, 2006: 48,660,286.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement to be used by the Company in connection with its 2007 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.

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**ABM Industries Incorporated**  
**Form 10-K**  
**For the Fiscal Year Ended October 31, 2006**

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## PART I

### ITEM 1. BUSINESS

ABM Industries Incorporated ("ABM") is a leading facility services contractor in the United States. With annual revenues in excess of \$2.7 billion and approximately 75,000 employees, ABM and its subsidiaries (the "Company") provide janitorial, parking, security, engineering and lighting services for thousands of commercial, industrial, institutional and retail facilities in hundreds of cities throughout the United States and in British Columbia, Canada.

ABM was reincorporated in Delaware on March 19, 1985, as the successor to a business founded in California in 1909. The corporate headquarters of the Company is located at 160 Pacific Avenue, Suite 222, San Francisco, California 94111, and the Company's telephone number at that location is (415) 733-4000.

The Company's Website is [www.abm.com](http://www.abm.com). Through a link on the Investor Relations section of the Company's Website, the following filings and amendments to those filings are made available free of charge, as soon as reasonably practicable after they are electronically filed with or furnished to the SEC: (1) Annual Reports on Form 10-K, (2) Quarterly Reports on Form 10-Q, (3) Current Reports on Form 8-K and (4) filings by ABM's directors and executive officers under Section 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act.") The Company also makes available on its Website and in print, free of charge, to those who request them its Corporate Governance Guidelines, Code of Business Conduct & Ethics and the charters of its audit, compensation and governance committees.

#### Industry Information

The Company conducts business through a number of subsidiaries, which are grouped into five segments based on the nature of the business operations. The operating subsidiaries within each segment generally report to the same senior management. Referred to collectively as the "ABM Family of Services," at October 31, 2006 the five segments were:

- Janitorial
- Parking
- Security
- Engineering
- Lighting

The business activities of the Company by industry segment, as they existed at October 31, 2006, are more fully described below.

**Janitorial.** The Company performs janitorial services through a number of the Company's subsidiaries, primarily operating under the names "ABM Janitorial Services" and "American Building Maintenance." The Company provides a wide range of basic janitorial services for a variety of facilities, including commercial office buildings, industrial plants, financial institutions, retail stores, shopping centers, warehouses, airport terminals, health and educational facilities, stadiums and arenas, and government buildings. Services provided include floor cleaning and finishing, window washing, furniture polishing, carpet cleaning and dusting, as well as other building cleaning services. The Company's Janitorial subsidiaries maintain 111 offices and operate in 48 states, the District of Columbia and one Canadian province. These subsidiaries operate under thousands of individually negotiated building maintenance contracts, nearly all of which are obtained by competitive bidding. The Company's Janitorial contracts are either fixed price agreements or "cost-plus" (i.e., the customer agrees to reimburse the agreed upon amount of wages and benefits, payroll taxes, insurance charges and other expenses plus a profit percentage). Generally, profit margins on contracts tend to be inversely proportional to the size of the contract. In addition to services defined within the scope of the contract, the Company also generates sales from extra services (or "tags"), such as additional cleaning requirements, with extra services frequently providing higher margins. The majority of Janitorial contracts are for one- to three-year periods, but are subject to termination by either party after 30 to 90 days' written notice and contain automatic renewal clauses.

**Parking.** The Company provides parking services through a number of subsidiaries primarily operating under the names "Ampco System Parking," "Ampco System Airport Parking" and "Ampco Express Airport Parking." The Company's Parking subsidiaries maintain 27 offices and operate in 28 states. The Company operates approximately 1,600 parking lots and garages, including, but not limited to, the following airports: Austin, Texas; Buffalo, New York; Denver, Colorado; Honolulu, Hawaii; Minneapolis/St. Paul, Minnesota; Omaha, Nebraska; Orlando, Florida; San Jose, California. The Company also operates off-airport parking facilities in Philadelphia, Pennsylvania; Houston, Texas; and San Diego, California, and operates 17 parking shuttle bus service contracts. Approximately 42% of the parking lots and garages are leased and 58% are

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operated through management contracts for third parties, nearly all of which are obtained by competitive bidding. The Company operated over 770,000 parking spaces as of October 31, 2006. Under leased lot arrangements, the Company leases the parking lot from the owner and is responsible for all expenses incurred, retains all revenues from monthly and transient parkers and pays rent to the owner per the terms and conditions of the lease. The lease terms generally range from one to 20 years and provide for payment of a fixed amount of rent, plus a percentage of revenue. The leases usually contain renewal options and may be terminated by the customer for various reasons including development of the real estate. Leases which expire may continue on a month-to-month basis. Under the management contracts, the Company manages the parking lot for the owner in exchange for a management fee, which could be a fixed fee, a performance-based fee such as a percentage of gross or net revenues, or a combination of both. Management contract terms are generally from one to three years, and often can be terminated without cause by the customer upon 30 days' notice and may also contain renewal clauses. The revenue and expenses are passed through by the Company to the owner under the terms and conditions of the management contracts. More than half of the Company's Parking revenues come from reimbursements of expenses.

**n Security.** The Company provides security services through a number of subsidiaries, primarily operating under the names "American Commercial Security Services," "ACSS," "ABM Security Services," "SSA Security, Inc.," "Security Services of America," "Silverhawk Security Specialists" and "Elite Protection Services." The Company provides security officers; investigative services; electronic monitoring of fire, life safety systems and access control devices; and security consulting services to a wide range of businesses. The Company's Security subsidiaries maintain 61 offices and operate in 34 states and the District of Columbia. Sales are generally based on actual hours of service at contractually specified rates. The majority of Security contracts are for one-year periods, but are subject to termination by either party after 30 to 90 days' written notice and contain automatic renewal clauses. Nearly all Security contracts are obtained by competitive bidding.

**n Engineering.** The Company provides engineering services through a number of subsidiaries, primarily operating under the name "ABM Engineering Services." The Company provides facilities with on-site engineers to operate and maintain mechanical, electrical and plumbing systems utilizing in part computerized maintenance management systems. These services are designed to maintain equipment at optimal efficiency for customers such as high-rise office buildings, schools, computer centers, shopping malls, manufacturing facilities, museums and universities. The Company's Engineering subsidiaries maintain 16 branches and operate in 40 states and the District of Columbia. The majority of Engineering contracts contain clauses under which the customer agrees to reimburse the full amount of wages, payroll taxes, insurance charges and other expenses plus a profit percentage. Additionally, the majority of Engineering contracts are for one-year periods, but are subject to termination by either party after 30 to 90 days' written notice and may contain renewal clauses. Nearly all Engineering contracts are obtained by competitive bidding. ABM Engineering Services Company, a wholly owned subsidiary, has maintained ISO 9000 Certification since 1999, the only national engineering services provider of on-site operating engineers to earn this prestigious designation. ISO is a quality standard comprised of a rigorous set of guidelines and good business practices against which companies are evaluated through a comprehensive independent audit process.

The Company's Engineering segment also provides facility services through a number of subsidiaries, primarily operating under the name "ABM Facility Services." The Company provides customers with streamlined, centralized control and coordination of multiple facility service needs. This process is consistent with the greater competitive demands on corporate organizations to become more efficient in the business market today. By leveraging the core competencies of the Company's other service offerings, the Company attempts to reduce overhead (such as redundant personnel) for its customers by providing multiple services under a single contract, with one contact and one invoice. Its National Service Call Center provides centralized dispatching, emergency services, accounting and related reports to financial institutions, high-tech companies and other customers regardless of industry or size.

**n Lighting.** The Company provides lighting services through a number of subsidiaries, primarily operating under the name "Amtech Lighting Services." The Company provides relamping, fixture cleaning, energy retrofits and lighting maintenance service to a variety of commercial, industrial and retail facilities. The Company's Lighting subsidiaries also repair and maintain electrical outdoor signage, and provide electrical service and repairs. The Company's Lighting subsidiaries maintain 27 offices and operate in 50 states and the District of Columbia. Lighting contracts are either

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fixed-price (long-term full service or maintenance only contracts), project work or time and materials based where the customer is billed according to actual hours of service and materials used at specified prices. Contracts range from one to six years, but the majority are subject to termination by either party after 30 to 90 days' written notice and may contain renewal clauses. Nearly all Lighting contracts are obtained by competitive bidding.

Additional information relating to the Company's industry segments appears in Note 18 of the Notes to Consolidated Financial Statements contained in Item 8, "Financial Statements and Supplementary Data."

### **Trademarks**

The Company believes that it owns or is licensed to use all corporate names, tradenames, trademarks, service marks, copyrights, patents and trade secrets which are material to the Company's operations.

### **Competition**

The Company believes that each aspect of its business is highly competitive, and that such competition is based primarily on price and quality of service. The Company provides nearly all its services under contracts originally obtained through competitive bidding. The low cost of entry to the facility services business has led to strongly competitive markets made up of large numbers of mostly regional and local owner-operated companies, located in major cities throughout the United States and in British Columbia, Canada (with particularly intense competition in the janitorial business in the Southeast and South Central regions of the United States). The Company also competes with the operating divisions of a few large, diversified facility services and manufacturing companies on a national basis. Indirectly, the Company competes with building owners and tenants that can perform internally one or more of the services provided by the Company. These building owners and tenants might have a competitive advantage when the Company's services are subject to sales tax and internal operations are not. Furthermore, competitors may have lower costs because privately owned companies operating in a limited geographic area may have significantly lower labor and overhead costs. These strong competitive pressures could inhibit the Company's success in bidding for profitable business and its ability to increase prices even as costs rise, thereby reducing margins.

### **Sales and Marketing**

The Company's sales and marketing efforts are conducted by its corporate, subsidiary, regional, branch and district offices. Sales, marketing, management and operations personnel in each of these offices participate directly in selling and servicing customers. The broad geographic scope of these offices enables the Company to provide a full range of facility services through intercompany sales referrals, multi-service "bundled" sales and national account sales.

The Company has a broad customer base, including, but not limited to, commercial office buildings, industrial plants, financial institutions, retail stores, shopping centers, warehouses, airports, health and educational facilities, stadiums and arenas, and government buildings. No customer accounted for more than 5% of its revenues during the fiscal year ended October 31, 2006.

### **Employees**

The Company employs approximately 75,000 persons, of whom the vast majority are service employees who perform janitorial, parking, security, engineering and lighting services. Approximately 29,000 of these employees are covered under collective bargaining agreements at the local level. There are about 4,000 employees with executive, managerial, supervisory, administrative, professional, sales, marketing or clerical responsibilities, or other office assignments.

### **Environmental Matters**

The Company's operations are subject to various federal, state and/or local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, such as discharge into soil, water and air, and the generation, handling, storage, transportation and disposal of waste and hazardous substances. These laws generally have the effect of increasing costs and potential liabilities associated with the conduct of the Company's operations, although historically they have not had a material adverse effect on the Company's financial position, results of operations or cash flows.

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### **Executive Officers of the Registrant**

The executive officers of ABM as of December 22, 2006 were as follows:

Name	Age	Principal Occupations and Business Experience During Past Five Years
Henrik C. Slipsager	51	President & Chief Executive Officer and a Director of ABM since November 2000.
James P. McClure	49	Executive Vice President of ABM since September 2002; President of ABM Janitorial Services since November 2000.
George B. Sundby	55	Executive Vice President of ABM since March 2004; Chief Financial Officer of ABM since June 2001; Senior Vice President of ABM from June 2001 to March 2004; Senior Vice President & Chief Financial Officer of Transamerica Finance Corporation from September 1999 to March 2001.
Steven M. Zaccagnini	45	Executive Vice President of ABM since December 2005; Senior Vice President of ABM from September 2002 to December 2005; President of ABM Facility Services since April 2002; President of Amtech Lighting Services since November 2005; President of CommAir Mechanical Services from September 2002 to May 2005; Senior Vice President of Jones Lang LaSalle from April 1995 to February 2002.
Erin M. Andre	47	Senior Vice President of ABM since August 2005; Vice President, Human Resources of National Energy and Gas Transmission, Inc. from April 2000 to May 2005.
Linda S. Auwers	59	Senior Vice President, General Counsel & Secretary of ABM since May 2003; Vice President, Deputy General Counsel & Secretary of Compaq Computer Corporation from May 2001 to May 2002.
David L. Farwell	45	Senior Vice President & Chief of Staff of ABM since September 2005; Treasurer of ABM since August 2002; Vice President of ABM from August 2002 to September 2005; Treasurer of JDS Uniphase Corporation from December 1999 to April 2002.
Gary R. Wallace	56	Senior Vice President of ABM, Director of Business Development & Chief Marketing Officer since November 2000.
Maria De Martini	47	Vice President, Controller & Chief Accounting Officer of ABM since July 2001; Controller of Vectiv Corporation from March 2001 to June 2001.

## ITEM 1A. RISK FACTORS

(Cautionary Statements Under the Private Securities Litigation Reform Act of 1995)

The disclosure and analysis in this Annual Report on Form 10-K contain some forward-looking statements that set forth anticipated results based on management's plans and assumptions. From time to time, the Company also provides forward-looking statements in other written materials released to the public, as well as oral forward-looking statements. Such statements give the Company's current expectations or forecasts of future events; they do not relate strictly to historical or current facts. In particular, these include statements relating to future actions, future performance or results of current and anticipated sales efforts, expenses, and the outcome of contingencies and other uncertainties, such as legal proceedings, and financial results. Management tries, wherever possible, to identify such statements by using words such as "anticipate," "believe," "estimate," "expect," "intend," "plan," "project" and similar expressions.

Set forth below are factors that the Company thinks, individually or in the aggregate, could cause the Company's actual results to differ materially from past results or those anticipated, estimated or projected. The Company notes these factors for investors as permitted by the Private Securities Litigation Reform Act of 1995. Investors should understand that it is not possible to predict or identify all such factors. Consequently, the following should not be considered to be a complete list of all potential risks or uncertainties.

**A change in the frequency or severity of claims against the Company, a deterioration in claims management, the cancellation or non-renewal of the Company's primary insurance policies, or a change in our customer's insurance needs could adversely affect the Company's results.** Many customers, particularly institutional owners and large property management companies, prefer to do business with contractors, such as the Company, with significant financial resources, who can provide substantial insurance coverage. In fact, historically many of our clients have chosen to obtain insurance coverage for their risks associated with our services, by being named as additional insureds under our master liability insurance policies. In addition, pursuant to our management and service contracts, we charge certain clients an allocated portion of our insurance-related costs, including workers' compensation insurance, at rates that, because of the scale of our operations and claims experience, we believe are competitive. A material change in insurance costs due to a change in the number of claims, claims costs or premiums paid by us could have a material effect on our operating income. While the Company attempts to establish adequate self-insurance reserves using actuarial studies, unanticipated increases in the frequency or severity of claims against the Company would have an adverse financial impact. Also, where the Company self-insures, a deterioration in claims management, whether by the Company or by a third party claims administrator, could lead to delays in settling claims thereby increasing claim costs, particularly in the workers' compensation area. In addition, catastrophic uninsured claims against the Company or the inability or refusal of the Company's insurance carriers to pay otherwise insured claims would have a material adverse financial impact on the Company. Furthermore, should the Company be unable to renew its umbrella and other commercial insurance policies at competitive rates or should our customers choose not to have the Company obtain insurance, it would have an adverse impact on the Company's business.

**A change in actuarial analysis could affect the Company's results.** The Company uses an independent actuary to evaluate estimated claim costs and liabilities no less frequently than annually to ensure that its self-insurance reserves are appropriate. Trend analysis is complex and highly subjective. The interpretation of trends requires the knowledge of all factors affecting the trends that may or may not be reflective of adverse developments (e.g., changes in regulatory requirements and changes in reserving methodology). Actuaries may vary in the manner in which they derive their estimates and these differences could lead to variations in actuarial estimates that cause changes in the Company's insurance reserves not related to changes in its claims experience. Changes in insurance reserves as a result of an actuarial review can cause swings in operating results that are unrelated to the Company's ongoing business. In addition, because of the time required for the actuarial analysis, the Company may not learn of a deterioration in claims, particularly claims administered by a third party, until additional costs have been incurred or are projected. Because the Company bases its pricing in part on its estimated insurance costs, the Company's prices could be higher or lower than they otherwise might be if better information were available resulting in a competitive disadvantage in the former case and reduced margins or unprofitable contracts in the latter.

**The Company's technology environment may be inadequate to support growth.** Although the

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Company employs a centralized accounting system, the Company relies on a number of legacy information technology systems, particularly its payroll system, as well as manual processes, to conduct its operations. These systems and processes may be unable to provide adequate support for the business and create additional reliance upon manual rather than system controls, particularly as the Company expands. This could result, for instance, in delays in meeting payroll obligations, in difficulty calculating and tracking appropriate governmental withholding and other payroll regulatory obligations, and in higher internal and external expenses to work around these systems. Additionally, the current technology environment may be unable to support the integration of acquired businesses and anticipated internal growth. Effective October 2006, the Company entered into an outsourcing agreement with IBM to provide information technology services. With IBM's support, the Company expects to implement a new payroll system in 2008. The project approach, scope, cost and schedule are currently being developed. The Company may also upgrade its accounting system, which would include the consolidation of multiple databases, the potential replacement of custom systems and business process redesign to facilitate the implementation of shared-service functions across the Company. If it decides to do so, software version incompatibility may require concurrent rather than sequential projects to achieve the required integration between the two systems or entail additional costs associated with consecutive implementation of the new payroll system and an accounting system upgrade. Additionally, a data warehouse/analytics solution will be necessary to address historic data and reporting requirements for payroll and accounting. Supporting multiple concurrent projects may result in resource constraints and the inability to complete projects on schedule. The Company may also experience problems in transitioning to the new systems and/or additional expenditures may be required. For the first six months of that contract, IBM is providing support in the current technology environment and will assist the Company in selecting new technology or upgrading current technology. While the Company believes that IBM's experience and expertise will lead to improvements in its technology environment, the risks associated with outsourcing include the dependence upon a third party for essential aspects of the Company's business and risks to the security and integrity of the Company's data in the hands of third parties. The Company may also have potentially less control over costs associated with necessary systems when they are supported by a third party, as well as potentially less responsiveness from vendors than employees.

**Acquisition activity could slow or be unsuccessful.** A significant portion of the Company's historic growth has come through acquisitions and the Company expects to continue to acquire businesses in the future as part of its growth strategy. A slowdown in acquisitions could lead to a slower growth rate. Because new contracts frequently involve start-up costs, sales associated with acquired operations generally have higher margins than new sales associated with internal growth. Therefore a slowdown in acquisition activity could lead to constant or lower margins, as well as lower revenue growth. There can be no assurance that any acquisition that the Company makes in the future will provide the Company with the benefits that were anticipated when entering the transaction. The process of integrating an acquired business may create unforeseen difficulties and expenses. The areas in which the Company may face risks include:

- Diversion of management time and focus from operating the business to acquisition integration;
- The need to implement or improve internal controls, procedures and policies appropriate for a public company at businesses that prior to the acquisition lacked these controls, procedures and policies;
- The need to integrate acquired businesses' accounting, management information, human resources and other administrative systems to permit effective management;
- Inability to retain employees from businesses the Company acquires;
- Inability to maintain relationships with customers of the acquired business;
- Write-offs or impairment charges relating to goodwill and other intangible assets from acquisitions; and
- Unanticipated or unknown liabilities relating to acquired businesses.

**The Company could experience labor disputes that could lead to loss of sales or expense variations.** At October 31, 2006, approximately 39% of the Company's employees were subject to various local collective bargaining agreements. Some collective bargaining agreements will expire or become subject to renegotiation during fiscal year 2007. In addition, the Company may face union organizing drives. When one or more of the Company's major collective bargaining agreements becomes subject to renegotiation or when

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the Company faces union organizing drives, the Company and the union may disagree on important issues which, in turn, could lead to a strike, work slowdown or other job actions at one or more of the Company's locations. A strike, work slowdown or other job action could in some cases disrupt the Company from providing its services, resulting in reduced revenue. If declines in customer service occur or if the Company's customers are targeted for sympathy strikes by other unionized workers during union organizing drives, contract cancellations could result. The result of negotiating a first time agreement or renegotiating an existing collective bargaining agreement could be a substantial increase in labor and benefits expenses that the Company could be unable to pass through to its customers for some period of time, if at all.

**A decline in commercial office building occupancy and rental rates could affect the Company's sales and profitability.** The Company's sales directly depend on commercial real estate occupancy levels and the rental income of building owners. Decreases in occupancy levels and rental income reduce demand and also create pricing pressures on building maintenance and other services provided by the Company. In certain geographic areas and service segments, the Company's most profitable sales are known as tag jobs, which are services performed for tenants in buildings in which it performs building services for the property owner or management company. A decline in occupancy rates could result in a decline in fees paid by landlords, as well as tenant work, which would lower sales and margins. In addition, in those areas of its business where the Company's workers are unionized, decreases in sales can be accompanied by relative increases in labor costs if the Company is obligated by collective bargaining agreements to retain workers with seniority and consequently higher compensation levels and cannot pass through these costs to customers.

**The financial difficulties or bankruptcy of one or more of the Company's major customers could adversely affect results.** The Company's ability to collect its accounts receivable and future sales depend, in part, on the financial strength of its customers. The Company estimates an allowance for accounts it does not consider collectible and this allowance adversely impacts profitability. In the event customers experience financial difficulty, and particularly if bankruptcy results, profitability is further impacted by the Company's failure to collect accounts receivable in excess of the estimated allowance. Additionally, the Company's future sales would be reduced by the loss of these customers.

**The Company's success depends on its ability to preserve its long-term relationships with its customers.** The Company's contracts with its customers can generally be terminated upon relatively short notice. However, the business associated with long-term relationships is generally more profitable than that from short-term relationships because the Company incurs start-up costs with many new contracts, particularly for training, operating equipment and uniforms. Once these costs are expensed or fully depreciated over the appropriate periods, the underlying contracts become more profitable. Therefore, the Company's loss of long-term customers could have an adverse impact on its profitability even if the Company generates equivalent sales from new customers.

**The Company is subject to intense competition that can constrain its ability to gain business and its profitability.** The Company believes that each aspect of its business is highly competitive, and that such competition is based primarily on price and quality of service. The Company provides nearly all its services under contracts originally obtained through competitive bidding. The low cost of entry to the facility services business has led to strongly competitive markets consisting primarily of regional and local owner-operated companies, with particularly intense competition in the janitorial business in the Southeast and South Central regions of the United States. The Company also competes with the operating divisions of a few large, diversified facility services and manufacturing companies on a national basis. Indirectly, the Company competes with building owners and tenants that can perform internally one or more of the services provided by the Company. These building owners and tenants might have a competitive advantage in locations where the Company's services are subject to sales tax and internal operations are not. Furthermore, competitors may have lower costs because privately owned companies operating in a limited geographic area may have significantly lower labor and overhead costs. These strong competitive pressures could inhibit the Company's success in bidding for profitable business and its ability to increase prices even as costs rise, thereby reducing margins. Further, if the Company's sales decline, the Company may not be able to reduce its expenses correspondingly.

**An increase in costs that the Company cannot pass on to customers could affect profitability.** The Company negotiates many contracts under which its customers agree to pay certain costs at rates set by the Company, particularly workers' compensation and other insurance coverage where the Company self insures

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much of its risk. If the Company's actual costs exceed the rates set by the Company, then the Company's profitability may decline unless it can negotiate increases in these rates. In addition, if the Company's costs, particularly workers' compensation and other insurance costs, exceed those of its competitors, the Company may lose business unless it establishes rates that do not fully cover its costs.

**Natural disasters or acts of terrorism could disrupt the Company in providing services.** Storms, earthquakes, or other natural disasters or acts of terrorism may result in reduced sales or property damage. Disasters may also cause economic dislocations throughout the country. In addition, natural disasters or acts of terrorism may increase the volatility of the Company's results, either due to increased costs caused by the disaster with partial or no corresponding compensation from customers, or, alternatively, increased sales and profitability related to tag jobs, special projects and other higher margin work necessitated by the disaster. In addition, a significant portion of the Company's Parking sales is tied to the numbers of airline passengers and hotel guests and Parking results could be adversely affected if people curtail business and personal travel.

**The Company incurs significant accounting and other control costs that reduce its profitability.** As a publicly traded corporation, the Company incurs certain costs to comply with regulatory requirements. The process of complying with the internal control over financial reporting certification requirement of Section 404 of the Sarbanes-Oxley Act of 2002 was more costly than anticipated, requiring additional personnel and outside advisory services, as well as additional accounting and legal expenses. If regulatory requirements were to become more stringent or if controls thought to be effective later fail, the Company may be forced to make additional expenditures, the amounts of which could be material.

Most of the Company's competitors are privately owned so these costs can be a competitive disadvantage for the Company. Should the Company's sales decline or if the Company is unsuccessful at increasing prices to cover higher expenditures for internal controls and audits, its costs associated with regulatory compliance will rise as a percentage of sales.

### **Other issues and uncertainties may include:**

- New accounting pronouncements or changes in accounting policies;
- Labor shortages that adversely affect the Company's ability to employ entry level personnel;
- Legislation or other governmental action that detrimentally impacts the Company's expenses or reduces sales by adversely affecting the Company's customers;
- Unanticipated adverse jury determinations, judicial rulings or other developments in litigation to which the Company is subject;
- A reduction or revocation of the Company's line of credit that could increase interest expense and the cost of capital;
- Low levels of capital investments by customers, which tend to be cyclical in nature, could adversely impact the results of the Company's Lighting segment; and
- The resignation, termination, death or disability of one or more of the Company's key executives that adversely affects customer retention or day-to-day management of the Company.

The Company believes that it has the human and financial resources for business success, but future profit and cash flow can be adversely (or advantageously) influenced by a number of factors, including those listed above, any and all of which are inherently difficult to forecast. The Company undertakes no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise.

## **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## **ITEM 2. PROPERTIES**

The Company has corporate, subsidiary, regional, branch or district offices in over 240 locations throughout the United States and in British Columbia, Canada. Twelve of these facilities are owned by the Company. At October 31, 2006, the real estate owned by the Company had an aggregate net book value of \$2.3 million and was located in: Phoenix, Arizona; Jacksonville and Tampa, Florida; Portland, Oregon; Houston and San Antonio, Texas; and Kennewick, Seattle, Spokane and Tacoma, Washington.

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Rental payments under long and short-term lease agreements amounted to \$95.9 million for the fiscal year ended October 31, 2006. Of this amount, \$62.5 million in rental expense was attributable to public parking lots and garages leased and operated by Parking. The remaining expense was for the rental or lease of office space, computers, operating equipment and motor vehicles.

### **ITEM 3. LEGAL PROCEEDINGS**

The Company is involved in various claims and legal proceedings of a nature considered normal to its business, as well as from time to time in additional matters. The Company records accruals for contingencies when it is probable that a liability has been incurred and the amount can be reasonably estimated. These accruals are adjusted periodically as assessments change or additional information becomes available.

The Company is a defendant in the following purported class action suits related to alleged violations of federal or California wage-and-hour laws: (1) The consolidated cases of Augustus, Hall and Davis v. American Commercial Security Services ("ACSS") filed July 12, 2005, in the Superior Court of California, Los Angeles County ("L.A. Superior Ct."); (2) Augustus and Hernandez v. ACSS filed on February 23, 2006, in L.A. Superior Ct.; (3) Bucio, Morales and Salcedo v. ABM Janitorial Services filed on April 7, 2006, in the Superior Court of California, County of San Francisco; (4) the recently consolidated cases of Batiz v. ACSS and Heine v. ACSS, filed on June 7, 2006 and August 9, 2006, respectively, in the U.S. District Court of California, Central District; (5) Martinez, Lopez, Rodriguez and Godoy v. ABM Janitorial Services filed on November 28, 2006 in L.A. Superior Ct and (6) Joaquin Diaz v. Ampco System Parking filed on December 5, 2006, in L.A. Superior Ct. The named plaintiffs in these lawsuits are current or former employees of ABM subsidiaries who allege, among other things, that they were required to work "off the clock," were not paid for all overtime and were not provided work breaks or other benefits. The plaintiffs generally seek unspecified monetary damages, injunctive relief, or both. The Company believes it has meritorious defenses to these claims and that class certification is unlikely, and intends to continue to vigorously defend itself. Given the nature and preliminary status of these wage-and-hour claims, the Company cannot yet determine the amount or a reasonable range of potential loss in these matters, if any.

In September, 2006, the Company received \$80.0 million in settlement of its previously reported litigation against its business interruption carrier, Zurich Insurance Company ("Zurich"), for losses related to the destruction of the World Trade Center complex in New York, which was the Company's largest single job-site at the time of its destruction on September 11, 2001.

The Company uses an independent actuary to evaluate the Company's estimated claim costs and liabilities no less frequently than annually. The 2004 actuarial report completed in November 2004 indicated that there were adverse developments in the Company's insurance reserves primarily related to workers' compensation claims in the State of California during the four-year period ended October 31, 2003, for which the Company recorded a charge of \$17.2 million in the fourth quarter of 2004. The Company believes a substantial portion of the \$17.2 million, as well as other costs incurred by the Company in its insurance claims was related to poor claims management by a third party administrator that no longer performs these services for the Company. In addition, the Company believes that poor claims administration in certain other states, particularly New York, led to higher costs for the Company. The Company has filed a claim against its former third party administrator for its damages related to claims mismanagement. The Company is actively pursuing this claim, which is subject to arbitration in accordance with the rules of the American Arbitration Association. The three-person arbitration panel has been designated and discovery is underway, including examination of a sample of claims by insurance experts.

In August 2005, ABM filed an action for declaratory relief, breach of contract and breach of the implied covenant of good faith and fair dealing in U.S. District Court in The Northern District of California against its insurance carriers, Zurich American Insurance Company ("Zurich American") and National Union Fire Insurance Company relating to the carriers' failure to provide coverage for ABM and one of its Parking subsidiaries. In September 2006, the Company settled its claims against Zurich American for \$400,000. Zurich American had provided \$850,000 in coverage. In September 2006, the Company lost a motion for summary adjudication filed by National Union on the issue of the duty to defend. The Company is appealing that ruling. ABM's claim includes "bad faith" allegations based upon the settlement of the underlying litigation with IAH-JFK Airport Parking Co., LLC in early 2006. ABM seeks to recover

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legal fees and \$5.3 million in settlement costs in the underlying litigation.

While the Company accrues amounts it believes are adequate to address any liabilities related to litigation that the Company believes will result in a probable loss, the ultimate resolution of such matters is always uncertain. It is possible that litigation or other proceedings brought against the Company in the future could have a material adverse impact on its financial condition and results of operations.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

Not applicable.

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### PART II

## ITEM 5. MARKET FOR THE REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

### Market Information and Dividends

ABM's common stock is listed on the New York Stock Exchange. The following table sets forth the high and low intra-day prices of ABM's common stock on the New York Stock Exchange and quarterly cash dividends declared on common shares for the periods indicated:

	Fiscal Quarter				
	First	Second	Third	Fourth	Year
<b>Fiscal Year 2006</b>					
Price range of common stock:					
High	\$21.89	\$ 19.40	\$18.22	\$ 20.00	\$21.89
Low	\$18.93	\$ 16.35	\$16.20	\$ 16.11	\$16.11
Dividends declared per share	\$ 0.11	\$ 0.11	\$ 0.11	\$ 0.11	\$ 0.44
<b>Fiscal Year 2005</b>					
Price range of common stock:					
High	\$22.49	\$ 20.18	\$20.27	\$ 21.43	\$22.49
Low	\$17.83	\$ 17.99	\$18.08	\$ 18.76	\$17.83
Dividends declared per share	\$0.105	\$ 0.105	\$ 0.105	\$ 0.105	\$ 0.42

To the Company's knowledge, there are no current factors that are likely to materially limit the Company's ability to pay comparable dividends for the foreseeable future.

### Stockholders

At November 30, 2006, there were 3,669 registered holders of ABM's common stock.

### Issuer Purchases of Equity Securities

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (1)
8/1/2006-8/31/2006	—	—	—	1,200,000 shares
9/1/2006-9/30/2006	—	—	—	1,200,000 shares
10/1/2006-10/31/2006	628,500 shares	\$ 19.12	628,500 shares	—
Total	628,500 shares	\$ 19.12	628,500 shares	—

(1) On March 29, 2006, ABM's Board of Directors authorized the purchase of up to 2,000,000 shares of ABM's outstanding common stock at any time through October 31, 2006. The authorization expired with 571,500 shares remaining.

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### **ITEM 6. SELECTED FINANCIAL DATA**

The following selected financial data is derived from the Company's consolidated financial statements for each of the years in the five-year period ended October 31, 2006. It should be read in conjunction with the consolidated financial statements and the notes thereto, as well as "Management's Discussion and Analysis of Financial Condition and Results of Operations" ("MD&A"), which are included elsewhere in this Annual Report on Form 10-K.

<b>Years Ended October 31,</b> (in thousands, except per share data and ratios)	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
<b>Operations</b>					
Revenues					
Sales and other income	\$ 2,712,668	\$ 2,586,566	\$ 2,375,149	\$ 2,222,367	\$ 2,021,698
Gain on insurance claim (1)	80,000	1,195	—	—	10,025
	<b>2,792,668</b>	<b>2,587,761</b>	<b>2,375,149</b>	<b>2,222,367</b>	<b>2,031,723</b>
Expenses					
Operating expenses and cost of goods sold (2)	2,421,552	2,312,687	2,157,637	2,007,740	1,822,802
Selling, general and administrative (3)(4)	207,116	204,131	166,981	159,949	145,772
Intangible amortization	5,764	5,673	4,519	2,044	1,085
Interest	495	884	1,016	758	1,052
	<b>2,634,927</b>	<b>2,523,375</b>	<b>2,330,153</b>	<b>2,170,491</b>	<b>1,970,711</b>
Income from continuing operations before income taxes	157,741	64,386	44,996	51,876	61,012
Income taxes	64,536	20,832	15,352	17,278	19,523
Income from continuing operations	<b>93,205</b>	<b>43,554</b>	<b>29,644</b>	<b>34,598</b>	<b>41,489</b>
Income from discontinued operations, net of income taxes	—	166	829	3,586	2,865
Gain on sale of discontinued operations, net of income taxes	—	14,221	—	52,736	—
Net income	<b>\$ 93,205</b>	<b>\$ 57,941</b>	<b>\$ 30,473</b>	<b>\$ 90,920</b>	<b>\$ 44,354</b>
Net income per common share — Basic					
Income from continuing operations	\$ 1.90	\$ 0.88	\$ 0.61	\$ 0.71	\$ 0.84
Income from discontinued operations	—	—	0.02	0.07	0.06
Gain on sale of discontinued operations	—	0.29	—	1.07	—
	<b>\$ 1.90</b>	<b>\$ 1.17</b>	<b>\$ 0.63</b>	<b>\$ 1.85</b>	<b>\$ 0.90</b>
Net income per common share — Diluted					
Income from continuing operations	\$ 1.88	\$ 0.86	\$ 0.59	\$ 0.69	\$ 0.81
Income from discontinued operations	—	—	0.02	0.07	0.06
Gain on sale of discontinued operations	—	0.29	—	1.06	—
	<b>\$ 1.88</b>	<b>\$ 1.15</b>	<b>\$ 0.61</b>	<b>\$ 1.82</b>	<b>\$ 0.87</b>
Average common and common equivalent shares					
Basic	<b>49,054</b>	<b>49,332</b>	<b>48,641</b>	<b>49,065</b>	<b>49,116</b>
Diluted	<b>49,678</b>	<b>50,367</b>	<b>50,064</b>	<b>50,004</b>	<b>51,015</b>
<b>FINANCIAL STATISTICS</b>					
Dividends declared per common share	\$ 0.44	\$ 0.42	\$ 0.40	\$ 0.38	\$ 0.36
Stockholders' equity	\$ 541,247	\$ 475,926	\$ 442,161	\$ 430,022	\$ 372,194
Common shares outstanding	48,635	49,051	48,707	48,367	48,997
Stockholders' equity per common share (5)	\$ 11.13	\$ 9.70	\$ 9.08	\$ 8.89	\$ 7.60
Working capital	\$ 312,456	\$ 246,379	\$ 230,698	\$ 244,671	\$ 214,876
Net operating cash flows from continuing operations	\$ 130,367	\$ 44,799	\$ 64,412	\$ 50,746	\$ 95,583
Current ratio	1.98	1.90	1.91	1.95	1.94
Total assets	\$ 1,016,274	\$ 903,710	\$ 842,524	\$ 804,306	\$ 712,550
Assets held for sale	—	—	\$ 14,441	\$ 12,028	\$ 46,011
Trade accounts receivable — net	\$ 383,977	\$ 345,104	\$ 307,237	\$ 278,330	\$ 285,827
Goodwill	\$ 247,888	\$ 243,559	\$ 225,495	\$ 186,857	\$ 162,057
Other intangibles — net	\$ 23,881	\$ 24,463	\$ 22,290	\$ 15,849	\$ 4,059
Property, plant and equipment — net	\$ 32,185	\$ 34,270	\$ 31,191	\$ 31,738	\$ 35,533
Capital expenditures	\$ 14,065	\$ 17,738	\$ 11,460	\$ 11,535	\$ 7,212
Depreciation	\$ 14,981	\$ 13,918	\$ 13,024	\$ 13,673	\$ 13,674

(1) The World Trade Center formerly represented the Company's largest job-site; its destruction on September 11, 2001 has directly and indirectly impacted subsequent Company results. Amounts for 2006, 2005 and 2002 consist of gains in connection with World Trade Center insurance claims.

(2) Operating expenses for 2006 and 2005 included benefits of \$14.1 million and \$8.2 million, respectively, from the reduction of the Company's self-insurance reserves. Operating expenses for 2004 included a \$17.2 million insurance charge resulting from adverse developments in the Company's California worker's compensation claims. See Note 2 of the Notes to Consolidated Financial Statements contained in Item 8, "Financial Statements and Supplementary Data."

(3) Selling, general and administrative expenses included losses related to three major lawsuits against the Company totaling \$12.8 million in 2005. There were no significant litigation losses in the other years presented. In addition, Selling, general and administrative expenses for 2006 included \$3.3 million of incremental costs associated with outsourcing the management of the Company's information technology infrastructure and support services. No other year presented included a similar charge.

(4) Due to the Company's adoption of Statement of Financial Accounting Standards No. 123R, "Share-Based Payment" effective November 1, 2005, which required the recognition of compensation expense associated with stock awards, selling, general and administrative expenses in 2006 included share-based compensation expense of \$3.2 million. No other years presented included share-based compensation expense except for \$42,000 of compensation expense recorded in 2005 due to the accelerated vesting of options in connection with an employee termination.

(5) Stockholders' equity per common share is calculated by dividing stockholders' equity at the end of the fiscal year by the number of shares of common stock outstanding at that date. This calculation may not be comparable to similarly titled measures reported by other companies.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following discussion should be read in conjunction with the consolidated financial statements of the Company and the notes thereto contained in Item 8, "Financial Statements and Supplementary Data." All information in the discussion and references to the years are based on the Company's fiscal year that ends on October 31.

### **Overview**

ABM Industries Incorporated ("ABM") and its subsidiaries (the "Company") provide janitorial, parking, security, engineering and lighting services for thousands of commercial, industrial, institutional and retail facilities in hundreds of cities throughout the United States and in British Columbia, Canada. The largest segment of the Company's business is Janitorial which generated over 57% of the Company's sales and other income (hereinafter called "Sales") and over 69% of its operating profit before corporate expenses for 2006. The Company also previously provided mechanical and elevator services. (See "Divestitures and Results from Discontinued Operations.")

The Company's Sales are substantially based on the performance of labor-intensive services at contractually specified prices. Janitorial and other maintenance service contracts are either fixed-price or "cost-plus" (*i.e.*, the customer agrees to reimburse the agreed upon amount of wages and benefits, payroll taxes, insurance charges and other expenses plus a profit percentage), or are time and materials based. In addition to services defined within the scope of the contract, the Company also generates Sales from extra services (or "tags"), such as additional cleaning requirements or emergency repair services, with extra services frequently providing higher margins. The quarterly profitability of fixed-price contracts is impacted by the variability of the number of work days in the quarter.

The majority of the Company's contracts are for one-year periods, but are subject to termination by either party after 30 to 90 days' written notice. Upon renewal of the contract, the Company may renegotiate the price although competitive pressures and customers' price sensitivity could inhibit the Company's ability to pass on cost increases. Such cost increases include, but are not limited to, labor costs, workers' compensation and other insurance costs, any applicable payroll taxes and fuel costs. However, for some renewals the Company is able to restructure the scope and terms of the contract to maintain profit margin.

Sales have historically been the major source of cash for the Company, while payroll expenses, which are substantially related to Sales, have been the largest use of cash. Hence operating cash flows significantly depend on the Sales level and timing of collections, as well as the quality of the customer accounts receivable. The timing and level of the payments to suppliers and other vendors, as well as the magnitude of self-insured claims, also affect operating cash flows. The Company's management views operating cash flows as a good indicator of financial strength. Strong operating cash flows provide opportunities for growth both internally and through acquisitions.

The Company's growth in Sales in 2006 from 2005 is significantly attributable to internal growth. Internal growth in Sales represents not only Sales from new customers, but also expanded services or increases in the scope of work for existing customers. In the long run, achieving the desired levels of Sales and profitability will depend on the Company's ability to gain and retain, at acceptable profit margins, more customers than it loses, pass on cost increases to customers, and keep overall costs down to remain competitive, particularly against privately owned companies that typically have the lower cost advantage. The Company's most recent acquisitions also contributed to the growth in sales in 2006. These acquisitions are described in Note 12 of the Notes to Consolidated Financial Statements contained in Item 8, "Financial Statements and Supplementary Data."

In the short-term, management is focused on pursuing new business and integrating its most recent acquisitions. In the long-term, management continues to focus the Company's financial and management resources on those businesses it can grow to be a leading national service provider.

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**Liquidity and Capital Resources**

(In thousands)	October 31,		2006	2005	Change
Cash and cash equivalents	\$134,001		\$ 56,793	\$77,208	
Working capital	\$312,456		\$246,379	\$66,077	
(In thousands)	Years ended October 31,		Years ended October 31,		
	2006	2005	Change	2005	2004
Cash provided by operating activities from continuing operations	\$130,367	\$ 44,799	\$85,568	\$ 44,799	\$ 64,412
Cash used in investing activities	\$ (21,814)	\$ (13,102)	\$ (8,712)	\$ (13,102)	\$ (60,753)
Cash used in financing activities	\$ (31,345)	\$ (30,925)	\$ (420)	\$ (30,925)	\$ (20,515)

Funds provided from operations and bank borrowings have historically been the sources for meeting working capital requirements, financing capital expenditures and acquisitions, and paying cash dividends. As of October 31, 2006 and 2005, the Company's cash and cash equivalents totaled \$134.0 million and \$56.8 million, respectively. Net cash provided by continuing operations contributed \$130.4 million in 2006 and cash from common stock issuances contributed an additional \$16.2 million. As described under "Insurance Claims Related to the Destruction of the World Trade Center ("WTC") in New York on September 11, 2001" below, the Company received \$80.0 million in cash during the fourth quarter of 2006 from the settlement of the WTC insurance claims, which is included in cash provided by operations. Cash used in investing and financing activities partially offset these amounts with \$21.6 million used for dividend payments, \$26.0 million used to purchase shares of ABM common stock, \$14.1 million used for additions to property, plant, and equipment, and \$10.0 million used for acquisitions, including \$5.4 million of initial payments for the purchase of operations of Brandywine Building Services, Inc. ("Brandywine") acquired on November 1, 2005, Fargo Security, Inc. ("Fargo") acquired on November 27, 2005 and Protector Security Services ("Protector") acquired on December 11, 2005.

**Working Capital.** Working capital increased by \$66.1 million to \$312.5 million at October 31, 2006 from \$246.4 million at October 31, 2005, which is primarily due to the income generated during 2006, including the \$45.1 million after-tax gain on the WTC insurance claim, although the cash used in investing and financing activities partially offset the impact. Trade accounts receivable is the largest component of working capital and totaled \$384.0 million at October 31, 2006 compared to \$345.1 million at October 31, 2005. These amounts were net of allowances for doubtful accounts and sales totaling \$8.0 million and \$7.9 million at October 31, 2006 and 2005, respectively. At October 31, 2006, accounts receivable that were over 90 days past due had increased by \$5.6 million to \$32.8 million (8.4% of the total outstanding) from \$27.2 million (7.7% of the total outstanding) at October 31, 2005 as a result of a slow down of customer payments.

**Cash Flows from Operating Activities.** Continuing operations provided net cash of \$130.4 million, \$44.8 million and \$64.4 million in 2006, 2005 and 2004, respectively. Cash flows from continuing operations increased in 2006 from 2005 primarily due to the \$80.0 million received in settlement of WTC insurance claims, although payments in 2006 of litigation settlements that were pending at October 31, 2005 reduced cash flow from continuing operations. Cash flows from operating activities were also affected by the timing of other recurring payments. Cash from continuing operations decreased in 2005 from 2004 primarily due to higher tax payments made in 2005 compared to 2004. In addition, cash flows from operating activities for 2005 included a \$5.0 million litigation loss and increased deferred cost on projects not completed at the end of the year at Lighting. These increases were offset in part by \$4.4 million in proceeds from the sale of a leasehold interest for an off-airport parking facility.

**Cash Flows from Investing Activities.** Net cash used in investing activities in 2006, 2005 and 2004 was \$21.8 million, \$13.1 million and \$60.8 million, respectively. In 2005, the Company received \$32.3 million from the sales of the operating assets of the Mechanical segment (see "Results from Discontinued Operations"). The Company used \$16.9 million less cash to purchase businesses in 2006 compared to 2005, and \$3.7 million less cash to purchase property, plant, and equipment. The decrease in net cash used in investing activities in 2005 compared to 2004 was primarily due to the \$32.3 million from the Mechanical sale in 2005 and the \$27.3 million decrease in the cash used in the purchase of businesses in 2005 compared to 2004, although

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additions to property, plant and equipment (mostly communication and information technologies) were \$6.3 million higher in 2005 than in 2004.

**Cash Flows from Financing Activities.** Net cash used in financing activities was \$31.3 million, \$30.9 million, \$20.5 million in 2006, 2005 and 2004, respectively. In 2006 compared to 2005, the Company purchased \$5.4 million less ABM common stock although it issued \$4.9 million less ABM common stock through the Company's stock option and employee stock purchase plans. The Company purchased \$20.2 million more ABM common stock in 2005 compared to 2004, although it also issued \$11.1 million more ABM common stock under the Company's stock option and employee stock purchase plans.

**Line of Credit.** In May 2005, ABM entered into a \$300 million syndicated line of credit scheduled to expire in May 2010. No compensating balances are required under the facility and the interest rate is determined at the time of borrowing based on the London Interbank Offered Rate (LIBOR) plus a spread of 0.375% to 1.125% or, for overnight borrowings, at the prime rate or, for overnight to one week, at the Interbank Offered Rate ("IBOR") plus a spread of 0.375% to 1.125%. The spreads for LIBOR and IBOR borrowings are based on the Company's leverage ratio. The facility calls for a non-use fee payable quarterly, in arrears, of 0.125%, based on the average daily unused portion. For purposes of this calculation, irrevocable standby letters of credit issued primarily in conjunction with the Company's self-insurance program plus cash borrowings are considered to be outstanding amounts. As of October 31, 2006 and 2005, the total outstanding amounts under the facility were \$98.7 million and \$84.4 million, respectively, in the form of standby letters of credit.

The facility includes usual and customary covenants for a credit facility of this type, including covenants limiting liens, dispositions, fundamental changes, investments, indebtedness, and certain transactions and payments. In addition, the facility also requires that the Company satisfy three financial covenants: (1) a fixed charge coverage ratio greater than or equal to 1.50 to 1.0 at fiscal quarter-end; (2) a leverage ratio of less than or equal to 3.25 to 1.0 at fiscal quarter-end; and (3) consolidated net worth greater than or equal to the sum of (i) \$341.9 million, (ii) an amount equal to 50% of the consolidated net income earned in each full fiscal quarter ending after May 25, 2005 (with no deduction for a net loss in any such fiscal quarter) and (iii) an amount equal to 100% of the aggregate increases in stockholders' equity of ABM after May 25, 2005 by reason of the issuance and sale of capital stock or other equity interests of ABM, including upon any conversion of debt securities of ABM into such capital stock or other equity interests, but excluding by reason of the issuance and sale of capital stock pursuant to the Company's employee stock purchase plans, employee stock option plans and similar programs. At October 31, 2006, the Company was in compliance with all covenants.

### **Cash Requirements**

The Company is contractually obligated to make future payments under non-cancelable operating lease agreements for various facilities, vehicles and other equipment. As of October 31, 2006, future contractual payments were as follows:

(in thousands)	Payments Due By Period				
Contractual Obligations	Total	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years
Operating leases	\$ 129,781	\$ 34,168	\$ 44,283	\$ 23,525	\$ 27,805

Additionally, the Company has the following commercial commitments and other long-term liabilities:

(in thousands)	Amounts of Commitment Expiration Per Period				
Commercial Commitments	Total	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years
Standby letters of credit	\$ 98,725	\$ 98,725	\$ —	\$ —	\$ —
Surety bonds	54,462	52,504	1,948	10	—
Total	\$ 153,187	\$ 151,229	\$ 1,948	\$ 10	\$ —

(in thousands)	Payments Due By Period				
Other Long-Term Liabilities	Total	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years
Unfunded employee benefit plans	\$ 32,575	\$ 2,791	\$ 3,986	\$ 4,141	\$ 21,657

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The Company uses surety bonds, principally performance and payment bonds, to guarantee performance under various customer contracts in the normal course of business. These bonds typically remain in force for one to five years and may include optional renewal periods. At October 31, 2006, outstanding surety bonds totaled approximately \$54.5 million. The Company does not believe these bonds will be required to be drawn upon.

The Company has three unfunded defined benefit plans, an unfunded post-retirement benefit plan and an unfunded deferred compensation plan that are described in Note 6 of the Notes to Consolidated Financial Statements contained in this Annual Report on Form 10-K. At October 31, 2006, the liability reflected on the Company's consolidated balance sheet for these five plans totaled \$22.3 million, with the amount expected to be paid over the next 20 years estimated at \$32.6 million. With the exception of the deferred compensation plan, the liability for which is reflected on the Company's consolidated balance sheet at the amount of compensation deferred plus accrued interest, the plan liabilities at that date assume future annual compensation increases of 3.50% (for those plans affected by compensation changes) and have been discounted at 5.75%, a rate based on Moody's Investor Services AA-rated long-term corporate bonds (*i.e.*, 20 years). Because the deferred compensation plan liability reflects the actual obligation of the Company and the post-retirement benefit plan and the three defined benefit plans have been frozen, variations in assumptions would be unlikely to have a material effect on the Company's financial condition and operating performance. The Company expects to fund payments required under the plans from operating cash as payments are due to participants.

Not included in the unfunded employee benefit plans in the table above are union-sponsored multi-employer defined benefit plans under which certain union employees of the Company are covered. These plans are not administered by the Company and contributions are determined in accordance with provisions of negotiated labor contracts. Contributions paid for these plans were \$34.5 million, \$34.4 million and \$33.5 million in 2006, 2005 and 2004, respectively.

The Company self-insures certain insurable risks such as general liability, automobile, property damage, and workers' compensation. Commercial policies are obtained to provide for \$150.0 million of coverage for certain risk exposures above the self-insured retention limits (*i.e.*, deductibles). For claims incurred after November 1, 2002, substantially all of the self-insured retentions increased from \$0.5 million per occurrence (inclusive of legal fees) to \$1.0 million per occurrence (exclusive of legal fees) except for California workers' compensation insurance which increased to \$2.0 million per occurrence from April 14, 2003 to April 14, 2005, when it returned to \$1.0 million per occurrence, plus an additional \$1.0 million annually in the aggregate. The estimated liability for claims incurred but unpaid at October 31, 2006 and 2005 was \$195.2 million and \$198.6 million, respectively. The Company retains an outside actuary to provide an actuarial estimate of its insurance reserves no less frequently than annually.

The self-insurance claims paid in 2006, 2005 and 2004 were \$57.4 million, \$55.2 million and \$60.7 million, respectively. Claim payments vary based on the frequency and/or severity of claims incurred and timing of the settlements and therefore may have an uneven impact on the Company's cash balances.

On September 29, 2006, the Company entered into a Master Professional Services Agreement (the "Services Agreement") with International Business Machines Corporation ("IBM") that became effective October 1, 2006, pursuant to which IBM will provide to the Company substantially all of the information technology infrastructure and services provided in 2006 by in-house equipment and personnel. By transferring these functions to IBM, the Company expects to reduce the risks associated with performing these information technology functions in-house and upgrade the information technology infrastructure to support growth and strategic business initiatives.

The services that IBM will provide include data center, server, network and workstation operations, as well as help desk, applications management and support, and disaster recovery services. The base fee for these services is approximately \$117 million over the initial term of 7 years and 3 months. ABM and IBM may expand the services covered by the Service Agreement at rates set forth in the Services Agreement, or later agreed to by the parties, which would increase costs. As of October 31, 2006, future contractual payments were as follows:

(in thousands)	Payments Due By Period				
Contractual Obligations	Total	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years
IBM Agreement	\$112,896	\$ 22,511	\$ 32,017	\$ 28,883	\$ 29,485

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The Company expects to pay approximately \$35 million in taxes in the first quarter of fiscal 2007 related to the \$80.0 million gain on the WTC insurance claim described below.

The Company also completed its evaluation of its legacy payroll system and expects to implement in 2008 a new payroll system, which will include payroll, human resources, and benefits applications. The Company expects to spend approximately \$10 million during fiscal 2007 and the first quarter of fiscal 2008 on planning and implementation costs. The project commenced in the fourth quarter of fiscal 2006.

The Company believes that the current cash and cash equivalents, cash generated from operations and the line of credit will be sufficient to meet the Company's cash requirements for the long term including cash required for acquisitions.

### **Insurance Claims Related to the Destruction of the World Trade Center in New York City on September 11, 2001**

The Company had commercial insurance policies covering business interruption, property damage and other losses related to the World Trade Center complex in New York, which was the Company's largest single job-site at the time of its destruction on September 11, 2001 with annual Sales of approximately \$75.0 million. The Company had been engaged in protracted litigation with Zurich Insurance Company ("Zurich"), its business interruption insurance carrier, to recover its losses of business profits. This litigation was settled on August 15, 2006 for \$80.0 million and the proceeds were received in September 2006. Under Emerging Issues Task Force ("EITF") Issue No. 01-10, "Accounting for the Impact of the Terrorist Attacks of September 11, 2001," the Company recognized the \$80.0 million settlement into income from continuing operations in the fourth quarter of 2006. Including the \$80.0 million, the Company received from Zurich \$95.2 million in accumulated payments for its commercial insurance policy covering business interruption, property damage, and other losses related to the World Trade Center complex and no additional claims remain pending.

### **Environmental Matters**

The Company's operations are subject to various federal, state and/or local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, such as discharge into soil, water and air, and the generation, handling, storage, transportation and disposal of waste and hazardous substances. These laws generally have the effect of increasing costs and potential liabilities associated with the conduct of the Company's operations, although historically they have not had a material adverse effect on the Company's financial position, results of operations, or cash flows. In addition, from time to time the Company is involved in environmental issues at certain of its locations or in connection with its operations. While it is difficult to predict the ultimate outcome of any of these matters, based on information currently available, management believes that none of these matters, individually or in the aggregate, are reasonably likely to have a material adverse effect on the Company's financial position, results of operations, or cash flows.

### **Off-Balance Sheet Arrangements**

The Company is party to a variety of agreements under which it may be obligated to indemnify the other party for certain matters. Primarily, these agreements are standard indemnification arrangements in its ordinary course of business. Pursuant to these arrangements, the Company may agree to indemnify, hold harmless and reimburse the indemnified parties for losses suffered or incurred by the indemnified party, generally its customers, in connection with any claims arising out of the services that the Company provides. The Company also incurs costs to defend lawsuits or settle claims related to these indemnification arrangements and in most cases these costs are paid from its insurance program. The term of these indemnification arrangements is generally perpetual. Although the Company attempts to place limits on this indemnification reasonably related to the size of the contract, the maximum obligation may not be explicitly stated and, as a result, the maximum potential amount of future payments the Company could be required to make under these arrangements is not determinable.

ABM's certificate of incorporation and bylaws may require it to indemnify Company directors and officers against liabilities that may arise by reason of their status as such and to advance their expenses incurred as a result of any legal proceeding against them as to which they could be indemnified. ABM has also entered into indemnification agreements with its directors to this effect. The overall amount of these obligations cannot be reasonably estimated, however, the Company believes that any loss under these obligations would not have a material adverse effect on the Company's financial position, results of operations or cash flows. The Company currently has directors' and officers' insurance, which has a deductible of up to \$1.0 million.

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### **Effect of Inflation**

The low rates of inflation experienced in recent years have had no material impact on the financial statements of the Company. The Company attempts to recover increased costs by increasing sales prices to the extent permitted by contracts and competition.

### **Acquisitions**

The operating results of businesses acquired during the periods presented have been included in the accompanying consolidated financial statements from their respective dates of acquisition. Acquisitions made during the three years ended October 31, 2006 are discussed in Note 12 of the Notes to Consolidated Financial Statements contained in Item 8, "Financial Statements and Supplementary Data," and contributed approximately \$235.4 million (8.7%) to 2006 Sales.

### **Divestitures and Results from Discontinued Operations**

On June 2, 2005, the Company sold substantially all of the operating assets of CommAir Mechanical Services, which represented the Company's Mechanical segment, to Carrier Corporation ("Carrier"). The operating assets sold included customer contracts, accounts receivable, inventories, facility leases and other assets, as well as rights to the name "CommAir Mechanical Services." The consideration paid was \$32.0 million in cash, subject to certain adjustments, and Carrier's assumption of trade payables and accrued liabilities. The Company realized a pre-tax gain of \$21.4 million (\$13.1 million after tax) on the sale of these assets in 2005.

On July 31, 2005, the Company sold the remaining operating assets of Mechanical, consisting of its water treatment business, to San Joaquin Chemicals, Incorporated for \$0.5 million, of which \$0.25 million was paid in cash and \$0.25 million in the form of a note, which was paid in October 2005. The operating assets sold included customer contracts and inventories. The Company realized a pre-tax gain of \$0.3 million (\$0.2 million after tax) on the sale of these assets in 2005.

On August 15, 2003, the Company sold substantially all of the operating assets of Amtech Elevator Services, Inc., which represented the Company's Elevator segment, to Otis Elevator Company. In June 2005, the Company settled litigation that arose from and was directly related to the operations of Elevator prior to its disposal. An estimated liability of \$0.5 million for several Elevator commercial litigation matters had been recorded on the date of disposal. The settlement was less than the estimated liability by \$0.2 million, pre-tax. This difference was recorded as income from discontinued operations in 2005. In addition, a \$0.9 million benefit was recorded in gain on sale of discontinued operations in 2005, which resulted from the correction of the overstatement of income taxes provided for the gain on sale of assets of the Elevator segment.

The operating results of Mechanical for 2005 and 2004 and the Elevator adjustments in 2005 are shown below. Operating results for 2005 for the portion of Mechanical's business sold to Carrier are for the period beginning November 1, 2004 through the date of sale, June 2, 2005. Operating results for 2005 for Mechanical's water treatment business are for the period beginning November 1, 2004 through the date of sale, July 31, 2005.

(In thousands)	2005	2004
Revenues	\$ 24,811	\$ 41,074
Income before income taxes	\$ 273	\$ 1,366
Income taxes	107	537
Income from discontinued operations, net of income taxes	\$ 166	\$ 829

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### Results of Continuing Operations

#### COMPARISON OF 2006 TO 2005 — CONTINUING OPERATIONS

Years Ended October 31, (\$ in thousands)	2006	% of Sales	2005	% of Sales	Increase (Decrease)
<b>Revenues</b>					
Sales and other income	\$ 2,712,668	100.0%	\$ 2,586,566	100.0%	4.9%
Gain on insurance claim	80,000	—	1,195	—	—
	\$ 2,792,668	—	\$ 2,587,761	—	7.9%
<b>Expenses</b>					
Operating expenses and cost of goods sold	2,421,552	89.3%	2,312,687	89.4%	4.7%
Selling, general and administrative	207,116	7.6%	204,131	7.9%	1.5%
Intangible amortization	5,764	0.2%	5,673	0.2%	1.6%
Interest	495	—	884	—	(44.0)%
	2,634,927	97.1%	2,523,375	97.6%	4.4%
Income from continuing operations before income taxes	157,741	5.8%	64,386	2.5%	145.0%
Income taxes	64,536	2.4%	20,832	0.8%	—
<b>Income from continuing operations</b>	<b>\$ 93,205</b>	<b>3.4%</b>	<b>\$ 43,554</b>	<b>1.7%</b>	<b>114.0%</b>

**Income from continuing operations.** Income from continuing operations in 2006 increased 114.0% to \$93.2 million (\$1.88 per diluted share) from \$43.6 million (0.86 per diluted share) in 2005. The increase was primarily due to the \$80.0 million (\$45.1 million, after-tax) recognized into income in the fourth quarter of 2006 for the settlement of the WTC insurance claims. All operating segments, except Lighting, showed improvement in operating income. In addition, in 2006 the Company recognized a benefit that was \$5.9 million (\$3.6 million after-tax) higher than 2005 from the reduction of the Company's self insurance reserves (\$14.1 million benefit in 2006 and \$8.2 million in 2005) related to prior years' insurance claims. These improvements were partially offset by a \$3.3 million (\$2.0 million after-tax) charge related to outsourcing the management of the Company's information technology infrastructure and support services in October 2006, \$3.2 million (\$2.6 million after-tax) of share-based compensation costs as a result of the adoption of Statement of Financial Accounting Standards ("SFAS") No. 123R effective November 1, 2005, and \$2.4 million (\$1.5 million after-tax) of professional fees associated with the Audit Committee's independent investigation of prior year accounting at a subsidiary in the Company's Security segment, Security Services America ("SSA"). Income from continuing operations in 2005 included \$12.8 million (\$7.8 million, after-tax) of losses from three major lawsuits, and a \$3.4 million (\$2.1 million after-tax) charge for a reserve provided for the amount the Company believed it overpaid Security Services of America, LLC ("SSA LLC"), which reserve was reduced by \$1.0 million (\$0.6 million after-tax) in 2006. Also included in 2005 was a \$4.3 million (\$2.6 million after-tax) gain on sale of a leasehold interest of an off-airport parking facility by Parking, a \$2.7 million income tax benefit resulting from a state tax audit settlement and a \$1.2 million (\$0.7 million after-tax) gain on a WTC indemnity payment.

**Revenues.** Revenues in 2006 of \$2,792.7 million increased by \$204.9 million or 7.9% from \$2,587.8 million in 2005. The primary reason for the increase was the growth in Sales which increased by \$126.1 million or 4.9% in 2006 from 2005. Acquisitions completed in 2005 and 2006 contributed \$27.8 million to the Sales increase. Additionally, Parking's reimbursements for out-of-pocket expenses from managed parking lot clients were \$32.0 million higher. The remainder of the Sales increase was primarily due to new business, primarily in Janitorial, Security and Engineering. The \$80.0 million gain from the settlement of the WTC insurance claim also positively impacted revenues.

**Operating Expenses and Cost of Goods Sold.** As a percentage of Sales, gross profit (Sales minus operating expenses and cost of goods sold) was 10.7% in 2006 compared to 10.6% in 2005. The improvement in the margin was due to lower insurance expense and slightly higher margin contributions from Janitorial in 2006 compared to 2005, partially offset by the \$32.0 million in additional reimbursements in 2006 compared to 2005 for out-of-pocket expenses from managed parking lot clients for which Parking had no margin benefit.

**Selling, General and Administrative Expenses.** Selling, general and administrative expenses were \$207.1 million in 2006, compared to \$204.1 million in 2005. The increase was primarily due to a \$3.3 million charge related to outsourcing the management of Company's information technology infrastructure and support services, \$3.2 million of share-based compensation costs, a \$2.6 million increase in payroll and payroll related costs due to annual salary increases and additional staff, \$2.4 million of professional fees associated with the Audit Committee's independent investigation of prior year accounting at SSA, and additional expenses from acquisitions made in 2005 and 2006.

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These increases were partially offset by a \$2.6 million reduction in documentation and testing costs associated with the Sarbanes-Oxley certification effort in 2006 compared to the same period of 2005. In 2005, the Company recorded \$12.8 million of pre-tax losses from three major lawsuits, and the \$3.4 million charge for a reserve provided for the amount the Company believed it overpaid SSA LLC. The \$3.4 million reserve was reduced by \$1.0 million in 2006.

**Interest Expense.** Interest expense, which includes loan amortization and commitment fees for the revolving credit facility, was 44.0% lower in 2006 compared to 2005 because the amortization of the initiation costs of the new line of credit, which are being amortized over its term of five years, is lower than the amortization of the initiation costs incurred for the old line of credit, which had a three-year term.

**Income Taxes.** The effective tax rates were 40.9% and 32.4% for 2006 and 2005, respectively. The increase in 2006 was primarily due to a higher estimated state income tax rate and the effect of the non-deductible incentive stock option expense included in pre-tax income. The increase in the state income tax rate in 2006 was largely due to the higher tax rates in the jurisdictions where the WTC settlement gain was subject to state income taxation. An income tax expense of \$34.9 million was recorded in the fourth quarter of 2006 attributable to the WTC settlement gain. A \$1.1 million income tax benefit, mostly from the reversal of state tax liabilities for closed years, was recorded in 2006. However, this was offset by \$1.1 million in income tax expense primarily arising from the adjustment of the valuation allowance for state net operating loss carryforwards and the adjustment of the income tax liability accounts after filing the 2005 tax returns and amendments of prior year returns. A \$2.7 million income tax benefit was recorded in the second quarter of 2005 resulting from the favorable settlement of the audit of prior years' state tax returns (tax years 2000 to 2003).

### *Segment Information*

Under the criteria of SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," Janitorial, Parking, Security, Engineering, and Lighting are reportable segments. The operating results of the former Mechanical segment are reported separately under discontinued operations and are excluded from the table below. (See Divestitures and Results from Discontinued Operations.) Corporate expenses are not allocated.

(\$ in thousands)	Years Ended October 31,		Better (Worse)
	2006	2005	
<b>Sales and other income:</b>			
Janitorial	\$ 1,563,756	\$ 1,525,565	2.5%
Parking	440,033	409,886	7.4%
Security	307,851	294,299	4.6%
Engineering	285,241	238,794	19.5%
Lighting	113,014	116,218	(2.8)%
Corporate	2,773	1,804	53.7%
	\$ 2,712,668	\$ 2,586,566	4.9%
<b>Operating profit:</b>			
Janitorial	\$ 81,578	\$ 67,754	20.4%
Parking	13,658	10,527	29.7%
Security	4,329	3,089	40.1%
Engineering	16,736	14,200	17.9%
Lighting	1,375	3,805	(63.9)%
Corporate expense	(39,440)	(35,300)	(11.7)%
<b>Operating profit</b>	<b>78,236</b>	<b>64,075</b>	<b>22.1%</b>
Gain on insurance claim	80,000	1,195	—
Interest expense	(495)	(884)	44.0%
Income from continuing operations before income taxes	\$ 157,741	\$ 64,386	145.0%

**Janitorial.** Janitorial Sales increased by \$38.2 million, or 2.5%, in 2006 compared to 2005. The Sales increase is primarily attributable to additional Sales of \$22.5 million from acquisitions in 2005 and 2006 including Brandywine Building Services, Inc., ("Brandywine"), Initial Contract Services, Inc., Baltimore ("Initial Baltimore") and Colin Service Systems, Inc. ("Colin"), affecting both the Mid-Atlantic and Northeast regions. Sales also increased in the Northern California, Northwest, North and South Central and Southwest regions due to new business, expansion of services to existing customers, and price adjustments to pass through a portion of union cost increases. These increases were partially offset by reductions in Sales from the loss of accounts in the Midwest and Northeast regions.

Operating profit increased by \$13.8 million, or 20.4%, in 2006 compared to 2005, primarily due to higher Sales and improved margins from the Northern California, Northwest, South Central and Southwest regions, which were partially offset by lower profit in the Midwest and North Central regions, both caused by scope reductions, competitive pressure and in the case of the Midwest region, loss of accounts. The Brandywine, Initial Baltimore and Colin acquisitions contributed \$2.5 million additional profit. In 2005, the Company incurred a \$5.0 million litigation loss; however, it recognized a \$1.3 million benefit from the reduction of insurance reserves.

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**Parking.** Parking Sales increased by \$30.1 million, or 7.4%, while operating profit increased \$3.1 million, or 29.7%, in 2006 compared to 2005. The increase in Sales was primarily due to a \$32.0 million increase in reimbursements for out-of-pocket expenses from managed parking lot clients, new contracts, and higher fees received from managed parking lots. These improvements were partially offset by a reduction in lease revenue principally due to the October 2005 sale of a leasehold interest in an off-airport facility that had contributed \$6.5 million in Sales in 2005. The increase in operating profit was principally due to the absence of \$6.9 million of litigation losses and the partially offsetting \$4.3 million gain from the sale of the leasehold interest of the off-airport parking facility, and \$1.4 million benefit from the reduction of insurance reserves, all of which impacted 2005. In addition, insurance expense was lower in 2006 compared to 2005 although it included a \$0.4 million charge for adverse developments pertaining to prior years. A new revenue control and reporting system increased 2006 operating expenses.

**Security.** Security Sales increased \$13.6 million, or 4.6%, in 2006 compared to 2005, primarily due to Sales from new business, although these new sales were partially offset by lost Sales associated with the loss of a major customer account in June 2005. Operating profit increased \$1.2 million, or 40.1%, in 2006 compared to 2005. Results in 2005 included a \$3.4 million charge for a reserve provided for the amount the Company believed it overpaid SSA LLC, as well as a \$0.4 million bad debt provision for a customer that declared bankruptcy in April 2005, a \$0.3 million charge to correct the understatement of payroll and payroll-related 2004 expenses and higher overtime expenses related to operations acquired from SSA LLC. However, the benefit of not incurring these charges and a \$1.0 million reduction in the SSA LLC reserve in 2006 were partially offset by lower margins on new contracts, annual salary increases and increases in workers' compensation, legal fees and settlements.

**Engineering.** Engineering Sales increased \$46.4 million, or 19.5%, during 2006 compared to 2005 due to successful sales initiatives resulting in new business and the expansion of services to existing customers across the country, most significantly in the Mid-Atlantic, Northern California, and Eastern regions. Operating profits increased \$2.5 million, or 17.9%, during 2006 compared to 2005 due to increased Sales, offset by the increase in sub-contracting and insurance expense, and higher management headcount necessary to support the growth in business.

**Lighting.** Lighting Sales and operating profit decreased \$3.2 million, or 2.8%, and \$2.4 million, or 63.9%, respectively, in 2006 compared to 2005. The Sales decrease was primarily due to a \$4.3 million decrease in special project business. The decrease in operating profit was primarily due to the decrease in sales and higher subcontractor and fuel costs, which negatively impacted fixed price contracts.

**Corporate.** Corporate recognized \$80.0 million in revenues in 2006 for the settlement of WTC insurance claims. Corporate expenses in 2006 increased by \$4.1 million, or 11.7%, compared to 2005 mainly due to the \$3.3 million charge related to outsourcing the management of the Company's information technology infrastructure and support services, \$3.2 million of share-based compensation costs, \$2.4 million of professional fees associated with the Audit Committee's independent investigation of prior year accounting at SSA, annual salary increases, costs of additional staffing, and higher legal expenses. These increases were partially offset by \$9.0 million of additional reductions in insurance reserves recorded in Corporate in 2006 (\$14.5 million) than in 2005 (\$5.5 million). While virtually all insurance claims arise from the operating segments, these reductions were included in unallocated Corporate expenses. In addition, documentation and testing costs associated with the Sarbanes-Oxley certification effort were \$2.6 million lower in 2006 than in 2005.

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### COMPARISON OF 2005 TO 2004 — CONTINUING OPERATIONS

Years Ended October 31, (\$ in thousands)	2005	% of Sales	2004	% of Sales	Increase (Decrease)
<b>Revenues</b>					
Sales and other income	\$2,586,566	100.0%	\$2,375,149	100.0%	8.9%
Gain on insurance claim	1,195	—	—	—	—
	<b>\$2,587,761</b>	—	<b>\$2,375,149</b>	—	<b>9.0%</b>
<b>Expenses</b>					
Operating expenses and cost of goods sold	2,312,687	89.4%	2,157,637	90.8%	7.2%
Selling, general and administrative	204,131	7.9%	166,981	7.0%	22.2%
Intangible amortization	5,673	0.2%	4,519	0.2%	25.5%
Interest	884	—	1,016	—	(13.0)%
	<b>2,523,375</b>	97.6%	<b>2,330,153</b>	98.1%	<b>8.3%</b>
Income from continuing operations before income taxes	64,386	2.5%	44,996	1.9%	43.1%
Income taxes	20,832	0.8%	15,352	0.6%	35.7%
<b>Income from continuing operations</b>	<b>\$ 43,554</b>	<b>1.7%</b>	<b>\$ 29,644</b>	<b>1.2%</b>	<b>46.9%</b>

**Income from continuing operations.** Income from continuing operations in 2005 increased 46.9% to \$43.6 million (\$0.86 per diluted share) from \$29.6 million (\$0.59 per diluted share) in 2004 primarily due to 2005 including an \$8.2 million (\$5.0 million after-tax) benefit from the reduction of the Company's self-insurance reserves and 2004 including a \$17.2 million (\$10.4 million after-tax) increase in self-insurance reserves as described below. All operating segments, except Security, showed improvement in operating income. Additionally, income from continuing operations in 2005 included a \$4.3 million pre-tax gain on sale of a leasehold interest of an off-airport parking facility by Parking, \$2.7 million of income tax benefit resulting from a state tax audit settlement and \$1.2 million gain on a WTC indemnity payment. These positive developments were partially offset by a \$13.0 million increase in litigation losses and \$11.6 million of higher professional fees related to compliance with the Sarbanes-Oxley internal controls certification requirement. In addition, there was one more workday in 2005 compared to 2004.

The \$17.2 million insurance charge recorded by Corporate in 2004 resulted from adverse developments in the Company's California workers' compensation claims believed to be related to poor claims management by a third party administrator. The \$8.2 million insurance benefit had two components. The 2005 actuarial report covering substantially all of the Company's general liability and workers' compensation reserves was completed in the third quarter of 2005 and showed favorable developments in the Company's California workers' compensation and general and auto liability claims, offset in part by adverse developments in the Company's workers' compensation claims outside of California. This resulted in a \$5.5 million reduction in reserves recorded by Corporate, of which \$1.4 million was attributable to a correction of an overstatement of reserves at October 31, 2004. The 2005 actuarial reports covering the rest of the Company's self-insurance reserves, including low deductible self-insurance programs that cover general liability expenses at malls, special event facilities and airport shuttles, as well as workers' compensation for certain employees in certain states, were completed in the fourth quarter of 2005 resulting in the reduction of these reserves by \$2.7 million. The \$2.7 million was recorded by Janitorial and Parking.

**Revenues.** Revenues in 2005 of \$2,587.8 million increased by \$212.7 million or 9.0% from \$2,375.1 million in 2004. Substantially all of the increase was the growth in Sales which increased by \$211.5 million or 8.9% in 2005 from 2004. Acquisitions completed in 2004 and 2005 contributed \$126.7 million to the Sales increase. The remainder of the Sales increase was primarily due to new business in all operating segments, expansion of services with existing Janitorial and Engineering customers and the \$4.3 million gain on sale of the leasehold interest by Parking.

**Operating Expenses and Cost of Goods Sold.** As a percentage of Sales, gross profit was 10.6% in 2005 compared to 9.2% in 2004. The increase in margins was primarily due to the \$8.2 million insurance expense benefit in 2005 and the \$17.2 million insurance charge in 2004. Results for 2005 also include the \$4.3 million gain on sale of the leasehold interest by Parking, termination of unprofitable contracts and favorably renegotiated contracts at Parking and Janitorial operating profit improvements in 2005 in the majority of regions, particularly the Northeast, where higher tag sales provided higher margins. Partially offsetting these were higher reimbursements in 2005 for out-of-pocket expenses from managed parking lot clients for which Parking had no margin benefit, higher overtime costs in Security that cannot be passed through to clients, and one more workday in 2005 compared to 2004 which unfavorably impacted fixed-price contracts in Janitorial. The total insurance expense recorded by the operating segments in 2005 was flat compared to 2004.

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**Selling, General and Administrative Expenses.** Selling, general and administrative expenses were \$204.1 million in 2005, compared to \$167.0 million in 2004. The increase was primarily due to the \$13.0 million increase in litigation losses, \$11.6 million of higher professional fees related to the Sarbanes-Oxley internal control compliance requirement in 2005, \$7.7 million selling, general and administrative expenses attributable to the operations associated with acquisitions completed in 2004 and 2005 (including the \$3.4 million estimated overpayment in connection with the subcontracting arrangement with SSA LLC) and the expanded sales force at Lighting and Security, as well as annual salary increases. These increases were partially offset by the decrease in bad debt expense primarily because of the elimination of specific reserves on customer accounts where billing disputes have been settled.

**Intangible Amortization.** Intangible amortization was \$5.7 million in 2005 compared to \$4.5 million in 2004. The higher amortization was due to intangibles acquired in business combinations completed in 2004 and 2005, partially offset by lower amortization on acquisitions completed in 2003 resulting from the use of sum-of-the-years-digits method for amortization of customer relationship intangible assets.

**Interest Expense.** Interest expense, which includes loan amortization and commitment fees for the revolving credit facility, was \$0.9 million in 2005 and \$1.0 million 2004.

**Income Taxes.** The effective tax rate was 32.4% for 2005, compared to 34.1% for 2004. A \$2.7 million income tax benefit was recorded in the second quarter of 2005 resulting from the favorable settlement of the audit of prior years' state tax returns (tax years 2000 to 2003) in May 2005. An estimated liability was accrued in prior years for the separate income tax returns filed with that state for the years under audit because the intercompany charges were not supported by a recent formal transfer pricing study. The estimated liability was greater than the settlement amount. The income tax provision for continuing operations for 2004 included a tax benefit of \$1.3 million principally from adjusting the income tax liability accounts after filing the 2003 income tax returns and from filing amended tax returns primarily to claim higher tax credits. The effective tax rate for 2005 also reflects a slightly lower estimated state tax rate based on actual state tax returns for 2004.

### *Segment Information*

Under the criteria of SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," Janitorial, Parking, Security, Engineering, and Lighting are reportable segments. Corporate expenses are not allocated.

Years Ended October 31, (\$ in thousands)	2005	2004	Better (Worse)
<b>Sales and other income:</b>			
Janitorial	\$ 1,525,565	\$ 1,442,901	5.7%
Parking	409,886	384,547	6.6%
Security	294,299	224,715	31.0%
Engineering	238,794	209,156	14.2%
Lighting	116,218	112,074	3.7%
Corporate	1,804	1,756	2.7%
	<b>\$ 2,586,566</b>	<b>\$ 2,375,149</b>	<b>8.9%</b>
<b>Operating profit:</b>			
Janitorial	\$ 67,754	\$ 60,574	11.9%
Parking	10,527	9,514	10.6%
Security	3,089	9,002	(65.7)%
Engineering	14,200	12,096	17.4%
Lighting	3,805	2,822	34.8%
Corporate expense	(35,300)	(47,996)	26.5%
<b>Operating profit</b>	<b>64,075</b>	<b>46,012</b>	<b>39.3%</b>
Gain on insurance claim	1,195	—	—
Interest expense	(884)	(1,016)	13.0%
Income from continuing operations before income taxes	<b>\$ 64,386</b>	<b>\$ 44,996</b>	<b>43.1%</b>

**Janitorial.** Janitorial Sales increased by \$82.7 million, or 5.7%, in 2005 compared to 2004. The acquisitions of the Northeast United States Division of Initial Contract Services, Inc. ("Initial Northeast"), Initial Baltimore and Colin contributed \$66.2 million to the increase in Sales with the impact showing in the Mid-Atlantic and the Northeast regions. In addition, the Mid-Atlantic, Midwest, Northern California, Northwest, South Central and Southwest regions all increased Sales due to new business, expansion of services to existing customers and price adjustments to pass through a portion of union cost increases. The increases were partially offset by reductions in Sales from lost accounts in the Northeast and Southeast regions.

Operating profit increased by \$7.2 million, or 11.9%, in 2005 compared to 2004. The increase was primarily due to the operating profit improvements in the majority of the regions, a \$1.3 million benefit from the reduction of insurance expense due to the reduction of self-insurance reserves for workers' compensation for certain employees, and a \$0.8 million operating profit contribution from the two Initial and Colin acquisitions. These positive developments were partially offset by a \$6.2 million increase in litigation losses and one more workday in 2005 compared to 2004 which unfavorably impacted fixed-price contracts.

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Of the regions that showed operating profit improvement, the Northeast region showed the most improvement, earning a profit in 2005 compared to a loss in 2004. The improvement was due to higher tag sales, which provided higher margins, tight control of labor cost, especially in Manhattan, higher prices on some renegotiated contracts, lower bad debt expense and the impact of acquisitions. The other regions showed operating profit improvement primarily due to higher Sales and higher margins on existing jobs resulting from lower costs.

**Parking.** Parking Sales increased \$25.4 million, or 6.6%, while operating profit increased \$1.0 million, or 10.6%, in 2005 compared to 2004. Of the \$25.4 million Sales increase, \$15.7 million represented higher reimbursements for out-of-pocket expenses from managed parking lot clients for which Parking had no margin benefit. Sales for the period also benefited from the sale of the leasehold interest of an off-airport parking facility resulting in a gain of \$4.3 million. New contracts and increased traffic at airport locations throughout the year contributed to the remainder of the Sales increase. The increase in operating profits was primarily due to the \$4.3 million gain, a \$1.4 million benefit from the reduction of self-insurance reserves for airport shuttle claims, the impact of new contracts, termination of unprofitable contracts and higher margins on renegotiated contracts, as well as improvements at airport locations due to increased air traffic across the country. Partially offsetting these improvements was a \$6.9 million increase in litigation losses and the cost of implementing a new revenue reporting system.

**Security.** Security Sales increased \$69.6 million, or 31.0%, in 2005 compared to 2004 primarily due to the 2004 and 2005 acquisitions of operations from SSA LLC, Sentinel Guard Systems ("Sentinel") and Amguard Security and Patrol Services ("Amguard"), which contributed \$60.5 million to the Sales increase. The remainder of the Sales increase was attributable to the net effect of new business, partially offset by the loss of a major contract in Seattle at the end of June 2005. Operating profits decreased \$5.9 million, or 65.7%, primarily due to the \$7.2 million decline in operating profit from the operations acquired from SSA LLC. The decline resulted from increased overtime expenses that could not be passed through to the clients, lower margins on new contracts, a \$3.4 million charge for a reserve provided for the amount the Company estimated it overpaid SSA LLC in connection with the subcontracting arrangement with SSA LLC. Of the \$3.4 million charge, \$2.8 million was attributable to overpayment in 2004. The Company intends to continue to vigorously pursue collection. Also included in SSA LLC's operating profit for 2005 was a \$0.3 million charge to correct the understatement of payroll and payroll related expenses in 2004 and a \$1.1 million benefit from correcting the overstatement of insurance expense in 2004. Additionally, the other operating units of Security incurred higher costs of an expanded sales force. Partially offsetting these declines were \$1.1 million of profit contribution from Sentinel and Amguard and the net effect of new business.

**Engineering.** Engineering Sales increased \$29.6 million, or 14.2%, in 2005 compared to 2004 due to successful sales initiatives resulting in new business and the expansion of services to existing customers across the country, mostly in the Southern California, Northern California and Eastern regions. Operating profits increased \$2.1 million, or 17.4%, during 2005 compared to 2004 primarily due to higher Sales, partially offset by higher state unemployment insurance expense in California and settlement of an employee claim.

**Lighting.** Lighting Sales increased \$4.1 million, or 3.7%, in 2005 compared to 2004, while operating profit increased \$1.0 million, or 34.8%. The growth in Sales was primarily due to increased project and service business in the Southwest and Northwest regions, partially offset by a decrease in project business in the Northcentral region, lost service contracts and the impact of several hurricanes in the fourth quarter of 2005. The increase in operating profit was primarily due to increased Sales and a \$0.9 million reduction of bad debt expense primarily related to reversals of specific reserves determined no longer to be required, partially offset by increased costs associated with an expanded sales force.

**Corporate.** Corporate expenses decreased by \$12.7 million, or 26.5%, in 2005 compared to 2004 mainly due to the difference between the \$17.2 million increase in self-insurance reserves in 2004 and the \$5.5 million decrease in self-insurance reserves in 2005. While virtually all insurance claims arise from the operating segments, the \$5.5 million decrease in self-insurance reserves in 2005 and \$17.2 million increase in reserves in 2004 were included in unallocated corporate expenses. Had the Company allocated these insurance adjustments among the operating segments, the reported pre-tax operating profits of the operating segments, as a whole, would have been increased by \$5.5 million in 2005 and decreased \$17.2 million in 2004, with an equal and offsetting change to unallocated Corporate expenses and therefore no change to consolidated pre-tax earnings for either year. The favorable impact of the insurance adjustments on 2005 was

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partially offset by \$11.6 million of higher professional fees in 2005 related to the Sarbanes-Oxley internal controls certification requirement.

### **Share-Based Compensation**

Effective November 1, 2005, the Company began recording compensation expense associated with share-based payment awards in accordance with SFAS No. 123R as interpreted by SEC Staff Accounting Bulletin No. 107 ("SAB No. 107"). Prior to November 1, 2005, the Company accounted for stock options according to the provisions of Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations, and therefore no related compensation expense was recorded for awards granted with no intrinsic value. The Company adopted the modified prospective transition method provided for under SFAS No. 123R, and, consequently, has not retroactively adjusted results from prior periods. Under this transition method, compensation cost associated with share-based payment awards recognized in 2006 included: 1) amortization related to the remaining unvested portion of all stock option awards granted for the fiscal years beginning November 1, 1995 and ending October 31, 2005, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, "Accounting for Stock-Based Compensation;" and 2) amortization related to all share-based payment awards granted November 1, 2005 or after, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R. The compensation cost is included in selling, general and administrative expenses.

The total compensation cost related to the 2006 Equity Incentive Plan (the "2006 Equity Plan") options recognized during the year ended October 31, 2006, was \$10,173. As of October 31, 2006, there was \$478,134 of total unrecognized compensation cost (net of estimated forfeitures) related to the 2006 Equity Plan unvested options which is expected to be recognized over a weighted-average vesting period of 2.35 years.

The total compensation cost related to the 2006 Equity Plan restricted stock units recognized during the year ended October 31, 2006, was \$73,381. As of October 31, 2006, there was \$3.4 million of total unrecognized compensation cost (net of estimated forfeitures) related to restricted stock units which is expected to be recognized over a weighted-average vesting period of 2.35 years on a straight-line basis.

The total compensation cost related to the 2006 Equity Plan performance shares recognized during the year ended October 31, 2006, was \$84,590. As of October 31, 2006, there was \$1.9 million of total unrecognized compensation cost (net of estimated forfeitures) related to performance shares which is expected to be recognized over a weighted-average vesting period of 1.24 years on a straight-line basis.

The total compensation cost related to the "Time-Vested" Incentive Stock Option Plan (the "Time-Vested Plan") options recognized during the year ended October 31, 2006, was \$1.4 million. As of October 31, 2006, there was \$2.6 million of total unrecognized compensation cost (net of estimated forfeitures) related to the Time-Vested Plan unvested options which is expected to be recognized over a weighted-average vesting period of 1.86 years.

The total compensation cost related to the 1996 and 2002 "Price-Vested" Performance Stock Option Plans (the "Price-Vested Plans") options recognized during the year ended October 31, 2006, was \$0.7 million. As of October 31, 2006, there was \$3.6 million of total unrecognized compensation cost (net of estimated forfeitures) related to the Price-Vested Plans unvested options which is expected to be recognized over a weighted-average vesting period of 3.25 years.

The total compensation cost related to the Executive Stock Option Plan (also known as the "Age-Vested" Career Stock Option Plan) (the "Age-Vested Plan") options recognized during the year ended October 31, 2006, was \$0.1 million. As of October 31, 2006, there was \$0.7 million of total unrecognized compensation cost (net of estimated forfeitures) related to the Age-Vested Plan unvested options which is expected to be recognized over a weighted-average vesting period of 5.22 years.

The total compensation cost related to the 2004 Employee Stock Purchase Plan recognized during the year ended October 31, 2006, was \$0.8 million. Because of changes to the 2004 Employee Stock Purchase Plan beginning in the third quarter of 2006, the value of the awards is no longer treated as share-based compensation and no share-based compensation expense was recognized under this Plan after May 1, 2006.

The Company estimates the fair value of each option award on the date of grant using the Black-Scholes option valuation model. The Company uses an outside expert to determine the assumptions used in the

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option valuation model. The Company estimates forfeiture rates based on historical data and adjusts the rates periodically. The adjustment of the forfeiture rate may result in a cumulative adjustment in any period the forfeiture rate estimate is changed. During the year ended October 31, 2006, no adjustment was necessary.

### **Adoption of Accounting Standards**

Effective November 1, 2005, the Company began recording compensation expense associated with share-based payment awards in accordance with SFAS No. 123R as interpreted by SEC Staff SAB No. 107 as described above.

In May 2005, the Financial Accounting Standards Board ("FASB") issued SFAS No. 154, "Accounting Changes and Error Corrections" ("SFAS No. 154"). SFAS No. 154 replaces APB Opinion No. 20, "Accounting Changes" ("Opinion No. 20") and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements." SFAS No. 154 applies to all voluntary changes in accounting principles, and changes the requirements for accounting for and reporting of a change in accounting principles. SFAS No. 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principles unless it is impracticable. Opinion No. 20 previously required that most voluntary changes in accounting principles be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS No. 154 also requires that a change in method of depreciation, amortization or depletion for long-lived, nonfinancial assets be accounted for as a change in accounting estimate that is effected by a change in accounting principle. Opinion No. 20 previously required that such a change be reported as a change in accounting principle. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Earlier application is permitted for accounting changes and corrections of errors made in fiscal years beginning after June 1, 2005. The Company began to apply SFAS No. 154 effective November 1, 2005.

### **Recent Accounting Pronouncements**

In June 2006, the FASB issued EITF No. 06-3, "How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement" ("EITF 06-3"). EITF 06-3 requires companies to disclose the presentation of any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer (e.g., sales and use tax) as either gross or net in the accounting principles included in the notes to the financial statements. EITF 06-3 will be effective beginning with the second quarter of 2007.

In June 2006, the FASB issued FASB Financial Interpretation No. 48, "Accounting for Uncertain Tax Positions" ("FIN 48"). FIN 48 provides guidance on the accounting for and disclosure of tax positions accounted for in accordance with SFAS No. 109. FIN 48 requires that the effects of a tax position be initially recognized when it is "more likely than not" (which is defined as a greater than 50 percent chance) that the position will be sustained upon examination by the taxing authorities. In addition, FIN 48 requires additional disclosures regarding tax positions. FIN 48 is effective for the Company beginning fiscal 2008. The Company is presently assessing the impact of FIN 48 to the Company's consolidated financial position, results of operations and cash flows.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108 ("SAB No. 108"), "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements." The guidance in SAB No. 108 requires Companies to base their materiality evaluations on all relevant quantitative and qualitative factors. This involves quantifying the impact of correcting all misstatements, including both the carryover and reversing effects of prior year misstatements, on the current year financial statements. The implementation of SAB No. 108 will not have any impact on the Company's evaluation as the Company is substantially following guidance provided in SAB No. 108. SAB No. 108 will be effective beginning in the first quarter of 2007.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 was issued to provide guidance and consistency for comparability in fair value measurements and for expanded disclosures about fair value measurements. The Company does not anticipate that SFAS No. 157 will have an impact on the financial position, results of operations or disclosures in the Company's financial statements. SFAS No. 157 will be effective beginning in fiscal year 2008.

In September 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statements No. 87, 88, 106, and 132(R)" ("SFAS No. 158"). SFAS No. 158 requires an employer

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to recognize the overfunded or underfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in that funded status in the year in which the changes occur through comprehensive income. SFAS No. 158 also requires an employer to measure the funded status of a plan as of the date of its year end statement of financial position. The Company does not anticipate that SFAS No. 158 will have a material impact on its financial position and results of operations. SFAS No. 158 will be effective for fiscal year ending October 31, 2007.

### **Critical Accounting Policies and Estimates**

The preparation of consolidated financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, sales and expenses. On an ongoing basis, the Company evaluates its estimates, including those related to self-insurance reserves, allowance for doubtful accounts, sales allowance, valuation allowance for the net deferred income tax asset, estimate of useful life of intangible assets, impairment of goodwill and other intangibles, and contingencies and litigation liabilities. The Company bases its estimates on historical experience, independent valuations and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

The Company believes the following critical accounting policies govern its more significant judgments and estimates used in the preparation of its consolidated financial statements.

**Self-Insurance Reserves.** Certain insurable risks such as general liability, automobile property damage and workers' compensation are self-insured by the Company. However, commercial policies are obtained to provide coverage for certain risk exposures subject to specified limits. Accruals for claims under the Company's self-insurance program are recorded on a claim-incurred basis. The Company uses an independent actuary to evaluate the Company's estimated claim costs and liabilities no less frequently than annually and accrues self-insurance reserves in an amount that is equal to the actuarial point estimate.

Using the annual actuarial report, management develops annual insurance costs for each operation, expressed as a rate per \$100 of exposure (labor and revenue) to estimate insurance costs. Additionally, management monitors new claims and claim development to assess the adequacy of the insurance reserves. The estimated future charge is intended to reflect the recent experience and trends. Trend analysis is complex and highly subjective. The interpretation of trends requires the knowledge of all factors affecting the trends that may or may not be reflective of adverse developments (e.g., changes in regulatory requirements and changes in reserving methodology). If the trends suggest that the frequency or severity of claims incurred increased, the Company might be required to record additional expenses for self-insurance liabilities. Additionally, the Company uses third party service providers to administer its claims and the performance of the service providers and transfers between administrators can impact the cost of claims and accordingly the amounts reflected in insurance reserves.

**Allowance for Doubtful Accounts.** Trade accounts receivable arise from services provided to the Company's customers and are generally due and payable on terms varying from receipt of the invoice to net thirty days. The Company records an allowance for doubtful accounts to provide for losses on accounts receivable due to customers' inability to pay. The allowance is typically estimated based on an analysis of the historical rate of credit losses or write-offs (due to a customer bankruptcy or failure of a former customer to pay) and specific customer concerns. The accuracy of the estimate is dependent on the future rate of credit losses being consistent with the historical rate. Changes in the financial condition of customers or adverse developments in negotiations or legal proceedings to obtain payment could result in the actual loss exceeding the estimated allowance. If the rate of future credit losses is greater than the historical rate, then the allowance for doubtful accounts may not be sufficient to provide for actual credit losses. Alternatively, if the rate of future credit losses is less than the historical rate, then the allowance for doubtful accounts will be in excess of actual credit losses. The Company does not believe that it has any material exposure due to either industry or regional concentrations of credit risk.

**Sales Allowance.** Sales allowance is an estimate for losses on customer receivables resulting from customer credits (e.g., vacancy credits for fixed-price contracts, customer discounts, job cancellations and breakage cost). The sales allowance estimate is based on an analysis of the historical rate of sales adjustments (credit memos, net of re-bills). The accuracy of the estimate is dependent on the rate of future sales adjustments being consistent with the historical rate. If the

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rate of future sales adjustments is greater than the historical rate, then the sales allowance may not be sufficient to provide for actual sales adjustments. Alternatively, if the rate of future sales adjustments is less than the historical rate, then the sales allowance will be in excess of actual sales adjustments.

**Deferred Income Tax Asset and Valuation Allowance.** Deferred income taxes reflect the impact of temporary differences between the amount of assets and liabilities recognized for financial reporting purposes and such amounts recognized for tax purposes. These deferred taxes are measured using tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. If the enacted rates in future years differ from the rates expected to apply, an adjustment of the net deferred tax assets will be required. Additionally, if management determines it is more likely than not that a portion of the net deferred tax asset will not be realized, a valuation allowance is recorded. At October 31, 2006, the net deferred tax asset was \$86.1 million, net of a \$1.5 million valuation allowance related to state net operating loss carryforwards. Should future income be less than anticipated, the net deferred tax asset may not be fully recoverable.

**Other Intangible Assets Other Than Goodwill.** The Company engages a third party valuation firm to independently appraise the value of intangible assets acquired in larger sized business combinations. For smaller acquisitions, the Company performs an internal valuation of the intangible assets using the discounted cash flow technique. Acquired customer relationship intangible assets are being amortized using the sum-of-the-years-digits method over their useful lives consistent with the estimated useful life considerations used in the determination of their fair values. The accelerated method of amortization reflects the pattern in which the economic benefits of the customer relationship intangible asset are expected to be realized. Trademarks and trade names are being amortized over their useful lives using the straight-line method. Other intangible assets, consisting principally of contract rights, are being amortized over the contract periods using the straight-line method. At least annually, in the fourth quarter, the Company evaluates the remaining useful lives of its intangible assets to determine whether events and circumstances warrant a revision to the remaining period of amortization. If the estimate of an asset's remaining useful life changes, the remaining carrying amount of the intangible asset would be amortized over the revised remaining useful life. In addition, the remaining unamortized book value of intangibles is reviewed for impairment in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets" ("SFAS No. 144"). The first step of an impairment test under SFAS No. 144 is a comparison of the future cash flows, undiscounted, to the remaining book value of the intangible. If the future cash flows are insufficient to recover the remaining book value, a fair value of the asset, depending on its size, will be independently or internally determined and compared to the book value to determine if an impairment exists.

**Goodwill.** In accordance with SFAS No. 142, "Goodwill and Other Intangibles" ("SFAS No. 142") goodwill is no longer amortized. Rather, the Company performs goodwill impairment tests on at least an annual basis, in the fourth quarter, using the two-step process prescribed in SFAS No. 142. The first step is to evaluate for potential impairment by comparing the reporting unit's fair value with its book value. If the first step indicates potential impairment, the required second step allocates the fair value of the reporting unit to its assets and liabilities, including recognized and unrecognized intangibles. If the implied fair value of the reporting unit's goodwill is lower than its carrying amount, goodwill is impaired and written down to its implied fair value. As of October 31, 2006, no impairment of the Company's goodwill carrying value has been indicated.

**Contingencies and Litigation.** ABM and certain of its subsidiaries have been named defendants in certain proceedings arising in the ordinary course of business, including certain environmental matters. Litigation outcomes are often difficult to predict and often are resolved over long periods of time. Estimating probable losses requires the analysis of multiple possible outcomes that often depend on judgments about potential actions by third parties. Loss contingencies are recorded as liabilities in the consolidated financial statements when it is both: (1) probable or known that a liability has been incurred and (2) the amount of the loss is reasonably estimable. If the reasonable estimate of the loss is a range and no amount within the range is a better estimate, the minimum amount of the range is recorded as a liability. So long as the Company believes that a loss in litigation is not probable, then no liability will be recorded unless the parties agree upon a settlement, which may occur because the Company wishes to avoid the costs of litigation.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company does not issue or invest in financial instruments or their derivatives for trading or speculative purposes. Substantially all of the operations of the Company are conducted in the United States, and, as such, are not subject to material foreign currency exchange rate risk. At October 31, 2006, the Company had no outstanding long-term debt. Although the Company's assets included \$134.0 million in cash and cash equivalents at October 31, 2006, market rate risk associated with changing interest rates in the United States is not material.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders

ABM Industries Incorporated:

We have audited the accompanying consolidated balance sheets of ABM Industries Incorporated and subsidiaries as of October 31, 2006 and 2005, and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended October 31, 2006. In connection with our audits of the consolidated financial statements, we also have audited the related financial statement schedule II. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of ABM Industries Incorporated and subsidiaries as of October 31, 2006 and 2005, and the results of their operations and their cash flows for each of the years in the three-year period ended October 31, 2006, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in note 1 to the consolidated financial statements, effective November 1, 2005, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R), *Share-Based Payments*.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of ABM Industries Incorporated's internal control over financial reporting as of October 31, 2006, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated December 21, 2006 expressed an unqualified opinion on management's assessment of, and the effective operation of, internal control over financial reporting.

/s/ KPMG LLP

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KPMG LLP

San Francisco, California  
December 21, 2006

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### **Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders  
ABM Industries Incorporated:

We have audited management's assessment, included in the accompanying Management's Report on Internal Control Over Financial Reporting (Item 9A(b)), that ABM Industries Incorporated maintained effective internal control over financial reporting as of October 31, 2006, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). ABM Industries Incorporated's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that ABM Industries Incorporated maintained effective internal control over financial reporting as of October 31, 2006, is fairly stated, in all material respects, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Also, in our opinion, ABM Industries Incorporated maintained, in all material respects, effective internal control over financial reporting as of October 31, 2006, based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of ABM Industries Incorporated and subsidiaries as of October 31, 2006 and 2005, and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended October 31, 2006, and our report dated December 21, 2006 expressed an unqualified opinion on those consolidated financial statements.

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/s/ KPMG LLP  
KPMG LLP

San Francisco, California  
December 21, 2006

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ABM Industries Incorporated and Subsidiaries

**CONSOLIDATED BALANCE SHEETS**

October 31,	2006	2005
(In thousands, except share data)		
<b>Assets</b>		
Cash and cash equivalents	\$ 134,001	\$ 56,793
Trade accounts receivable (less allowances of \$8,041 and \$7,932)	383,977	345,104
Inventories	22,783	21,280
Deferred income taxes	43,945	46,795
Prepaid expenses and other current assets	47,035	44,690
Prepaid income taxes	—	6,791
Total current assets	631,741	521,453
Investments and long-term receivables	14,097	12,955
Property, plant and equipment (less accumulated depreciation of \$86,837 and \$80,370)	32,185	34,270
Goodwill (less accumulated amortization of \$67,557)	247,888	243,559
Other intangibles (less accumulated amortization of \$15,550 and \$13,478)	23,881	24,463
Deferred income taxes	42,120	46,426
Other assets	24,362	20,584
<b>Total assets</b>	<b>\$1,016,274</b>	<b>\$903,710</b>
<b>Liabilities</b>		
Trade accounts payable	\$ 66,336	\$ 47,605
Income taxes payable	36,712	2,349
Accrued liabilities:		
Compensation	78,673	72,034
Taxes — other than income	20,587	18,832
Insurance claims	66,364	71,455
Other	50,613	62,799
Total current liabilities	319,285	275,074
Retirement plans and other non-current liabilities	26,917	25,596
Insurance claims	128,825	127,114
<b>Total liabilities</b>	<b>475,027</b>	<b>427,784</b>
<b>Stockholders' equity</b>		
Preferred stock, \$0.01 par value; 500,000 shares authorized; none issued	—	—
Common stock, \$0.01 par value; 100,000,000 shares authorized; 55,663,472 and 54,650,514 shares issued at October 31, 2006 and 2005, respectively	557	547
Additional paid-in capital	225,796	206,369
Accumulated other comprehensive income (loss)	149	(68)
Retained earnings	437,083	365,455
Cost of treasury stock (7,028,500 and 5,600,000 shares at October 31, 2006 and October 31, 2005, respectively)	(122,338)	(96,377)
<b>Total stockholders' equity</b>	<b>541,247</b>	<b>475,926</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$1,016,274</b>	<b>\$903,710</b>

The accompanying notes are an integral part of the consolidated financial statements.

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ABM Industries Incorporated and Subsidiaries

**CONSOLIDATED STATEMENTS OF INCOME**

<b>Years ended October 31,</b> (In thousands, except per share data)	<b>2006</b>	<b>2005</b>	<b>2004</b>
<b>Revenues</b>			
Sales and other income	\$ 2,712,668	\$ 2,586,566	\$ 2,375,149
Gain on insurance claim	80,000	1,195	—
	<b>2,792,668</b>	2,587,761	2,375,149
<b>Expenses</b>			
Operating expenses and cost of goods sold	2,421,552	2,312,687	2,157,637
Selling, general and administrative	207,116	204,131	166,981
Intangible amortization	5,764	5,673	4,519
Interest	495	884	1,016
	<b>2,634,927</b>	2,523,375	2,330,153
Income from continuing operations before income taxes	<b>157,741</b>	64,386	44,996
Income taxes	64,536	20,832	15,352
Income from continuing operations	<b>93,205</b>	43,554	29,644
Income from discontinued operations, net of income taxes	—	166	829
Gain on sale of discontinued operations, net of income taxes	—	14,221	—
<b>Net income</b>	<b>\$ 93,205</b>	\$ 57,941	\$ 30,473
<b>Net income per common share — Basic</b>			
Income from continuing operations	\$ 1.90	\$ 0.88	\$ 0.61
Income from discontinued operations	—	—	0.02
Gain on sale of discontinued operations	—	0.29	—
	<b>\$ 1.90</b>	\$ 1.17	\$ 0.63
<b>Net income per common share — Diluted</b>			
Income from continuing operations	\$ 1.88	\$ 0.86	\$ 0.59
Income from discontinued operations	—	—	0.02
Gain on sale of discontinued operations	—	0.29	—
	<b>\$ 1.88</b>	\$ 1.15	\$ 0.61
<b>Average common and common equivalent shares</b>			
Basic	49,054	49,332	48,641
Diluted	49,678	50,367	50,064
<b>Dividends declared per common share</b>	<b>\$ 0.44</b>	\$ 0.42	\$ 0.40

The accompanying notes are an integral part of the consolidated financial statements.

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ABM Industries Incorporated and Subsidiaries

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND COMPREHENSIVE INCOME**

(In thousands)	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)		Retained Earnings	Total
	Shares	Amount	Shares	Amount		\$	(268)	\$ 317,261	\$ 430,022
<b>Balance November 1, 2003</b>	51,767	\$ 518	(3,400)	\$ (53,986)	\$ 166,497	\$	(268)	\$ 317,261	\$ 430,022
Comprehensive income:									
Net income	—	—	—	—	—	—	—	30,473	30,473
Foreign currency translation	—	—	—	—	—	160	—	—	160
Comprehensive income	—	—	—	—	—	—	—	—	30,633
Dividends:									
Common stock	—	—	—	—	—	—	(19,476)	(19,476)	
Tax benefit from exercise of stock options	—	—	—	—	2,021	—	—	—	2,021
Stock purchases	—	—	(600)	(11,073)	—	—	—	—	(11,073)
Stock issued under employees' stock purchase and option plans	940	9	—	—	10,025	—	—	—	10,034
<b>Balance October 31, 2004</b>	52,707	\$ 527	(4,000)	\$ (65,059)	\$ 178,543	\$	(108)	\$ 328,258	\$ 442,161
Comprehensive income:									
Net income	—	—	—	—	—	—	57,941	57,941	
Foreign currency translation	—	—	—	—	—	40	—	—	40
Comprehensive income	—	—	—	—	—	—	—	—	57,981
Dividends:									
Common stock	—	—	—	—	—	—	(20,744)	(20,744)	
Tax benefit from exercise of stock options	—	—	—	—	3,203	—	—	—	3,203
Stock purchases	—	—	(1,600)	(31,318)	—	—	—	—	(31,318)
Stock issued under employees' stock purchase and option plans and for acquisition	1,944	20	—	—	24,623	—	—	—	24,643
<b>Balance October 31, 2005</b>	54,651	\$ 547	(5,600)	\$ (96,377)	\$ 206,369	\$	(68)	\$ 365,455	\$ 475,926
Comprehensive income:									
Net income	—	—	—	—	—	—	93,205	93,205	
Foreign currency translation	—	—	—	—	—	217	—	—	217
Comprehensive income	—	—	—	—	—	—	—	—	93,422
Dividends:									
Common stock	—	—	—	—	—	—	(21,577)	(21,577)	
Tax benefit from exercise of stock options	—	—	—	—	3,055	—	—	—	3,055
Stock purchases	—	—	(1,428)	(25,961)	—	—	—	—	(25,961)
Stock issued under employees' stock purchase and option plans	1,012	10	—	—	13,128	—	—	—	13,138
Share-based compensation expense	—	—	—	—	3,244	—	—	—	3,244
<b>Balance October 31, 2006</b>	55,663	\$ 557	(7,028)	\$ (122,338)	\$ 225,796	\$	149	\$ 437,083	\$ 541,247

The accompanying notes are an integral part of the consolidated financial statements.

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ABM Industries Incorporated and Subsidiaries

## CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended October 31, (In thousands)	2006	2005	2004
<b>Cash flows from operating activities:</b>			
Net income	\$ 93,205	\$ 57,941	\$ 30,473
Less income from discontinued operations	—	(14,387)	(829)
Income from continuing operations	93,205	43,554	29,644
<b>Adjustments to reconcile income from continuing operations to net cash provided by continuing operating activities:</b>			
Depreciation and intangible amortization	20,745	19,591	17,543
Share-based compensation expense	3,244	—	—
Provision for bad debts	341	1,112	4,482
Gain on sale of assets	(829)	(419)	(225)
Decrease (increase) in deferred income taxes	7,156	(4,465)	(12,262)
Increase in trade accounts receivable	(38,922)	(31,844)	(35,369)
(Increase) decrease in inventories	(1,503)	(726)	9
(Increase) decrease in prepaid expenses and other current assets	(2,255)	(5,888)	6,643
Increase in other assets and long-term receivables	(4,982)	(2,132)	(3,074)
Increase (decrease) in net income taxes	41,154	(11,304)	5,935
Increase (decrease) in retirement plans and other non-current liabilities	1,321	(62)	1,483
(Decrease) increase in insurance claims	(3,380)	10,630	37,622
Increase in trade accounts payable and other accrued liabilities	15,072	26,752	11,981
Total adjustments to income from continuing operations	37,162	1,245	34,768
Net cash flows from continuing operating activities	130,367	44,799	64,412
Net operational cash flows from discontinued operations	—	(7,348)	(30,722)
Net cash provided by operating activities	130,367	37,451	33,690
<b>Cash flows from investing activities:</b>			
Additions to property, plant and equipment	(14,065)	(17,738)	(11,460)
Proceeds from sale of assets	2,253	1,775	795
Purchase of businesses	(10,002)	(26,884)	(54,152)
Proceeds from sale of business	—	32,250	—
Other	—	(2,505)	4,064
Net cash used in investing activities	(21,814)	(13,102)	(60,753)
<b>Cash flows from financing activities:</b>			
Common stock issued	16,193	21,137	10,034
Common stock purchased	(25,961)	(31,318)	(11,073)
Dividends paid	(21,577)	(20,744)	(19,476)
Net cash used in financing activities	(31,345)	(30,925)	(20,515)
Net increase (decrease) in cash and cash equivalents	77,208	(6,576)	(47,578)
Cash and cash equivalents beginning of year	56,793	63,369	110,947
<b>Cash and cash equivalents end of year</b>	<b>\$134,001</b>	<b>\$ 56,793</b>	<b>\$ 63,369</b>
<b>Supplemental data:</b>			
Cash paid for income taxes	\$ 13,166	\$ 43,901	\$ 52,723
Tax benefit from exercise of options	\$ 3,055	\$ 3,203	\$ 2,021
Cash received from exercise of options	\$ 13,138	\$ 21,137	\$ 10,034
Non-cash investing activities:			
Common stock issued for business acquired	\$ —	\$ 3,506	\$ —

The accompanying notes are an integral part of the consolidated financial statements.

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ABM Industries Incorporated and Subsidiaries

## **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

### **1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

ABM Industries Incorporated (ABM) is a leading facility services contractor in the United States. With annual revenues in excess of \$2.7 billion and approximately 75,000 employees, ABM and its subsidiaries (the Company) provide janitorial, parking, security, engineering and lighting services for thousands of commercial, industrial, institutional and retail facilities in hundreds of cities throughout the United States and in British Columbia, Canada.

**Principles of Consolidation.** The consolidated financial statements include the accounts of ABM and its subsidiaries. All material intercompany transactions and balances have been eliminated.

**Use of Estimates.** The preparation of consolidated financial statements requires the Company to make estimates and judgments that affect the reported amounts of assets, liabilities, sales and expenses. On an ongoing basis, the Company evaluates its estimates, including those related to self-insurance reserves, allowance for doubtful accounts, sales allowance, valuation allowance for the net deferred income tax asset, estimate of useful life of intangible assets, impairment of goodwill and other intangibles, and contingencies and litigation liabilities. The Company bases its estimates on historical experience, independent valuations and various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

**Allowance for Doubtful Accounts.** Trade accounts receivable arise from services provided to the Company's customers and are generally due and payable on terms varying from receipt of the invoice to net thirty days. The Company records an allowance for doubtful accounts to provide for losses on accounts receivable due to customers' inability to pay. The allowance is typically estimated based on an analysis of the historical rate of credit losses or write-offs (due to a customer bankruptcy or failure of a former customer to pay) and specific customer concerns. The accuracy of the estimate is dependent on the future rate of credit losses being consistent with the historical rate. Changes in the financial condition of customers or adverse developments in negotiations or legal proceedings to obtain payment could result in the actual loss exceeding the estimated allowance. If the rate of future credit losses is greater than the historical rate, then the allowance for doubtful accounts may not be sufficient to provide for actual credit losses. Alternatively, if the rate of future credit losses is less than the historical rate, then the allowance for doubtful accounts will be in excess of actual credit losses. The Company does not believe that it has any material exposure due to either industry or regional concentrations of credit risk.

**Sales Allowance.** Sales allowance is an estimate for losses on customer receivables resulting from customer credits (e.g., vacancy credits for fixed-price contracts, customer discounts, job cancellations and breakage cost). The sales allowance estimate is based on an analysis of the historical rate of sales adjustments (credit memos, net of re-bills). The accuracy of the estimate is dependent on the rate of future sales adjustments being consistent with the historical rate. If the rate of future sales adjustments is greater than the historical rate, then the sales allowance may not be sufficient to provide for actual sales adjustments. Alternatively, if the rate of future sales adjustments is less than the historical rate, then the sales allowance will be in excess of actual sales adjustments.

**Inventories.** Inventories consist of service-related supplies and are valued at amounts approximating the lower of cost (first-in, first-out basis) or market. The cost of inventories is net of vendor rebates in accordance with Emerging Issues Task Force (EITF) Issue No. 02-16, "Accounting by a Customer (Including a Reseller) for Certain Consideration Received from a Vendor."

**Property, Plant and Equipment.** Property, plant and equipment are stated at cost less accumulated depreciation and amortization. At the time property, plant and equipment are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the accounts and any resulting gain or loss is reflected in income. Maintenance and repairs are charged against income as incurred.

Depreciation and amortization are calculated using the straight-line method. Useful lives used in computing depreciation for transportation equipment average 3 to 5 years and for machinery and other equipment average 2 to 20 years. Buildings are depreciated over

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periods of 20 to 40 years. In accordance with the adoption of EITF Issue No. 05-6, "Determining the Amortization Period for Leasehold Improvements," in 2005, leasehold improvements are amortized over the shorter of the terms of the respective leases including renewals that are deemed to be reasonably assured at the date the leasehold improvements are purchased, or the assets' useful lives.

**Goodwill.** In accordance with Statement of Financial Accounting Standards (SFAS) No. 142, "Goodwill and Other Intangibles," goodwill is no longer amortized. Rather, the Company performs goodwill impairment tests on at least an annual basis, in the fourth quarter, using the two-step process prescribed in SFAS No. 142. The first step is to evaluate for potential impairment by comparing the reporting unit's fair value with its book value. If the first step indicates potential impairment, the required second step allocates the fair value of the reporting unit to its assets and liabilities, including recognized and unrecognized intangibles. If the implied fair value of the reporting unit's goodwill is lower than its carrying amount, goodwill is impaired and written down to its implied fair value.

**Other Intangible Assets Other Than Goodwill.** The Company engages a third party valuation firm to independently appraise the value of intangible assets acquired in larger sized business combinations. For smaller acquisitions, the Company performs an internal valuation of the intangible assets using the discounted cash flow technique. Acquired customer relationship intangible assets are being amortized using the sum-of-the-years-digits method over their useful lives consistent with the estimated useful life considerations used in the determination of their fair values. The accelerated method of amortization reflects the pattern in which the economic benefits of the customer relationship intangible asset are expected to be realized. Trademarks and trade names are being amortized over their useful lives using the straight-line method. Other intangible assets, consisting principally of contract rights, are being amortized over the contract periods using the straight-line method. At least annually, in the fourth quarter, the Company evaluates the remaining useful lives of its intangible assets to determine whether events and circumstances warrant a revision to the remaining period of amortization. If the estimate of an asset's remaining useful life changes, the remaining carrying amount of the intangible asset would be amortized over the revised remaining useful life. In addition, the remaining unamortized book value of intangibles is reviewed for impairment in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-lived Assets." The first step of an impairment test under SFAS No. 144 is a comparison of the future cash flows, undiscounted, to the remaining book value of the intangible. If the future cash flows are insufficient to recover the remaining book value, a fair value of the asset, depending on its size, will be independently or internally determined and compared to the book value to determine if an impairment exists.

**Income Taxes.** Income tax expense is based on results of operations before income taxes. Deferred income taxes reflect the impact of temporary differences between the amount of assets and liabilities recognized for financial reporting purposes and such amounts recognized for tax purposes. These deferred taxes are measured using tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. If the enacted rates in future years differ from the rates expected to apply, an adjustment of the net deferred tax assets will be required. Additionally, if management determines it is more likely than not that a portion of the net deferred tax asset will not be realized, a valuation allowance is recorded. At October 31, 2006, the net deferred tax asset was \$86.1 million, net of a \$1.5 million valuation allowance related to state net operating loss carryforwards. Should future income be less than anticipated, the net deferred tax asset may not be fully recoverable. (See Note 11.)

**Contingencies and Litigation.** ABM and certain of its subsidiaries have been named defendants in certain proceedings arising in the ordinary course of business, including certain environmental matters. Litigation outcomes are often difficult to predict and often are resolved over long periods of time. Estimating probable losses requires the analysis of multiple possible outcomes that often depend on judgments about potential actions by third parties. Loss contingencies are recorded as liabilities in the consolidated financial statements when it is both: (1) probable or known that a liability has been incurred and (2) the amount of the loss is reasonably estimable. If the reasonable estimate of the loss is a range and no amount within the range is a better estimate, the minimum amount of the range is recorded as a liability. Legal costs associated with loss contingencies are expensed as incurred.

**Revenue Recognition.** The Company earns revenue primarily under service contracts that are either fixed price, cost-plus or are time and materials based. Revenue is recognized when earned, normally when services are performed. In all forms of service provided by the Company, revenue recognition follows the

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guidelines under Staff Accounting Bulletin (SAB) No. 104, unless another form of guidance takes precedence over SAB No. 104 as mentioned below.

The Janitorial Division primarily earns revenue from the following types of arrangements: fixed price, cost-plus, and tag or extra service work. Fixed price arrangements are contracts in which the customer agrees to pay a fixed fee every month over the specified contract term. A variation of a fixed price arrangement is a square-foot arrangement. Square-foot arrangements are ones in which monthly billings are fixed, however, the customer is given a vacancy credit, that is, a credit calculated based on vacant square footage that is not serviced. Cost-plus arrangements are ones in which the customer agrees to reimburse the Company for the agreed upon amount of wages and benefits, payroll taxes, insurance charges and other expenses plus a profit percentage. Tag revenue is additional services requested by the customer outside of the standard contract terms. This work is usually additional work and is performed on short notice due to unforeseen events. The Janitorial Division recognizes revenue on each type of arrangement when services are performed.

The Parking Division has two types of arrangements: managed lot and leased lot. Under the managed lot arrangements, the Company manages the parking lot for the owner in exchange for a management fee, which could be a fixed fee, a performance-based fee such as a percentage of gross or net revenues, or a combination of both. The revenue and expenses are passed through by the Company to the owner under the terms and conditions of the management contract. The management fee revenue is recognized when services are performed. The Company also reports both revenue and expenses, recognized in equal amounts, for costs directly reimbursed from its managed parking lot clients in accordance with EITF Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for Out-of-Pocket Expenses Incurred." Parking sales related solely to the reimbursement of expenses totaled \$263.4 million, \$231.5 million and \$215.8 million for years ended October 31, 2006, 2005 and 2004, respectively. Under leased lot arrangements, the Company leases the parking lot from the owner and is responsible for all expenses incurred, retains all revenues from monthly and transient parkers and pays rent to the owner per the terms and conditions of the lease. Revenues from monthly and transient parkers are recognized when cash is received.

The Security Division primarily performs scheduled post assignments under one-year service arrangements. Security services for special events may be performed under temporary service agreements. Scheduled post assignments and temporary service agreements are billed based on actual hours of service at contractually specified rates. Revenues for both types of arrangements are recognized when services are performed.

The Engineering Division provides services primarily under cost-plus arrangements in which the customer agrees to reimburse the Company for the full amount of wages, payroll taxes, insurance charges and other expenses plus a profit percentage. Revenue is recognized for these contracts when services are performed.

The Lighting Division provides services under the following types of contracts: long-term full service contracts, maintenance only contracts, project work, and time and materials based. A long-term full service contract is a multiple deliverable arrangement wherein the Company initially provides services involving washing light fixtures and replacing all the lamps, followed by periodic lighting maintenance services. Lighting's multiple deliverable contracts do not meet the criteria for treating the deliverables as separate units of accounting, hence the revenues and direct costs associated with the initial service are deferred and amortized over the service period on a straight-line basis, in accordance with EITF Issue No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." Typically, the payment terms require a monthly fixed fee payment. If any payment is received upfront for the initial service, revenue is deferred and amortized over the maintenance period. A maintenance only contract is one in which the Company provides periodic lighting maintenance services only, usually covering only labor costs. In accordance with FTB 90-1, "Accounting for Separately Priced Extended Warranty and Product Maintenance Contracts," revenue for maintenance only contracts is recognized on a straight-line basis and costs are recorded as incurred. Project work denotes construction-type arrangements that require several months to complete. Revenue for construction-type arrangements is recognized under the percentage-of-completion method and is based upon the total gross profit projected for the project at the time of completion and the expenses incurred to date. For Lighting, the percentage-of-completion is measured using the proportion of the cost of direct material installed. Time and materials arrangements are contracts under which the customer is billed based on the number of hours of service and materials used at an agreed upon price per hour of labor and price per unit of material. Revenue from time and materials arrangements is recognized when services are performed

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unless services consist of multiple deliverables as discussed above.

In accordance with EITF Issue No. 01-10: "Accounting for the Impact of the Terrorist Attacks of September 11, 2001." Insurance recoveries of losses and costs incurred as a result of the terrorist attacks of September 11, 2001 are classified in a manner consistent with the related losses, within income from continuing operations. Insurance recoveries are recognized when realization of the claim for recovery of a loss is deemed probable.

**Net Income per Common Share.** The Company has reported its earnings in accordance with SFAS No. 128, "Earnings per Share." Basic net income per common share is based on the weighted average number of shares outstanding during the period. Diluted net income per common share is based on the weighted average number of shares outstanding during the period, including common stock equivalents. Stock options account for the difference between basic average common shares outstanding and diluted average common shares outstanding. Restricted stock units and performance shares did not have an effect on the diluted average common shares outstanding. The calculation of net income per common share is as follows:

Years ended October 31 (in thousands, except per share data)	2006	2005	2004
Net income available to common stockholders	\$ 93,205	\$ 57,941	\$ 30,473
Average common shares outstanding — Basic	49,054	49,332	48,641
Effect of dilutive securities:			
Stock awards	624	1,035	1,423
Average common shares outstanding — Diluted	49,678	50,367	50,064
Net income per common share — Basic	\$ 1.90	\$ 1.17	\$ 0.63
Net income per common share — Diluted	\$ 1.88	\$ 1.15	\$ 0.61

For purposes of computing diluted net income per common share for the years ended October 31, 2006, 2005 and 2004, options to purchase common shares of 1,746,791, 451,940 and 17,000, respectively, at weighted average exercise prices of \$19.39, \$21.32 and \$20.40, respectively, were excluded from the computation as they had an anti-dilutive effect.

**Share-Based Compensation.** Effective November 1, 2005, the Company began recording compensation expense associated with share-based payment awards in accordance with SFAS No. 123R, "Share-Based Payment," as interpreted by SAB No. 107. Prior to November 1, 2005, the Company accounted for stock options according to the provisions of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations, and therefore no related compensation expense was recorded for awards granted with no intrinsic value. The Company adopted the modified prospective transition method provided for under SFAS No. 123R, and, consequently, has not retroactively adjusted results from prior periods. Under this transition method, compensation cost associated with share-based payment awards recognized in 2006 included: 1) amortization related to the remaining unvested portion of all stock option awards granted for the fiscal years beginning November 1, 1995 and ending October 31, 2005, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, "Accounting for Stock-Based Compensation;" and 2) amortization related to all share-based payment awards granted November 1, 2005 or after, based on the grant-date fair value estimated in accordance with the provisions of SFAS No. 123R. The compensation cost is included in selling, general and administrative expenses.

**Cash and Cash Equivalents.** The Company considers all highly liquid instruments with original maturities of three months or less to be cash equivalents.

**Comprehensive Income.** Comprehensive income consists of net income and other related gains and losses affecting stockholders' equity that, under generally accepted accounting principles, are excluded from net income. For the Company, such other comprehensive income items consist of unrealized foreign currency translation gains and losses.

**Related Party Transactions.** The Company has a current receivable which is included in prepaid expenses and other current assets that is due from Security Services of America, LLC (SSA LLC), the seller of contract security guard assets and operations that were acquired by the Company in 2004. The receivable arose from overpayments in connection with subcontracting the services of licensed security officers from SSA LLC while certain state operating licenses were being obtained by the Company. Current employees of the Company indirectly own approximately 16% of the equity in SSA LLC. At October 31, 2006 the outstanding amount of the receivable totaled \$3.4 million. Because SSA LLC disputes most of the amount owed, the Company has reserved \$2.4 million of this receivable. However, the Company continues to vigorously pursue collection of the total amount.

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In connection with the sale of substantially all of the assets of CommAir Mechanical Services on June 2, 2005, ABM entered into an Interim Services Agreement with Carrier Corporation (Carrier) to provide risk management, information technology, human resources, operational and financial services to Carrier to aid in the transition of the business, and entered into subleases by which Carrier subleased various facilities. All of the subleases had terminated as of December 2, 2005 and all of the interim services had terminated as of December 31, 2005. The total considerations recorded by ABM from the Interim Service Agreement and subleases were \$0.3 million and \$0.5 million for 2006 and 2005, respectively.

**Accounting Standards Adopted.** Effective November 1, 2005, the Company began recording compensation expense associated with share-based payment awards in accordance with SFAS No. 123R, as interpreted by SAB No. 107. For more details, see Note 10.

In May 2005, the FASB issued SFAS No. 154, "Accounting Changes and Error Corrections." SFAS No. 154 replaces APB Opinion No. 20, "Accounting Changes" (Opinion No. 20) and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements." SFAS No. 154 applies to all voluntary changes in accounting principles, and changes the requirements for accounting for and reporting of a change in accounting principles. SFAS No. 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principles unless it is impracticable. Opinion No. 20 previously required that most voluntary changes in accounting principles be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS No. 154 also requires that a change in method of depreciation, amortization or depletion for long-lived, nonfinancial assets be accounted for as a change in accounting estimate that is effected by a change in accounting principle. Opinion No. 20 previously required that such a change be reported as a change in accounting principle. SFAS No. 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Earlier application is permitted for accounting changes and corrections of errors made in fiscal years beginning after June 1, 2005. The Company began to apply SFAS No. 154 effective November 1, 2005.

**Recent Accounting Pronouncements.** In June 2006, the FASB issued EITF No. 06-3, "How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement" (EITF 06-3). EITF 06-3 requires companies to disclose the presentation of any tax assessed by a governmental authority that is directly imposed on a revenue-producing transaction between a seller and a customer (e.g., sales and use tax) as either gross or net in the accounting principles included in the notes to the financial statements. EITF 06-3 will be effective beginning with the second quarter of 2007.

In July 2006, the FASB issued FASB Financial Interpretation No. 48, "Accounting for Uncertain Tax Positions" (FIN 48). FIN 48 provides guidance on the accounting for and disclosure of tax positions accounted for in accordance with SFAS No. 109. FIN 48 requires that the effects of a tax position be initially recognized when it is "more likely than not" (which is defined as a greater than 50 percent chance) that the position will be sustained upon examination by the taxing authorities. In addition, FIN 48 requires additional disclosures regarding tax positions. FIN 48 is effective for the Company beginning fiscal 2008. The Company is presently assessing the impact of FIN 48 to the Company's consolidated financial position, results of operations and cash flows.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108 (SAB No. 108), "Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements." The guidance in SAB No. 108 requires Companies to base their materiality evaluations on all relevant quantitative and qualitative factors. This involves quantifying the impact of correcting all misstatements, including both the carryover and reversing effects of prior year misstatements, on the current year financial statements. The implementation of SAB No. 108 will not have any impact on the Company's evaluation as the Company is substantially following guidance provided in SAB No. 108. SAB No. 108 will be effective beginning in the first quarter of 2007.

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" (SFAS No. 157). SFAS No. 157 was issued to provide guidance and consistency for comparability in fair value measurements and for expanded disclosures about fair value measurements. The Company does not anticipate that SFAS No. 157 will have an impact on the financial position, results of operations or disclosures in the Company's financial statements. SFAS No. 157 will be effective beginning in fiscal year 2008.

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In September 2006, the FASB issued SFAS No. 158, "Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statements No. 87, 88, 106, and 132(R)" (SFAS No. 158). SFAS No. 158 requires an employer to recognize the overfunded or underfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in that funded status in the year in which the changes occur through comprehensive income. SFAS No. 158 also requires an employer to measure the funded status of a plan as of the date of its year end statement of financial position. The Company does not anticipate that SFAS No. 158 will have a material impact on the financial position, results of operations or disclosures in the Company's financial statements. SFAS No. 158 will be effective for fiscal year ending October 31, 2007.

## **2. INSURANCE**

The Company self-insures certain insurable risks such as general liability, automobile, property damage, and workers' compensation. Commercial policies are obtained to provide for \$150.0 million of coverage for certain risk exposures above the self-insured retention limits (*i.e.*, deductibles). For claims incurred after November 1, 2002, substantially all of the self-insured retentions increased from \$0.5 million per occurrence (inclusive of legal fees) to \$1.0 million per occurrence (exclusive of legal fees) except for California workers' compensation insurance which increased to \$2.0 million per occurrence from April 14, 2003 to April 14, 2005, when it returned to \$1.0 million per occurrence, plus an additional \$1.0 million annually in the aggregate.

The Company uses an independent actuary to evaluate the Company's estimated claim costs and liabilities no less frequently than annually and accrues self-insurance reserves in an amount that is equal to the actuarial point estimate. Using the actuarial report, management develops annual insurance costs for each operation, expressed as a rate per \$100 of exposure (labor and revenue) to estimate insurance costs. Additionally, management monitors new claims and claim development to assess the adequacy of the insurance reserves. The estimated future charge is intended to reflect the recent experience and trends. Trend analysis is complex and highly subjective. The interpretation of trends requires the knowledge of all factors affecting the trends that may or may not be reflective of adverse developments (*e.g.*, changes in regulatory requirements and changes in reserving methodology). If the trends suggest that the frequency or severity of claims incurred has increased, the Company might be required to record additional expenses for self-insurance liabilities. Additionally, the Company uses third party service providers to administer its claims and the performance of the service providers and transfers between administrators can impact the cost of claims and accordingly the amounts reflected in insurance reserves.

Three actuarial reviews were completed during 2006, with valuations dated April 30, May 31, and September 30.

The May 31, 2006 actuarial report, covering substantially all of the Company's general liability and workers' compensation reserves, was completed in the third quarter of 2006 resulting in a \$4.7 million insurance benefit. The reports showed favorable developments in the Company's California workers' compensation and general and auto liability claims, offset in part by adverse developments in the Company's workers' compensation claims outside of California. The \$4.7 million was recorded by Corporate and was attributable to reserves for 2005 and prior years.

The September 30, 2006 actuarial report, updating substantially all of the Company's general liability and workers' compensation reserves and a separate actuarial report covering the Company's self-insurance reserves for low deductible self-insurance programs that cover airport shuttles and vanpools, were completed in the fourth quarter of 2006 resulting in the reduction of these reserves by \$9.4 million. The reports showed favorable developments in the Company's workers' compensation and general and auto liability claims, offset in part by adverse developments in the Company's airport shuttle and vanpool claims. The \$9.4 million benefit comprised a \$9.8 million benefit recorded by Corporate and \$0.4 million of adverse development recorded by Parking relating to reserves for 2005 and prior years.

The 2005 actuarial report covering substantially all of the Company's general liability and workers' compensation reserves was completed in the third quarter of 2005 resulting in a \$5.5 million insurance benefit. The report showed favorable developments in the Company's California workers' compensation and general and auto liability claims, offset in part by adverse developments in the Company's workers' compensation claims outside of California. The \$5.5 million was recorded by Corporate and was attributable to reserves for 2004 and prior years, of which \$1.4 million was attributable to a correction of an overstatement of reserves at October 31, 2004. The 2005 actuarial reports covering the rest of the Company's self-insurance reserves including low

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deductible self-insurance programs that cover general liability expenses at malls, special event facilities and airport shuttles, as well as workers' compensation for certain employees in certain states were completed in the fourth quarter of 2005 resulting in the reduction of these reserves by \$2.7 million. The \$2.7 million was recorded by Janitorial and Parking and was mostly attributable to reserves for 2004 and prior years.

The 2004 actuarial report completed in November 2004 indicated that there were adverse developments in the Company's insurance reserves primarily related to workers' compensation claims in the State of California during the four-year period ended October 31, 2003, for which a charge of \$17.2 million was recorded by Corporate in the fourth quarter of 2004. The Company believes a substantial portion of the \$17.2 million was related to poor claims management by a third party administrator, who no longer performs these services for the Company. The Company has filed a claim against its former third party administrator for damages related to claims mismanagement.

The total estimated liability for claims incurred but unpaid at October 31, 2006 and 2005 was \$195.2 million and \$198.6 million, respectively.

In connection with certain self-insurance programs, the Company had standby letters of credit at October 31, 2006 and 2005 supporting estimated unpaid liabilities in the amounts of \$93.5 million and \$82.1 million, respectively.

### 3. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment at October 31, 2006 and 2005 consisted of the following:

(in thousands)	2006	2005
Land	\$ 727	\$ 808
Buildings	3,404	3,816
Transportation equipment	14,659	14,119
Machinery and other equipment	82,405	79,406
Leasehold improvements	17,827	16,491
	119,022	114,640
Less accumulated depreciation and amortization	86,837	80,370
Total	\$ 32,185	\$ 34,270

Depreciation expense in 2006, 2005 and 2004 was \$15.0 million, \$13.9 million and \$13.0 million, respectively.

### 4. GOODWILL AND OTHER INTANGIBLES

**Goodwill:** The changes in the carrying amount of goodwill for the years ended October 31, 2006 and 2005 were as follows (acquisitions are discussed in Note 12):

(in thousands)	Balance as of October 31, 2005	Initial Payments for Acquisitions	Contingent Amounts and Other	Balance as of October 31, 2006
Janitorial	\$ 151,307	\$ 475	\$ 2,108	\$ 153,890
Parking	29,535	—	645	30,180
Security	42,541	238	863	43,642
Engineering	2,174	—	—	2,174
Lighting	18,002	—	—	18,002
Total	\$ 243,559	\$ 713	\$ 3,616	\$ 247,888

Of the \$247.9 million carrying amount of goodwill as of October 31, 2006, \$44.8 million is not amortizable for income tax purposes because the related acquisitions were acquired prior to 1991 or purchased by stock issuances.

(in thousands)	Balance as of October 31, 2004	Initial Payments for Acquisitions	Contingent Amounts	Balance as of October 31, 2005
Janitorial	\$ 139,221	\$ 3,758	\$ 8,328	\$ 151,307
Parking	28,749	—	786	29,535
Security	37,605	2,563	2,373	42,541
Engineering	2,174	—	—	2,174
Lighting	17,746	—	256	18,002
Total	\$ 225,495	\$ 6,321	\$ 11,743	\$ 243,559

The \$2.6 million increase in Security's goodwill for initial payments for acquisitions includes \$1.0 million that resulted from recording a deferred tax liability from the Sentinel Guard Systems (Sentinel) transaction in the first quarter of 2005. (See Note 12.)

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**Other Intangibles:** The changes in the gross carrying amount and accumulated amortization of intangibles other than goodwill for the years ended October 31, 2006 and 2005 were as follows (acquisitions are discussed in Note 12):

(in thousands)	Gross Carrying Amount			Accumulated Amortization			October 31, 2006	
	October 31, 2005	Additions	Retirements and Other	October 31, 2006	October 31, 2005	Additions	Retirements and Other	
Customer contracts and related relationships	\$ 28,267	\$ 5,446	\$ —	\$ 33,713	\$ (7,540)	\$ (4,741)	\$ —	\$ (12,281)
Trademarks and trade names	3,050	—	—	3,050	(1,227)	(540)	—	(1,767)
Other (contract rights, etc.)	6,624	27	(3,983)	2,668	(4,711)	(483)	3,692	(1,502)
Total	\$ 37,941	\$ 5,473	\$ (3,983)	\$ 39,431	\$ (13,478)	\$ (5,764)	\$ 3,692	\$ (15,550)

(in thousands)	Gross Carrying Amount			Accumulated Amortization			October 31, 2005	
	October 31, 2004	Additions	Retirements and Other	October 31, 2005	October 31, 2004	Additions	Retirements and Other	
Customer contracts and related relationships	\$ 21,217	\$ 7,050	\$ —	\$ 28,267	\$ (3,546)	\$ (3,994)	\$ —	\$ (7,540)
Trademarks and trade names	3,000	50	—	3,050	(570)	(657)	—	(1,227)
Other (contract rights, etc.)	6,061	746	(183)	6,624	(3,872)	(1,022)	183	(4,711)
Total	\$ 30,278	\$ 7,846	\$ (183)	\$ 37,941	\$ (7,988)	\$ (5,673)	\$ 183	\$ (13,478)

The weighted average remaining lives as of October 31, 2006 and the amortization expense for the years ended October 31, 2006, 2005 and 2004 of intangibles other than goodwill, as well as the estimated amortization expense for such intangibles for each of the five succeeding fiscal years are as follows:

(in thousands)	Weighted Average Remaining Life (Years)	Amortization Expense			Estimated Amortization Expense				
		2006	2005	2004	2007	2008	2009	2010	2011
Customer contracts and related relationships	9.6	\$ 4,741	\$ 3,994	\$ 2,680	\$ 4,329	\$ 3,788	\$ 3,246	\$ 2,705	\$ 2,163
Trademarks and trade names	2.4	540	657	537	540	540	202	—	—
Other (contract rights, etc.)	8.3	483	1,022	1,302	190	181	165	135	135
Total	9.1	\$ 5,764	\$ 5,673	\$ 4,519	\$ 5,059	\$ 4,509	\$ 3,613	\$ 2,840	\$ 2,298

The customer relationship intangible assets are being amortized using the sum-of-the-years-digits method over their useful lives consistent with the estimated useful life considerations used in the determination of their fair values. The accelerated method of amortization reflects the pattern in which the economic benefits of the customer relationship intangible assets are expected to be realized. Trademarks and trade names are being amortized over their useful lives using the straight-line method. Other intangible assets, consisting principally of contract rights, are being amortized over the contract periods using the straight-line method.

## 5. LINE OF CREDIT FACILITY

In May 2005, ABM entered into a \$300 million syndicated line of credit scheduled to expire in May 2010. No compensating balances are required under the facility and the interest rate is determined at the time of borrowing based on the London Interbank Offered Rate (LIBOR) plus a spread of 0.375% to 1.125% or, for overnight borrowings, at the prime rate or, for overnight to one week, at the Interbank Offered Rate (IBOR) plus a spread of 0.375% to 1.125%. The spreads for LIBOR and IBOR borrowings are based on the Company's leverage ratio. The facility calls for a non-use fee payable quarterly, in arrears, of 0.125%, based on the average daily unused portion. For purposes of this calculation, irrevocable standby letters of credit issued primarily in conjunction with the Company's self-insurance program plus cash borrowings are considered to be outstanding amounts. As of October 31, 2006 and 2005, the total outstanding amounts under the facility were \$98.7 million and \$84.4 million, respectively, in the form of standby letters of credit.

The facility includes usual and customary covenants for a credit facility of this type, including covenants limiting liens, dispositions, fundamental changes, investments, indebtedness, and certain transactions and payments. In addition, the facility also requires that the Company satisfy three financial covenants: (1) a fixed charge coverage ratio greater than or equal to 1.50 to 1.0 at fiscal quarter-end; (2) a leverage ratio of less than or equal to 3.25 to 1.0 at fiscal quarter-end; and

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(3) consolidated net worth greater than or equal to the sum of (i) \$341.9 million, (ii) an amount equal to 50% of the consolidated net income earned in each full fiscal quarter ending after May 25, 2005 (with no deduction for a net loss in any such fiscal quarter) and (iii) an amount equal to 100% of the aggregate increases in stockholders' equity of ABM after May 25, 2005 by reason of the issuance and sale of capital stock or other equity interests of ABM, including upon any conversion of debt securities of ABM into such capital stock or other equity interests, but excluding by reason of the issuance and sale of capital stock pursuant to the Company's employee stock purchase plan, employee stock option plans and similar programs. The Company is currently in compliance with all covenants.

## **6. EMPLOYEE BENEFIT AND INCENTIVE PLANS**

The Company offers the following employee benefit and incentive plans to its employees.

### **Executive Officer Incentive Plan**

On May 2, 2006, the stockholders of ABM approved the Executive Officer Incentive Plan (Incentive Plan). The purpose of the Incentive Plan is to provide annual performance-based cash incentives to certain employees of the Company and to motivate those employees to set and achieve above-average financial and non-financial goals. The Incentive Plan will give the Compensation Committee of the Board of Directors of ABM the ability to award cash bonuses that qualify as "performance-based compensation" under Section 162(m), and the Company's ability to deduct cash bonuses will be preserved. The aggregate funds available for bonuses under the Incentive Plan are three percent of pre-tax operating income for the award year. The plan sets forth certain limits on the awards to each of the covered employees eligible for bonuses under the Incentive Plan.

### **401(k) Plan**

The Company has two 401(k) plans covering certain qualified non-union employees, which provided for employer participation in accordance with the provisions of Section 401(k) of the Internal Revenue Code. The plans allow participants to make pre-tax contributions that the Company matches at various percentages of employee contributions depending on the particular employee group. All amounts contributed to the plans are deposited into a trust fund administered by independent trustees. The Company made matching 401(k) contributions required by the 401(k) plans for 2006, 2005 and 2004 in the amounts of \$5.8 million, \$5.3 million and \$5.5 million, respectively.

### **Retirement and Post-Retirement Plans**

The Company has the following unfunded defined benefit plans:

**Supplemental Executive Retirement Plan.** The Company has unfunded retirement agreements for 47 current and former senior executives, including two current directors who were former senior executives, many of which are fully vested. The retirement agreements provide for monthly benefits for ten years commencing at the later of the respective retirement dates of those executives or age 65. The benefits are accrued over the vesting period. Effective December 31, 2002, this plan was amended to preclude new participants.

**Non-Employee Director Retirement Plan.** Non-employee directors who have completed at least five years of service have been eligible to receive ten years of monthly retirement benefits equal to the monthly retainer fee received prior to retirement, reduced on a pro-rata basis for fewer than ten years of service under the unfunded Non-Employee Director Retirement Plan. The benefits were accrued over the vesting periods. Effective October 1, 2006, this plan was eliminated for new directors. The individual retirement plan balances were frozen at October 31, 2006 and transferred to other plans in 2007 as described below. The value of retirement benefits under the Non-Employee Director Retirement Plan was \$1.8 million at October 31, 2006.

**Director Deferred Compensation Plan.** On October 23, 2006, the Board of Directors adopted an unfunded Director Deferred Compensation Plan effective October 31, 2006. Directors were given the option to convert their interests in the Non-Employee Director Retirement Plan to the Director Deferred Compensation Plan or to restricted stock units (RSUs). On November 1, 2006, \$1.1 million was converted from the Non-Employee Director Retirement Plan to the Director Deferred Compensation Plan.

Directors who elected to receive RSUs will be granted the number of RSUs under the ABM 2006 Equity Incentive Plan determined by dividing the amount of retirement benefits by the fair market value of ABM common stock on the date of the 2007 annual meeting of the stockholders of the Company. The balance to be converted in 2007 from the Non-Employee Director Retirement Plan to RSUs for directors who made this election is \$0.7 million.

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**Service Award Benefit Plan.** The company has an unfunded service award benefit plan, with a retroactive vesting period of five years. This plan is a "severance pay plan" as defined by the Employee Retirement Income Security Act (ERISA) and covers certain qualified employees. The plan provides participants, upon termination, with a guaranteed seven days pay for each year of employment subsequent to November 1, 1989. Effective January 1, 2002, this plan was frozen. The Company will continue to incur interest costs related to this plan as the value of the previously earned benefits continues to increase. The Company uses an independent actuary to measure the value of this liability. The measurement date used is September 30.

The Company has the following unfunded post-retirement benefit plan:

**Death Benefit Plan.** The Death Benefit Plan covers certain qualified employees and, upon retirement on or after the employee's 62nd birthday, provides 50% of the death benefit that the employee was entitled to prior to retirement subject to a maximum of \$150,000. Coverage during retirement continues until death for retired employees hired before September 1, 1980. On March 1, 2003, the post-retirement death benefit for any active employees hired after September 1, 1980 was eliminated, although active employees hired before September 1, 1980 who retire on or after their 62nd birthday will continue to be covered between retirement and death. For certain plan participants who retired before March 1, 2003, the post-retirement death benefit continues until the retired employees 70th birthday. The Company uses an independent actuary to measure the value of this liability. The measurement date used is September 30.

### *Benefit Obligations*

(in thousands)	Defined Benefit Plans at October 31,		Post-Retirement Benefit Plan at October 31,	
	2006	2005	2006	2005
<b>Change in benefit obligation</b>				
Benefit obligation at beginning of year	\$ 8,061	\$ 9,679	\$ 4,802	\$ 4,492
Service cost	312	199	30	39
Interest cost	344	539	247	271
Amortization of actuarial loss	111	43	—	—
Termination benefits accrued upon divestiture	—	93	—	—
Benefits paid	(1,022)	(2,492)	—	—
Benefit obligation at end of year	\$ 7,806	\$ 8,061	\$ 5,079	\$ 4,802

### *Components of Net Period Benefit Cost*

The components of net periodic benefit cost of the defined benefit retirement plans and the post-retirement benefit plan for the years ended October 31, 2006, 2005 and 2004 were:

(in thousands)	2006	2005	2004
<b>Defined Benefit Plans</b>			
Service cost	\$ 312	\$ 199	\$ 492
Interest	344	539	759
Amortization of actuarial loss	111	43	—
Net expense	\$ 767	\$ 781	\$ 1,251
<b>Post-Retirement Benefit Plan</b>			
Service cost	\$ 30	\$ 39	\$ 40
Interest	247	271	275
Net expense	\$ 277	\$ 310	\$ 315

### *Assumptions*

The weighted average rate assumptions used to determine benefit obligations and net periodic benefit cost for the years ended October 31, 2006, 2005 and 2004 were:

	Defined Benefit Plans			Post-Retirement Benefit Plan		
	2006	2005	2004	2006	2005	2004
Discount rate	5.75%	5.75%	5.75%	5.75%	5.75%	5.75%
Rate of compensation increase	1.24%	0.87%	1.25%	3.50%	3.00%	3.00%

The discount rates are based on Moody's AA-rated long-term corporate bonds (*i.e.*, 20 years).

### *Estimated Future Benefit Payments*

The retirement and post-retirement benefit plans are unfunded agreements, therefore, no contributions are expected to be made.

The following table illustrates estimated future benefit payments, which are calculated using the same assumptions used to measure the Company's benefit obligation and are based upon expected future service:

(in thousands)	Defined Benefit Plans	Post-Retirement Benefit Plan
2007	\$ 1,449	\$ 248
2008	653	243
2009	662	247
2010	927	251
2011	515	258
2012-2016	2,170	1,443

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### **Deferred Compensation Plan**

The Company has an unfunded deferred compensation plan available to executive, management, administrative or sales employees whose annualized base salary exceeds \$100,000. The plan allows employees to defer from 1% to 20% of their pre-tax compensation. The deferred amount earns interest equal to the prime interest rate on the last day of the calendar quarter up to 6%. If the prime rate exceeds 6%, the deferred compensation interest rate is equal to 6% plus one half of the excess over 6%. The average interest rates credited to the deferred compensation amounts for 2006, 2005 and 2004 were 6.98%, 5.99% and 4.35%, respectively. At October 31, 2006, there were 64 active participants and 35 retired or terminated employees participating in the plan.

(in thousands)	2006	2005	2004
Deferred compensation liability at beginning of year	\$ 9,955	\$ 11,198	\$ 10,315
Employee contributions	681	1,034	1,222
Interest accrued	649	594	470
Payments	(1,869)	(2,871)	(809)
Deferred compensation liability at end of year	\$ 9,416	\$ 9,955	\$ 11,198

### **Pension Plan Under Collective Bargaining**

Certain qualified employees of the Company are covered under union-sponsored multi-employer defined benefit plans. Contributions paid for these plans were \$34.5 million, \$34.4 million and \$33.5 million in 2006, 2005 and 2004, respectively. These plans are not administered by the Company and contributions are determined in accordance with provisions of negotiated labor contracts.

### **7. LEASE COMMITMENTS AND RENTAL EXPENSE**

The Company is contractually obligated to make future payments under noncancelable operating lease agreements for various facilities, vehicles, and other equipment. As of October 31, 2006, future minimum lease commitments under noncancelable operating leases for the succeeding fiscal years are as follows:

(in thousands)	2007	2008	2009	2010	2011	Thereafter	Total minimum lease commitments
							\$ 34,168
							24,944
							19,339
							13,198
							10,327
							27,805
							\$ 129,781

Rental expense for continuing operations for the years ended October 31, 2006, 2005 and 2004 were as follows:

(in thousands)	2006	2005	2004
Minimum rentals under noncancelable leases	\$ 50,364	\$ 54,019	\$ 57,935
Contingent rentals	35,806	33,809	32,697
Short-term rental agreements	9,737	9,519	4,726
	\$ 95,907	\$ 97,347	\$ 95,358

Contingent rentals are applicable to leases of parking lots and garages and are based on percentages of the gross receipts or other financial parameters attributable to the related facilities.

### **8. OTHER COMMITMENTS**

On September 29, 2006, the Company entered into a services agreement with International Business Machines Incorporated (IBM) that became effective October 1, 2006, pursuant to which IBM will provide to the Company substantially all of the information technology infrastructure and services provided in 2006 by in-house equipment and personnel.

The services that IBM will provide include data center, server, network and workstation operations, as well as help desk, applications management and support, and disaster recovery services. The base fee for these services is approximately \$117 million over the initial term of 7 years and 3 months. ABM and IBM may expand the services covered by the service agreement at rates set forth in the services agreement, or later agreed to by the parties, which would increase costs. As of October 31, 2006, future commitments under the service agreement with IBM for the succeeding fiscal years are as follows:

(in thousands)	2007	2008	2009	2010	2011	Thereafter	Total
							\$ 22,511
							16,485
							15,532
							14,878
							14,005
							29,485
							\$ 112,896

### **9. CAPITAL STOCK**

#### **Treasury Stock**

Under a series of Board of Directors' authorizations, the Company has made the following repurchases of ABM common stock: year ended October 31, 2004, 600,000 shares at a cost of \$11.1 million (an average

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price of \$18.50 per share); year ended October 31, 2005, 1,600,000 shares at a cost of \$31.3 million (an average price of \$19.57 per share); and year ended October 31, 2006, 1,428,500 shares at a cost of \$26.0 million (an average price of \$18.17 per share). At October 31, 2006, the then-existing authorization for additional repurchases expired.

### **Preferred Stock**

ABM is authorized to issue 500,000 shares of preferred stock. None of these preferred shares are currently issued.

### **Common Stock Rights Plan**

Under ABM's stockholder rights plan one preferred stock purchase right (a Right) attached to each outstanding share of common stock on April 22, 1998, and a Right has attached or will attach to each subsequently issued share of common stock. The Rights are exercisable only if a person or group acquires 20% or more of ABM's common stock (an Acquiring Person) or announces a tender offer for 20% or more of the common stock. Each Right entitles stockholders to buy one-two thousandths of a share of newly created participating preferred stock, par value \$0.01 per share, of ABM at an initial exercise price of \$87.50 per Right, subject to adjustment from time to time. However, if any person becomes an Acquiring Person, each Right will then entitle its holder (other than the Acquiring Person) to purchase, at the exercise price, common stock (or, in certain circumstances, participating preferred stock) of ABM having a market value at that time of twice the Right's exercise price. These Rights holders would also be entitled to purchase an equivalent number of shares at the exercise price if the Acquiring Person were to control ABM's Board of Directors and cause the Company to enter into certain mergers or other transactions. In addition, if an Acquiring Person acquired between 20% and 50% of ABM's voting stock, ABM's Board of Directors may, at its option, exchange one share of ABM's common stock for each Right held (other than Rights held by the Acquiring Person). Rights held by the Acquiring Person will become void. Theodore Rosenberg and The Theodore Rosenberg Trust and those receiving stock therefrom without payment, cannot be Acquiring Persons under the Rights plan, therefore, changes in their holdings will not cause the Rights to become exercisable or non-redeemable or trigger the other features of the Rights. The Rights will expire on April 22, 2008, unless earlier redeemed by ABM's Board of Directors at \$0.005 per Right.

## **10. SHARE-BASED COMPENSATION PLANS**

The compensation expense and related income tax benefit recognized in the Company's consolidated financial statements for the year ended October 31, 2006 were as follows.

(in thousands)	2006
Share-based compensation expense recognized in selling, general and administrative expenses before income taxes	\$3,244
Income tax benefit	684
<b>Total share-based compensation expense after income taxes</b>	<b>\$2,560</b>
Total share-based compensation expense after income taxes — per common share	
Basic	\$ 0.05
Diluted	\$ 0.05

Share-based compensation expense of \$42,000 was recorded in 2005 due to the accelerated vesting of options in connection with an employee termination. No share-based compensation expense was recorded in 2004.

The Company has five stock incentive plans, which are described below. The Company also has an employee stock purchase plan.

### *2006 Equity Incentive Plan*

On May 2, 2006, the stockholders of ABM approved the 2006 Equity Incentive Plan (the 2006 Equity Plan), which replaced the Time-Vested Incentive Stock Option Plan (the Time-Vested Plan), the 1996 Price-Vested Performance Stock Option Plan (the 1996 Plan) and the 2002 Price-Vested Performance Stock Option Plan (the 2002 Plan and collectively with the Time-Vested Plan and the 1996 Plan, the Prior Plans), which are further described below, all in advance of their expirations. The purpose of the 2006 Equity Plan is to provide stock-based compensation to employees and directors to promote close alignment among the interests of employees, directors and stockholders. The 2006 Equity Plan provides for the issuance of awards for 2,500,000 shares of ABM's common stock plus the remaining shares authorized under the Prior Plans as of May 2, 2006, plus forfeitures under the Prior Plans after that date. The terms and conditions governing existing options under the Time-Vested Plan, the 1996 Plan and the 2002 Plan will continue to apply to the options outstanding under those plans. The 2006 Equity Plan is an "omnibus" plan that provides for a variety of equity and equity-based award vehicles, including stock options, stock appreciation rights, restricted stock, restricted stock unit awards, performance shares, and other share-based awards. Shares subject to awards that terminate without vesting or exercise may be

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reissued. Certain of the awards available under the 2006 Equity Plan will qualify as "performance-based" compensation under Internal Revenue Code Section 162(m) (Section 162(m)).

In October 2006, ABM made its first awards under the 2006 Equity Plan consisting of 130,450 nonqualified stock options, 236,375 restricted stock units, and 124,654 performance shares.

The nonqualified stock options have an exercise price of \$18.71 per share, will vest as to 25% of the underlying shares on each of the next four anniversaries of the award and expire in 7 years. As of October 31, 2006, the outstanding options have a weighted average remaining contractual life of 6.93 years and an aggregate intrinsic value of \$150,018.

As of October 31, 2006, there was \$478,134 of total unrecognized compensation cost (net of estimated forfeitures) related to unvested stock options under the 2006 Equity Plan, which is expected to be recognized on a straight-line basis over a weighted-average vesting period of 2.35 years. The total compensation cost related to options recognized during the year ended October 31, 2006, was \$10,173.

Restricted stock units, issued in October 2006, will be settled in shares of ABM common stock with respect to 50% of the underlying shares on the second anniversary of the award and 50% on the fourth anniversary of the award. 4,023 restricted stock units were forfeited by October 31, 2006.

As of October 31, 2006, there was \$3.4 million of total unrecognized compensation cost (net of estimated forfeitures) related to restricted stock units under the 2006 Equity Plan, which is expected to be recognized on a straight-line basis over a weighted-average vesting period of 2.35 years. The total compensation cost related to restricted stock units under the 2006 Equity Plan recognized during the year ended October 31, 2006 was \$73,381.

Performance shares consist of a contingent right to acquire shares of ABM common stock based on performance targets adopted by the Compensation Committee; in these awards the number of performance shares will vest based on gross margin and revenue targets for the two-year period beginning November 1, 2006 and ending October 31, 2008. Assuming minimums for both are met, vesting of 50% to 100% of the indicated shares will occur depending on the combination of gross margin and revenue achieved.

As of October 31, 2006, there was \$1.9 million of total unrecognized compensation cost (net of estimated forfeitures) related to performance shares which is expected to be recognized on a straight-line basis over a weighted average vesting period of 1.24 years. The total compensation cost related to performance shares under the 2006 Equity Plan recognized during the year ended October 31, 2006, was \$84,590.

The grant date fair value of the restricted stock units and performance shares was \$18.71, the then market price of ABM common stock. Restricted stock units, restricted stock, and performance shares will be credited with dividend equivalent rights which will be converted to restricted stock units, restricted stock or performance shares, as applicable, at the fair market value of ABM common stock on the date of payment and will be subject to the same terms and conditions as the underlying award.

At October 31, 2006, 3,832,035 shares were available for award under the 2006 Equity Plan.

### *"Time-Vested" Incentive Stock Option Plan*

Under the Time-Vested Plan, the options become exercisable at a rate of 20% of the shares per year beginning one year after date of grant and terminate no later than ten years plus one month after date of grant. On May 2, 2006, the remaining 254,142 shares authorized under this plan became available for grant under the 2006 Equity Plan, as will forfeitures after that date.

The status of the Time-Vested Plan at October 31, 2006, is summarized below:

	Number of Shares (in thousands)	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at October 31, 2005	2,285	\$15.42		
Granted	270	20.06		
Exercised	244	10.83		
Forfeited or expired	52	15.70		
Outstanding at October 31, 2006	2,259	\$16.47	5.68	\$8,281
Vested and Exercisable at October 31, 2006	1,360	\$14.99	4.25	\$6,740

As of October 31, 2006, there was \$2.6 million of total unrecognized compensation cost (net of estimated forfeitures) related to unvested stock options under the Time-Vested Plan which is expected to be recognized on a straight-line basis over a weighted-average vesting period of 1.86 years. The total compensation cost related to stock options under the Time-Vested Plan recognized during the year ended October 31, 2006, was \$1.4 million.

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### *"Price-Vested" Performance Stock Option Plans*

ABM has two Price-Vested Plans, the 1996 Plan and the 2002 Plan. The two plans are substantially similar. Each option has pre-defined vesting prices that provide for accelerated vesting, which were established by ABM's Compensation Committee. Under each form of option agreement, if, at the end of four years, any of the stock price performance targets are not achieved, then the remaining options would vest at the end of eight years from the date the options were granted. Options vesting during the first year following grant do not become exercisable until after the first anniversary of grant. The options expire ten years after the date of grant. On May 2, 2006, the remaining 2,350,963 shares authorized under these plans became available for grant under the 2006 Equity Plan, as will forfeitures after this date.

The status of the Price-Vested Plans at October 31, 2006, is summarized below:

	Number of Shares (in thousands)	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at October 31, 2005	2,807	\$16.07		
Granted	18	19.98		
Exercised	217	10.50		
Forfeited or expired	88	15.33		
Outstanding at October 31, 2006	2,520	\$16.61	6.06	\$8,291
Vested and Exercisable at October 31, 2006	917	\$14.94	3.56	\$4,513

As of October 31, 2006, there was \$3.6 million of total unrecognized compensation cost (net of estimated forfeitures) related to unvested stock options under the Price-Vested Plans, which is expected to be recognized on a straight-line basis over a weighted-average vesting period of 3.25 years. The total compensation cost related to stock options under the Price-Vested Plans recognized during the year ended October 31, 2006, was \$0.7 million.

### *Executive Stock Option Plan (aka "Age-Vested" Career Stock Option Plan)*

Under the Age-Vested Plan, options are exercisable for 50% of the shares when the option holders reach their 61st birthdays and the remaining 50% become exercisable on their 64th birthdays. To the extent vested, the options may be exercised at any time prior to one year after termination of employment. Effective as of December 9, 2003, no further grants may be made under the plan.

The status of the Age-Vested Plan at October 31, 2006, is summarized below:

	Number of Shares (in thousands)	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at October 31, 2005	986	\$12.82		
Granted	—	—		
Exercised	102	11.13		
Forfeited or expired	80	13.33		
Outstanding at October 31, 2006	804	\$12.98	9.66	\$5,529
Vested and Exercisable at October 31, 2006	168	\$10.41	2.44	\$1,583

As of October 31, 2006, there was \$0.7 million of total unrecognized compensation cost (net of estimated forfeitures) related to unvested stock options under the Age-Vested Plan which is expected to be recognized on a straight-lined basis over a weighted-average vesting period of 5.22 years. The total compensation cost related to stock options under the Age-Vested Plan recognized during the year ended October 31, 2006, was \$0.1 million.

The total intrinsic value of the options for 563,614, 1,248,033, and 802,728 shares exercised during the years ended October 31, 2006, 2005, and 2004, was \$4.4 million, \$11.7 million, and \$6.1 million, respectively. The fair value of options that vested during the year ended October 31, 2006 was \$2.4 million.

The Company settles employee stock option exercises, restricted stock unit conversions, and performance share issuances with newly issued common shares.

The following table illustrates the effect on net income and net income per common share as if the Company had applied the fair value recognition provisions of SFAS No. 123 to share-based compensation during the years ended October 31, 2005 and 2004:

(in thousands except per share amounts)	2005	2004
Net income, as reported	\$57,941	\$30,473
Deduct: Stock-based employee compensation cost, net of tax effect, that would have been included in net income if the fair value method had been applied	3,349	3,075
Net income, pro forma	\$54,592	\$27,398
Net income per common share — Basic		
As reported	\$ 1.17	\$ 0.63
Pro forma	\$ 1.11	\$ 0.57
Net income per common share — Diluted		
As reported	\$ 1.15	\$ 0.61
Pro forma	\$ 1.08	\$ 0.56

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The Company estimates the fair value of each option award on the date of grant using the Black-Scholes option valuation model. The Company uses an outside expert to determine the assumptions used in the option valuation model. The Company estimates forfeiture rates based on historical data and adjusts the rates periodically or as needed. The adjustment of the forfeiture rate may result in a cumulative adjustment in any period the forfeiture rate estimate is changed. During the year ended October 31, 2006, no adjustment was necessary.

The assumptions used in the option valuation model for the years ended October 31, 2006, 2005 and 2004 are shown in the table below:

	2006	2005	2004
Expected life from the date of grant	<b>6.2 years</b>	8.9 years	7.4 years
Expected stock price volatility average	<b>26.0%</b>	23.5%	24.9%
Expected dividend yield	<b>2.1%</b>	2.2%	2.3%
Risk-free interest rate	<b>4.5%</b>	4.1%	3.7%
Weighted average fair value of grants	<b>\$5.37</b>	\$5.27	\$4.40

The expected life for options granted under the Time-Vested Plan is based on observed historical exercise patterns. The expected life for options granted under the 2006 Equity Plan is based on observed historical exercise patterns of the previously granted Time-Vested Plan options adjusted to reflect the change in vesting and expiration dates. The expected life for options granted under the 1996 Plan and the 2002 Plan is calculated using the simplified method in accordance with SAB 107. The simplified method was calculated as the vesting term plus the contractual term divided by two. The vesting term of the 1996 Plan and the 2002 Plan options was derived using a Monte Carlo Simulation due to the market condition affecting the exercisability of these options. The expected volatility is based on considerations of implied volatility from publicly traded and quoted options on ABM's common stock and the historical volatility of ABM's common stock. The risk-free interest rate is based on the continuous compounded yield on U.S. Treasury Constant Maturity Rates with a remaining term equal to the expected term of the option. The dividend yield is based on the historical dividend yield over the expected term of the options granted.

### *Employee Stock Purchase Plan*

In 1985, ABM adopted an employee stock purchase plan under which participants could purchase shares of ABM common stock at the lesser of 85% of the fair market value at the commencement of each plan year or 85% of the fair market value on the date of purchase. Employees could designate up to 10% of their compensation for the purchase of stock, subject to a \$25,000 annual limit. The weighted average fair value of the purchase price rights granted in 2004 was \$4.29. During 2004, the number of shares of stock issued under the plan was 87,510 and was issued at a weighted average price of \$11.72. The aggregate purchase for 2004 was \$1.0 million. The plan terminated upon issue of all available shares in November 2003.

On March 9, 2004, the stockholders of ABM approved the 2004 Employee Stock Purchase Plan under which an aggregate of 2,000,000 shares may be issued. Through April 30, 2006, the participant's purchase price was 85% of the lower of the fair market value of ABM's common stock on the first day of each six-month period in the fiscal year (*i.e.*, May and November, or in the case of the first offering period, the price on August 1, 2004) or the last trading day of each month. Effective May 1, 2006, the purchase price became 95% of the fair market value of ABM common stock on the last trading day of the month. Accordingly, the plan is no longer considered compensatory and the value of the awards will no longer be treated as share-based compensation expense. Employees may designate up to 10% of their compensation for the purchase of stock, subject to a \$25,000 annual limit. Employees are required to hold their shares for a minimum of six months from the date of purchase.

The weighted average fair values of the purchase rights granted in 2006, 2005 and 2004 under the new plan were \$2.19, \$3.70 and \$3.41, respectively. During 2006, 2005 and 2004, 433,046, 562,826 and 77,251 shares of stock were issued under the plan at a weighted average price of \$16.15, \$15.83 and \$15.25, respectively. The aggregate purchases for 2006, 2005 and 2004 were \$7.0 million, \$8.9 million and \$1.2 million, respectively. The share-based compensation cost recognized during 2006 associated with these shares was \$0.8 million. Because of changes to the plan described above, beginning in the third quarter of 2006, the value of the awards is no longer treated as share-based compensation and no share-based compensation expense was recognized effective May 1, 2006. At October 31, 2006, 866,352 shares remained unissued under the plan.

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### **11. INCOME TAXES**

The income taxes provision for continuing operations is made up of the following components for each of the years ended October 31:

(in thousands)	2006	2005	2004
Current			
Federal	\$43,409	\$22,231	\$22,732
State	13,931	2,052	4,799
Foreign	39	50	85
Deferred			
Federal	5,304	(2,621)	(7,633)
State	1,853	(880)	(4,631)
	<b>\$64,536</b>	<b>\$20,832</b>	<b>\$15,352</b>

An income tax expense of \$34.9 million was recorded in the fourth quarter of 2006 attributable to the WTC settlement gain. A \$1.1 million income tax benefit, mostly from the reversal of state tax liabilities for closed years, was recorded in 2006. However, this was offset by \$1.1 million in income tax expense primarily arising from the adjustment of the valuation allowance for state net operating loss carryforwards and the adjustment of the income tax liability accounts after filing the 2005 tax returns and amendments of prior year returns. A \$2.7 million income tax benefit was recorded in the second quarter of 2005 resulting from the favorable settlement of the audit of prior years' state tax returns (tax years 2000 to 2003).

Income tax expense attributable to income from continuing operations differs from the amounts computed by applying the U.S. statutory rates to pre-tax income from continuing operations as a result of the following for the years ended October 31:

	2006	2005	2004
Statutory rate	35.0%	35.0%	35.0%
State and local taxes on income, net of federal tax benefit	6.5%	4.3%	4.3%
Tax credits	(2.4)%	(6.7)%	(6.6)%
Tax liability no longer required	(0.6)%	(4.2)%	—
Nondeductible expenses and other — net	2.4%	4.0%	1.4%
	<b>40.9%</b>	<b>32.4%</b>	<b>34.1%</b>

The increase in the state and local tax rate in 2006 is largely due to the higher tax rates in the jurisdictions in which the WTC settlement gain is subject to state income taxation.

Included in the tax credits that the Company generated in the years presented above are Work Opportunity, Enterprise Zone and Low Income Housing tax credits. The decrease in 2006 is due to the expiration of the Work Opportunity Tax Credit program at December 31, 2005. The extender bill for the program was approved by Congress on December 9, 2006 and signed by the President on December 20, 2006.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at October 31 are presented below:

(in thousands)	2006	2005
Deferred tax assets:		
Self-insurance claims	\$ 75,814	\$ 77,329
Deferred and other compensation	18,112	16,577
Accounts receivable allowances	3,938	3,146
Settlement liabilities	385	3,481
State taxes	1,533	1,010
State net operating loss carryforwards	1,998	1,277
Other	6,231	5,913
	<b>108,011</b>	<b>108,733</b>
Valuation allowance	(1,461)	(241)
Total gross deferred tax assets	<b>106,550</b>	<b>108,492</b>
Deferred tax liabilities:		
Goodwill and other acquired intangibles	(20,091)	(14,114)
Deferred software development cost	(395)	(1,157)
Total gross deferred tax liabilities	<b>(20,486)</b>	<b>(15,271)</b>
Net deferred tax assets	<b>\$ 86,064</b>	<b>\$ 93,221</b>

At October 31, 2006, the Company's net deferred tax assets included a tax benefit from state net operating loss carryforwards of \$2.0 million. The state net operating loss carryforwards will expire between the years 2007 and 2026.

The Company periodically reviews its deferred tax assets for recoverability. The valuation allowance represents the amount of tax benefits related to state net operating loss carryforwards which management believes are not likely to be realized. The Company believes that the net deferred tax assets are considered more likely than not to be realizable based on estimates of future taxable income.

The increase in the valuation allowance in 2006 results from management's revised estimate after considering the likelihood of future utilization of the state net operating loss carryforwards. Details of the valuation allowance at October 31 are as follows:

(in thousands)	2006	2005
Valuation allowance at the beginning of the year	\$ 241	\$ —
Additions	1,220	241
Valuation allowance at the end of the year	<b>\$ 1,461</b>	<b>\$ 241</b>

## 12. ACQUISITIONS

Acquisitions have been accounted for using the purchase method of accounting. The operating results generated by the companies and businesses acquired have been included in the accompanying consolidated financial statements from their respective dates of acquisition. The excess of the purchase price (including contingent amounts) over fair value of the net tangible and intangible assets acquired is included in goodwill. Most purchase agreements provide for initial payments and contingent payments based on the annual pre-tax income or other financial parameters for subsequent periods ranging generally from two to five years.

Cash paid for acquisitions, including initial payments and contingent amounts based on subsequent performance, was \$10.0 million, \$26.9 million and \$54.2 million in the years ended October 31, 2006, 2005 and 2004, respectively. Of those payment amounts, \$4.6 million, \$11.7 million and \$9.9 million were the contingent amounts paid in the years ended October 31, 2006, 2005 and 2004, respectively, on earlier acquisitions as provided by the respective purchase agreements. In addition, shares of ABM's common stock with a fair market value of \$3.5 million at the date of issuance were issued in the year ended October 31, 2005 as payment for a business acquired.

The Company made the following acquisitions during the year ended October 31, 2006:

On November 1, 2005, the Company acquired substantially all of the operating assets of Brandywine Building Services, Inc., a facility services company based in Wilmington, Delaware, for approximately \$3.6 million in cash. Additional cash consideration of approximately \$2.4 million is expected to be paid based on the financial performance of the acquired business over the next four years. With annual revenues in excess of \$9.0 million, Brandywine Building Services, Inc. was a provider of commercial office cleaning and specialty cleaning services throughout Delaware, southeast Pennsylvania and south New Jersey. Of the total initial payment, \$3.0 million was allocated to customer relationship intangible assets (amortized over a useful life of 14 years under the sum-of-the-year-digits method), \$0.5 million to goodwill and \$0.1 million to other assets. As of October 31, 2006, no contingent payment has been made.

On November 27, 2005, the Company acquired substantially all of the operating assets of Fargo Security, Inc., a security guard services company based in Miami, Florida, for an initial payment of approximately \$1.2 million in cash plus an additional payment of \$0.4 million based on the revenue retained by the acquired business over the 90 days following the date of acquisition. With annual revenues in excess of \$6.5 million, Fargo Security, Inc. was a provider of contract security guard services throughout the Miami metropolitan area. Of the total initial payment, \$1.0 million was allocated to customer relationship intangible assets (amortized over a useful life of five years under the sum-of-the-year-digits method), and \$0.2 million to goodwill. The final contingent payment of \$0.4 million made in 2006 was allocated to goodwill.

On December 11, 2005, the Company acquired substantially all of the operating assets of MWS Management, Inc., dba Protector Security Services, a security guard services company based in St. Louis, Missouri, for an initial payment of approximately \$0.6 million in cash plus an additional payment of \$0.3 million based on the revenue retained by the acquired business over the 90 days following the date of acquisition. With annual revenues in excess of \$2.6 million, Protector Security Services was a provider of contract security guard services throughout the St. Louis metropolitan area. Of the total initial payment, \$0.6 million was allocated to customer relationship intangible asset (amortized over a useful life of six years under the sum-of-the-year-digits method). The final contingent payment made in 2006 of \$0.3 million was allocated to goodwill.

The Company made the following acquisitions during the year ended October 31, 2005:

On November 1, 2004, the Company acquired substantially all of the operating assets of Sentinel Guard Systems (Sentinel), a Los Angeles-based company, from Tracerton Enterprises, Inc. Sentinel, with annual revenues in excess of \$13.0 million, was a provider of security officer services primarily to high-rise, commercial and residential structures. In addition to its Los Angeles business, Sentinel also operated an office in San Francisco. The initial purchase price was \$5.3 million, which included a payment of \$3.5 million in shares of ABM's common stock, the assumption of liabilities totaling approximately \$1.7 million and \$0.1 million of professional fees. Of the total initial payment, \$2.4 million was allocated to customer relationship intangible assets (amortized over a useful life of 13 years under the sum-of-the-year-digits method), \$0.1 million to trademarks and trade names (amortized over a useful life of six months under the straight-line method), \$1.3 million to customer accounts receivable and other assets, and \$1.5 million to goodwill.

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Additionally, because of the tax-free nature of this transaction to the seller, the Company recorded a \$1.0 million deferred tax liability on the difference between the recorded fair market value and the seller's tax basis of the net assets acquired. Goodwill was increased by the same amount. Additional consideration includes contingent payments, based on achieving certain revenue and profitability targets over a three-year period, estimated to be between \$0.5 million and \$0.75 million per year, payable in shares of ABM's common stock. As of October 31, 2006, no contingent payment has been made.

On December 22, 2004, the Company acquired the operating assets of Colin Service Systems, Inc. (Colin), a facility services company based in New York, for an initial payment of \$13.6 million in cash. Under certain conditions, additional consideration may include an estimated \$1.9 million payment upon the collection of the acquired receivables and three annual contingent cash payments each for approximately \$1.1 million, which are based on achieving annual revenue targets over a three-year period. With annual revenues in excess of \$70 million, Colin was a provider of professional onsite management, commercial office cleaning, specialty cleaning, snow removal and engineering services. Of the total initial payment, \$3.6 million was allocated to customer relationship intangible assets (amortized over a useful life of eight years under the sum-of-the-year-digits method), \$6.4 million to customer accounts receivable and other assets and \$3.6 million to goodwill. In 2006, the first annual contingent cash payment of \$1.1 million was made, bringing the total purchase price paid to date to \$14.7 million. The contingent cash payment of \$1.1 million was allocated to goodwill.

On March 4, 2005, the Company acquired the operating assets of Amguard Security and Patrol Services (Amguard), based in Germantown, Maryland, for an initial payment of \$1.1 million in cash plus additional payments of \$0.3 million based on the revenue retained by the acquired business over the first year following the date of acquisition. With annual revenues in excess of \$4.5 million, Amguard was a provider of security officer services, primarily to high-rise, commercial and residential structures. Of the total initial payment, \$0.9 million was allocated to customer relationship intangible assets (amortized over a useful life of 12 years under the sum-of-the-year-digits method), \$0.1 million to goodwill and \$0.1 million to other assets. In 2005 and 2006, contingent cash payments of \$0.2 million and \$0.1 million that were allocated to goodwill were made, respectively, bringing the total purchase price paid to \$1.4 million. The contingent cash payments have been completed.

On August 3, 2005, the Company acquired the commercial janitorial cleaning operations in Baltimore, Maryland, of the Northeast United States Division of Initial Contract Services, Inc., a provider of janitorial services based in New York, for approximately \$0.35 million in cash. The acquisition includes contracts with key accounts throughout the metropolitan area of Baltimore and represents over \$7.0 million in annual contract revenue. Additional consideration may be paid during the subsequent four years based on financial performance of the acquired business. Of the total initial payment, \$0.15 million was allocated to customer relationship intangible assets (amortized over a useful life of 12 years under the sum-of-the-year-digits method), \$0.1 million to goodwill, and \$0.1 million to other assets. As of October 31, 2006, no contingent payment has been made.

The Company made the following acquisitions during the year ended October 31, 2004:

On March 15, 2004, the Company acquired substantially all of the operating assets of Security Services of America, LLC (SSA LLC), a North Carolina limited liability company and wholly owned subsidiary of SSA Holdings II, LLC. SSA LLC and its subsidiaries, also operating under the names "Silverhawk Security Specialists" and "Elite Protection Services," provided full service private security and investigative services to a diverse client base that included small, medium and large businesses throughout the Southeast and Midwest regions of the United States. The total acquisition cost included an initial cash payment of \$40.7 million, net of liabilities assumed totaling \$0.3 million, plus contingent payments equal to 20% to 25% of adjusted earnings before interest and taxes, depending upon the level of actual earnings, for each of the years in the five-year period following the date of acquisition. Of the total initial payment, \$7.1 million was allocated to customer relationship intangible assets (amortized over a useful life of 14 years under the sum-of-the-year-digits method), and \$2.7 million to trademarks and trade names (amortized over a useful life of five years under the straight-line method). Additionally, \$2.2 million of the total purchase price was allocated to fixed and other tangible assets and \$29.0 million to goodwill. In 2005, the first annual contingent cash payment of \$1.2 million was made, bringing the total purchase price paid to date to \$42.2 million. The contingent cash payment of \$1.2 million was allocated to goodwill. No contingent payment was made in 2006. See "Related Party Transactions" in Note 1.

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On April 2, 2004, the Company acquired a significant portion of the commercial janitorial assets of the Northeast United States Division of Initial Contract Services, Inc., a provider of janitorial services based in New York. The acquisition included key accounts throughout the Northeast region totaling approximately 50 buildings. The total acquisition cost included an initial cash payment of \$3.5 million plus annual contingent payments for each of the years in the five-year period following the acquisition date, calculated as follows: 3% of the acquired operation's revenues for the first and second year, 2% for the third and fourth year, and 1% for the fifth year. Of the total initial payment, \$0.9 million was allocated to customer relationship intangible assets (amortized over a useful life of 12 years under the sum-of-the-year-digits method), \$1.8 million to accounts receivable and \$0.8 million to other assets. In 2006, contingent cash payments of \$0.9 million were made, which were allocated to customer relationship intangible assets, bringing the total purchase price paid to date to \$4.4 million.

### **13. DISCONTINUED OPERATIONS**

On June 2, 2005, the Company sold substantially all of the operating assets of CommAir Mechanical Services, which represented the Company's Mechanical segment, to Carrier Corporation (Carrier). The operating assets sold included customer contracts, accounts receivable, inventories, facility leases and other assets, as well as rights to the name "CommAir Mechanical Services." The consideration paid was \$32.0 million in cash, subject to certain adjustments, and Carrier's assumption of trade payables and accrued liabilities. The Company realized a pre-tax gain of \$21.4 million (\$13.1 million after tax) on the sale of these assets in 2005.

On July 31, 2005, the Company sold the remaining operating assets of Mechanical, consisting of its water treatment business, to San Joaquin Chemicals, Incorporated for \$0.5 million, of which \$0.25 million was in the form of a note and \$0.25 million in cash. The operating assets sold included customer contracts and inventories. The Company realized a pre-tax gain of \$0.3 million (\$0.2 million after tax) on the sale of these assets in 2005.

Assets and liabilities of Mechanical included in the accompanying consolidated balance sheet were as follows at May 31, 2005 (before the date of sale of the main portion of Mechanical to Carrier on June 2, 2005):

(In thousands)	May 31, 2005
Trade accounts receivable, net	\$ 9,903
Inventories	2,084
Property, plant and equipment, net	126
Goodwill, net of accumulated amortization	1,952
Other	60
<b>Total assets</b>	<b>14,125</b>
Trade accounts payable	2,292
Accrued liabilities:	
Compensation	350
Taxes — other than income	331
Other	989
<b>Total liabilities</b>	<b>3,962</b>
<b>Net assets</b>	<b>\$ 10,163</b>

On August 15, 2003, the Company sold substantially all of the operating assets of Amtech Elevator Services, Inc., which represented the Company's Elevator segment, to Otis Elevator Company. In June 2005, the Company settled litigation that arose from and was directly related to the operations of Elevator prior to its disposal. An estimated liability of \$0.5 million for several Elevator commercial litigation matters had been recorded on the date of disposal. The settlement was less than the estimated liability by \$0.2 million, pre-tax. This difference was recorded as income from discontinued operations in 2005. In addition, a \$0.9 million benefit was recorded in gain on sale of discontinued operations in 2005, which resulted from the correction of the overstatement of income taxes provided for the gain on sale of assets of the Elevator segment.

The operating results of Mechanical for 2005 and 2004 and the Elevator adjustments in 2005 are shown below. Operating results for 2005 for the portion of Mechanical's business sold to Carrier are for the period beginning November 1, 2004 through the date of sale, June 2, 2005. Operating results for 2005 for Mechanical's water treatment business are for the period beginning November 1, 2004 through the date of sale, July 31, 2005.

(In thousands)	2005	2004
Revenues	\$ 24,811	\$ 41,074
Income before income taxes	\$ 273	\$ 1,366
Income taxes	107	537
<b>Income from discontinued operations, net of income taxes</b>	<b>\$ 166</b>	<b>\$ 829</b>

## **14. DISCLOSURES ABOUT FAIR VALUE OF FINANCIAL INSTRUMENTS**

The carrying amounts reported in the balance sheet for cash equivalents approximate fair value due to the short-maturity of these instruments.

Financial instruments included in investments and long-term receivables have no quoted market prices and, accordingly, a reasonable estimate of fair market value could not be made without incurring excessive costs. However, the Company believes by reference to stated interest rates and security held that the fair value of the assets would not differ significantly from the carrying value.

## **15. CONTINGENCIES**

The Company accrues amounts it believes are adequate to address any liabilities related to litigation or other proceedings that the Company believes will result in a probable loss. However, the ultimate resolution of such matters is always uncertain. It is possible that litigation or other proceedings brought against the Company could have a material adverse impact on its financial condition and results of operations. The total amount accrued for probable losses at October 31, 2006 was \$1.3 million.

## **16. GUARANTEES AND INDEMNIFICATION AGREEMENTS**

The Company has applied the measurement and disclosure provisions of FIN 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of the Indebtedness of Others," agreements that contain guarantee and certain indemnification clauses. FIN 45 requires that upon issuance of a guarantee, the guarantor must disclose and recognize a liability for the fair value of the obligation it assumes under the guarantee. As of October 31, 2006 and 2005, the Company did not have any material guarantees that were issued or modified subsequent to October 31, 2002.

However, the Company is party to a variety of agreements under which it may be obligated to indemnify the other party for certain matters. Primarily, these agreements are standard indemnification arrangements in its ordinary course of business. Pursuant to these arrangements, the Company may agree to indemnify, hold harmless and reimburse the indemnified parties for losses suffered or incurred by the indemnified party, generally its customers, in connection with any claims arising out of the services that the Company provides. The Company also incurs costs to defend lawsuits or settle claims related to these indemnification arrangements and in most cases these costs are paid from its insurance program. The term of these indemnification arrangements is generally perpetual. Although the Company attempts to place limits on this indemnification reasonably related to the size of the contract, the maximum obligation may not be explicitly stated and, as a result, the maximum potential amount of future payments the Company could be required to make under these arrangements is not determinable.

ABM's certificate of incorporation and bylaws may require it to indemnify Company directors and officers against liabilities that may arise by reason of their status as such and to advance their expenses incurred as a result of any legal proceeding against them as to which they could be indemnified. ABM has also entered into indemnification agreements with its directors to this effect. The overall amount of these obligations cannot be reasonably estimated, however, the Company believes that any loss under these obligations would not have a material adverse effect on the Company's financial position, results of operations or cash flows. The Company currently has directors' and officers' insurance.

## **17. SUBSEQUENT EVENT**

On December 12, 2006, ABM's Board of Directors authorized the purchase of up to 2,000,000 shares of ABM's outstanding common stock at any time through October 31, 2007.

## **18. SEGMENT INFORMATION**

Under SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," segment information is presented under the management approach. The management approach designates the internal organization that is used by management for making operating decisions and assessing performance as the source of the Company's reportable segments. SFAS No. 131 also requires disclosures about products and services, geographic areas and major customers.

The Company is currently organized into five separate operating segments. Under the criteria of SFAS No. 131, Janitorial, Parking, Security, Engineering, and Lighting are reportable segments. The operating results of the former Mechanical segment are reported separately under discontinued operations and are excluded from the table below. (See Note 13.) All segments are distinct business units. They are managed separately because of their unique services, technology

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and marketing requirements. Nearly 100% of the operations and related sales are within the United States and no single customer accounts for more than 5% of sales.

The unallocated corporate expenses include the \$14.5 million and \$5.5 million reduction of insurance reserves in 2006 and 2005, respectively, and the \$17.2 million increase in insurance reserves in 2004. (See Note 2.) While virtually all insurance claims arise from the operating segments, these adjustments were recorded as unallocated corporate expense. Had the Company allocated the insurance charge among the segments, the reported pre-tax operating profits of the segments, as a whole, would have been increased by \$14.5 million and \$5.5 million for 2006 and 2005, respectively, and reduced by \$17.2 million for 2004, with an equal and offsetting change to unallocated corporate expenses and therefore no change to consolidated pre-tax earnings. This methodology would also apply to the gains on the settlement of the WTC insurance claims of \$80.0 million and \$1.2 million in 2006 and 2005, respectively, which were not allocated to the segments.

(In thousands)	Janitorial	Parking	Security	Engineering	Lighting	Corporate	Assets Held For Sale	Consolidated Totals
<b>Year ended October 31, 2006</b>								
Sales and other income	\$ 1,563,756	\$ 440,033	\$ 307,851	\$ 285,241	\$ 113,014	\$ 2,773	\$ —	\$ 2,712,668
Gain on insurance claim	—	—	—	—	—	80,000	—	80,000
Total revenues	\$ 1,563,756	\$ 440,033	\$ 307,851	\$ 285,241	\$ 113,014	\$ 82,773	\$ —	\$ 2,792,668
Operating profit	\$ 81,578	\$ 13,658	\$ 4,329	\$ 16,736	\$ 1,375	\$ (39,440)	\$ —	\$ 78,236
Gain on insurance claim	—	—	—	—	—	80,000	—	80,000
Interest expense	—	—	—	—	—	(495)	—	(495)
Income from continuing operations before income taxes	\$ 81,578	\$ 13,658	\$ 4,329	\$ 16,736	\$ 1,375	\$ 40,065	\$ —	\$ 157,741
Identifiable assets	\$ 416,097	\$ 86,541	\$ 104,174	\$ 69,467	\$ 100,576	\$ 239,419	\$ —	\$ 1,016,274
Depreciation expense	\$ 5,172	\$ 1,336	\$ 1,230	\$ 67	\$ 1,343	\$ 5,833	\$ —	\$ 14,981
Intangible amortization expense	\$ 3,030	\$ 464	\$ 2,270	\$ —	\$ —	\$ —	\$ —	\$ 5,764
Capital expenditures	\$ 4,379	\$ 2,558	\$ 180	\$ 297	\$ 2,003	\$ 4,648	\$ —	\$ 14,065
<b>Year ended October 31, 2005</b>								
Sales and other income	\$ 1,525,565	\$ 409,886	\$ 294,299	\$ 238,794	\$ 116,218	\$ 1,804	\$ —	\$ 2,586,566
Gain on insurance claim	—	—	—	—	—	1,195	—	1,195
Total revenues	\$ 1,525,565	\$ 409,886	\$ 294,299	\$ 238,794	\$ 116,218	\$ 2,999	\$ —	\$ 2,587,761
Operating profit	\$ 67,754	\$ 10,527	\$ 3,089	\$ 14,200	\$ 3,805	\$ (35,300)	\$ —	\$ 64,075
Gain on insurance claim	—	—	—	—	—	1,195	—	1,195
Interest expense	—	—	—	—	—	(884)	—	(884)
Income from continuing operations before income taxes	\$ 67,754	\$ 10,527	\$ 3,089	\$ 14,200	\$ 3,805	\$ (34,989)	\$ —	\$ 64,386
Identifiable assets	\$ 398,361	\$ 87,663	\$ 106,451	\$ 50,875	\$ 94,904	\$ 165,456	\$ —	\$ 903,710
Depreciation expense	\$ 5,721	\$ 1,113	\$ 677	\$ 41	\$ 1,567	\$ 4,799	\$ —	\$ 13,918
Intangible amortization expense	\$ 3,189	\$ 555	\$ 1,929	\$ —	\$ —	\$ —	\$ —	\$ 5,673
Capital expenditures	\$ 4,633	\$ 1,367	\$ 511	\$ 66	\$ 1,809	\$ 9,352	\$ —	\$ 17,738

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(In thousands)	Janitorial	Parking	Security	Engineering	Lighting	Corporate	Assets Held For Sale	Consolidated Totals
<b>Year ended October 31, 2004</b>								
Sales and other income	\$ 1,442,901	\$ 384,547	\$ 224,715	\$ 209,156	\$ 112,074	\$ 1,756	\$ —	\$ 2,375,149
Operating profit	\$ 60,574	\$ 9,514	\$ 9,002	\$ 12,096	\$ 2,822	\$ (47,996)	\$ —	\$ 46,012
Interest expense	—	—	—	—	—	(1,016)	—	(1,016)
Income from continuing operations before income taxes	\$ 60,574	\$ 9,514	\$ 9,002	\$ 12,096	\$ 2,822	\$ (49,012)	\$ —	\$ 44,996
Identifiable assets	\$ 383,566	\$ 78,548	\$ 90,627	\$ 38,715	\$ 85,411	\$ 151,216	\$ 14,441	\$ 842,524
Depreciation expense	\$ 5,237	\$ 1,092	\$ 552	\$ 44	\$ 1,578	\$ 4,521	\$ —	\$ 13,024
Intangible amortization expense	\$ 2,766	\$ 706	\$ 929	\$ 118	\$ —	\$ —	\$ —	\$ 4,519
Capital expenditures	\$ 5,795	\$ 1,085	\$ 182	\$ 82	\$ 1,524	\$ 2,792	\$ —	\$ 11,460

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**19. QUARTERLY INFORMATION (UNAUDITED)**

(In thousands, except per share amounts)	Fiscal Quarter				Year
	First	Second	Third	Fourth	
<b>Year ended October 31, 2006</b>					
Sales and other income	\$ 666,601	\$ 660,108	\$ 689,275	\$ 696,684	<b>\$ 2,712,668</b>
Gross profit from continuing operations	\$ 60,425	\$ 67,786	\$ 76,841	\$ 86,064	<b>\$ 291,116</b>
Income from continuing operations	\$ 3,990	\$ 10,392	\$ 17,252	\$ 61,571	<b>\$ 93,205</b>
Income from discontinued operations	—	—	—	—	—
Gain on sale of discontinued operations	—	—	—	—	—
	<u>\$ 3,990</u>	<u>\$ 10,392</u>	<u>\$ 17,252</u>	<u>\$ 61,571</u>	<u><b>\$ 93,205</b></u>
Net income per common share — Basic					
Income from continuing operations	\$ 0.08	\$ 0.21	\$ 0.35	\$ 1.26	<b>\$ 1.90</b>
Income from discontinued operations	—	—	—	—	—
Gain on sale of discontinued operations	—	—	—	—	—
	<u>\$ 0.08</u>	<u>\$ 0.21</u>	<u>\$ 0.35</u>	<u>\$ 1.26</u>	<u><b>\$ 1.90</b></u>
Net income per common share — Diluted					
Income from continuing operations	\$ 0.08	\$ 0.21	\$ 0.35	\$ 1.24	<b>\$ 1.88</b>
Income from discontinued operations	—	—	—	—	—
Gain on sale of discontinued operations	—	—	—	—	—
	<u>\$ 0.08</u>	<u>\$ 0.21</u>	<u>\$ 0.35</u>	<u>\$ 1.24</u>	<u><b>\$ 1.88</b></u>
<b>Year ended October 31, 2005</b>					
Sales and other income	\$ 638,165	\$ 639,555	\$ 650,140	\$ 658,706	<b>\$ 2,586,566</b>
Gross profit from continuing operations	\$ 58,708	\$ 60,729	\$ 77,381	\$ 77,061	<b>\$ 273,879</b>
Income from continuing operations	\$ 5,623	\$ 8,843	\$ 20,594	\$ 8,494	<b>\$ 43,554</b>
Income (loss) from discontinued operations	(139)	387	(15)	(67)	<b>166</b>
Gain on sale of discontinued operations	—	—	14,221	—	<b>14,221</b>
	<u>\$ 5,484</u>	<u>\$ 9,230</u>	<u>\$ 34,800</u>	<u>\$ 8,427</u>	<u><b>\$ 57,941</b></u>
Net income per common share — Basic					
Income from continuing operations	\$ 0.11	\$ 0.18	\$ 0.42	\$ 0.17	<b>\$ 0.88</b>
Income (loss) from discontinued operations	—	0.01	(0.01)	—	—
Gain on sale of discontinued operations	—	—	0.29	—	<b>0.29</b>
	<u>\$ 0.11</u>	<u>\$ 0.19</u>	<u>\$ 0.70</u>	<u>\$ 0.17</u>	<u><b>\$ 1.17</b></u>
Net income per common share — Diluted					
Income from continuing operations	\$ 0.11	\$ 0.17	\$ 0.41	\$ 0.17	<b>\$ 0.86</b>
Income (loss) from discontinued operations	—	0.01	(0.01)	—	—
Gain on sale of discontinued operations	—	—	0.29	—	<b>0.29</b>
	<u>\$ 0.11</u>	<u>\$ 0.18</u>	<u>\$ 0.69</u>	<u>\$ 0.17</u>	<u><b>\$ 1.15</b></u>

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(In thousands, except per share amounts)	Fiscal Quarter					Year
	First	Second	Third	Fourth		
<b>Year ended October 31, 2004</b>						
Sales and other income	\$ 561,635	\$ 580,923	\$ 612,797	\$ 619,794	<b>\$ 2,375,149</b>	
Gross profit from continuing operations	\$ 50,668	\$ 54,175	\$ 64,906	\$ 47,763	<b>\$ 217,512</b>	
Income from continuing operations	\$ 6,152	\$ 7,280	\$ 12,896	\$ 3,316	<b>\$ 29,644</b>	
Income from discontinued operations	183	60	252	334	<b>829</b>	
Gain on sale of discontinued operations	—	—	—	—	—	
	<b>\$ 6,335</b>	<b>\$ 7,340</b>	<b>\$ 13,148</b>	<b>\$ 3,650</b>	<b>\$ 30,473</b>	
Net income per common share — Basic						
Income from continuing operations	\$ 0.13	\$ 0.15	\$ 0.26	\$ 0.07	<b>\$ 0.61</b>	
Income from discontinued operations	—	—	0.01	0.01	<b>0.02</b>	
Gain on sale of discontinued operations	—	—	—	—	—	
	<b>\$ 0.13</b>	<b>\$ 0.15</b>	<b>\$ 0.27</b>	<b>\$ 0.08</b>	<b>\$ 0.63</b>	
Net income per common share — Diluted						
Income from continuing operations	\$ 0.13	\$ 0.15	\$ 0.25	\$ 0.06	<b>\$ 0.59</b>	
Income from discontinued operations	—	—	0.01	0.01	<b>0.02</b>	
Gain on sale of discontinued operations	—	—	—	—	—	
	<b>\$ 0.13</b>	<b>\$ 0.15</b>	<b>\$ 0.26</b>	<b>\$ 0.07</b>	<b>\$ 0.61</b>	

## **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None

### **ITEM 9A. CONTROLS AND PROCEDURES**

**a. Disclosure Controls and Procedures.** As required by paragraph (b) of Rules 13a-15 or 15d-15 under the Securities Exchange Act of 1934 (the "Exchange Act"), the Company's principal executive officer and principal financial officer evaluated the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, these officers concluded that as of the end of the period covered by this Annual Report on Form 10-K, these disclosure controls and procedures were adequate to ensure that the information required to be disclosed by the Company in reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and include controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake.

**b. Management's Report on Internal Control Over Financial Reporting.** The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) for the Company. The Company's internal control over financial reporting is designed to provide reasonable assurance, not absolute assurance, regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America. Internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles in the United States of America, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of October 31, 2006, based on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission in Internal Control — Integrated Framework. Based on that assessment and those criteria, the Company's management concluded that the Company's internal control over financial reporting was effective as of October 31, 2006. The Company's independent registered public accounting firm has issued a report on management's assessment of the Company's internal control over financial reporting, which is included in Item 8 of this Annual Report on Form 10-K under the caption entitled "Report of Independent Registered Public Accounting Firm."

**c. Changes in Internal Control Over Financial Reporting.** There were no changes in the Company's internal control over financial reporting during the quarter ended October 31, 2006 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

### **ITEM 9B. OTHER INFORMATION**

Not applicable.

PART III

**ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT**

**Executive Officers.** The information required by this item regarding ABM's executive officers is included in Part I under "Executive Officers of the Registrant."

**Directors.** The information required by this item regarding ABM's directors is incorporated by reference from the information set forth under the caption "Proposal 1 — Election of Directors" in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**Audit Committee.** The information required by this item regarding ABM's Audit Committee and audit committee financial expert is incorporated by reference from the information set forth under the caption "Corporate Governance — Audit Committee" in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**Section 16(a) Beneficial Ownership Reporting Compliance.** The information required by this item regarding compliance with Section 16(a) of the Exchange Act is incorporated by reference from the information set forth under the caption "Principal Stockholders — Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**Code of Business Conduct & Ethics.** The Company has adopted and posted on its Website ([www.abm.com](http://www.abm.com)) the ABM Code of Business Conduct & Ethics (the "Code of Ethics") that applies to all directors, officers and employees of the Company, including the Company's Principal Executive Officer, Principal Financial Officer and Principal Accounting Officer. If any amendments are made to the Code of Ethics or if any waiver, including any implicit waiver, from a provision of the Code of Ethics is granted to the Company's Principal Executive Officer, Principal Financial Officer or Principal Accounting Officer, the Company will disclose the nature of such amendment or waiver on its Website.

**Annual Certification to New York Stock Exchange.** ABM's common stock is listed on the New York Stock Exchange. As a result, ABM's Chief Executive Officer is required to make and he has made on May 31, 2006, a CEO's Annual Certification to the New York Stock Exchange in accordance with Section 303A.12 of the New York Stock Exchange Listed Company Manual stating that he was not aware of any violations by the Company of the New York Stock Exchange corporate governance listing standards.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this item is incorporated by reference from the information set forth under the captions "Executive Compensation" contained in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this item regarding security ownership of certain beneficial owners and management is incorporated by reference from the information set forth under the caption "Security Ownership of Management and Certain Beneficial Owners" contained in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

The information required by this item is incorporated by reference from the information set forth under the captions "Executive Compensation" contained in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by this item is incorporated by reference from the information set forth under the caption "Audit Related Matters" contained in the Proxy Statement to be used by ABM in connection with its 2007 Annual Meeting of Stockholders.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this Form 10-K:

1. Consolidated Financial Statements of ABM Industries Incorporated and Subsidiaries:

Reports of Independent Registered Public Accounting Firm

Consolidated Balance Sheets — October 31, 2006 and 2005

Consolidated Statements of Income — Years ended October 31, 2006, 2005 and 2004

Consolidated Statements of Stockholders' Equity and Comprehensive Income — Years ended October 31, 2006, 2005 and 2004

Consolidated Statements of Cash Flows — Years ended October 31, 2006, 2005 and 2004

Notes to Consolidated Financial Statements.

2. Consolidated Financial Statement Schedule of ABM Industries Incorporated and Subsidiaries:

Schedule II — Consolidated Valuation Accounts — Years ended October 31, 2006, 2005 and 2004.

All other schedules are omitted because they are not applicable or because the required information is included in the consolidated financial statements or the notes thereto.

(b) Exhibits:

See Exhibit Index.

(c) Additional Financial Statements:

The individual financial statements of the registrant's subsidiaries have been omitted since the registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements are wholly owned subsidiaries.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### ABM Industries Incorporated

By:

/s/ Henrik C. Slipsager

Henrik C. Slipsager

President & Chief Executive Officer and Director  
December 22, 2006

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Henrik C. Slipsager

Henrik C. Slipsager,

President & Chief Executive Officer and Director  
(Principal Executive Officer)  
December 22, 2006

/s/ George B. Sundby

George B. Sundby

Executive Vice President &  
Chief Financial Officer  
(Principal Financial Officer)  
December 22, 2006

/s/ Linda Chavez

Linda Chavez, Director

December 22, 2006

/s/ Maryellen C. Herringer

Maryellen C. Herringer,

Chairman of the Board and Director  
December 22, 2006

/s/ Henry L. Kotkins, Jr.

Henry L. Kotkins, Jr., Director

December 22, 2006

/s/ Theodore Rosenberg

Theodore Rosenberg, Director

December 22, 2006

/s/ Maria De Martini

Maria De Martini

Vice President, Controller &  
Chief Accounting Officer  
(Principal Accounting Officer)  
December 22, 2006

/s/ Luke S. Helms

Luke S. Helms, Director

December 22, 2006

/s/ Charles T. Horngren

Charles T. Horngren, Director

December 22, 2006

/s/ Martinn H. Mandles

Martinn H. Mandles, Director

December 22, 2006

/s/ William W. Steele

William W. Steele, Director

December 22, 2006

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(in thousands)	Balance Beginning of Year	Charges to Costs and Expenses	Write-offs Net of Recoveries	Reclassification to Sales Allowance	Balance End of Year
Allowance for doubtful accounts					
Years ended October 31,					
2006	\$6,148	\$ 341	\$ (2,386)	\$ —	\$4,103
2005	8,212	1,112	(1,392)	(1,784)	6,148
2004	5,945	4,482	(2,215)	—	8,212
Sales allowance					
Years ended October 31,					
2006	\$1,784	\$32,987	\$ (30,833)	\$ —	\$3,938
2005	—	—	—	1,784	1,784

Effective on October 31, 2005, the Company reclassified the portion of the allowance for doubtful accounts related to the estimated losses on receivables resulting from customer credits into sales allowance. Prior to October 31, 2005, the allowance for doubtful accounts included estimated losses on receivables resulting from both customer credits and credit risks. The amount reclassified as of October 31, 2005 was \$1.8 million.

At October 31, 2006, the Company had a current receivable of \$3.4 million from SSA LLC, included in prepaid expenses and other current assets. This receivable was fully reserved at October 31, 2005. In the third quarter of 2006, the reserve was reduced based on information received from SSA LLC. At October 31, 2006, a valuation reserve of \$2.4 million offset the receivable. See "Related Party Transactions" in Note 1 of the Notes to Consolidated Financial Statements contained in Item 8, "Financial Statements and Supplementary Data."

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**EXHIBIT INDEX**

Exhibit No.	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
2.1	Sales Agreement, dated as of May 27, 2005, by and among ABM Industries Incorporated, CommAir	10-Q	001-08929	2.1	September 9, 2005
3.1	Restated Certificate of Incorporation of ABM Industries Incorporated, dated November 25, 2003	10-K	001-08929	3.1	January 14, 2004
3.2	Bylaws, as amended January 28, 2004	10-Q	001-08929	3.2	March 10, 2005
4.1	Rights Agreement, dated as of March 17, 1998, between the Company and Chase Mellon Shareholder Services, LLC, as Rights Agent	8-A12B	001-08929	1	March 18, 1998
4.2	First Amendment to Rights Agreement, dated as of May 6, 2002, between ABM Industries Incorporated and Mellon Investor Services LLC, as successor Rights Agent	10-K	001-08929	10.77	December 17, 2002
10.1*	Executive Stock Option Plan (aka Age-Vested Career Stock Option Plan), as amended and restated as of January 11, 2005	10-Q	001-08929	10.1	March 10, 2005
10.2*	Time-Vested Incentive Stock Option Plan, as amended and restated as of June 7, 2005	10-Q	001-08929	10.1	September 9, 2005
10.3*	1996 Price-Vested Performance Stock Option Plan, as amended and restated as of January 11, 2005	10-Q	001-08929	10.4	March 10, 2005
10.4*	2002 Price-Vested Performance Stock Option Plan, as amended and restated as of June 7, 2005	10-Q	001-08929	10.2	September 9, 2005
10.5*	2006 Equity Incentive Plan, as amended September 6, 2006	10-Q	001-08929	10.4	September 8, 2006
10.6*	Form of Restricted Stock Unit Agreement for Directors — 2006 Equity Incentive Plan	10-Q	001-08929	10.5	September 8, 2006
10.7*	Statement of Terms and Conditions Applicable to Options, Restricted Stock and Restricted Stock Units Granted to Directors Pursuant to the 2006 Equity Incentive Plan	10-Q	001-08929	10.6	September 8, 2006
10.8*‡	Deferred Compensation Plan, as amended October 19, 2000				
10.9*	Service Award Benefit Plan, as amended and restated April 2005	10-Q	001-08929	10.4	June 9, 2005
10.10*	Supplemental Executive Retirement Plan as amended December 6, 2004	10-Q	001-08929	10.11	March 10, 2005
10.11*	Director Retirement Plan Distribution Election Form, as revised June 16, 2006	10-Q	001-08929	10.1	September 8, 2006
10.12*	Director Stock Ownership and Retention Guidelines	10-Q	001-08929	10.3	September 8, 2006
10.13*	Form of Indemnification Agreement for Directors	10-K	001-08929	10.13	January 14, 2005
10.14*	Arrangements With Non-Employee Directors	10-Q	001-08929	10.2	September 8, 2006
10.15*	ABM Executive Retiree Healthcare and Dental Plan	10-K	001-08929	10.17	January 14, 2005
10.16*‡	Deferred Compensation Plan for Non-Employee Directors				

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Exhibit No.	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
10.17*	Executive Employment Agreement with Henrik C. Slipsager as of June 7, 2005	10-Q	001-08929	10.3	September 9, 2005
10.18*‡	Statement of Terms and Conditions Applicable to Options, Restricted Stock, Restricted Stock Units and Performance Shares Granted to Employees Pursuant to the 2006 Equity Incentive Plan				
10.19*	Executive Employment Agreement with James P. McClure as of July 12, 2005	10-Q	001-08929	10.4	September 9, 2005
10.20*	Executive Employment Agreement with George B. Sundby as of July 12, 2005	10-Q	001-08929	10.5	September 9, 2005
10.21*	Executive Employment Agreement with Steven M. Zaccagnini as of July 12, 2005	10-Q	001-08929	10.6	September 9, 2005
10.22*	Executive Employment Agreement with Linda S. Auwers as of September 20, 2005	10-K	001-08929	10.22	March 29, 2006
10.23*	Form of Employment Agreement for Senior Vice Presidents and Executives not otherwise listed	10-K	001-08929	10.23	March 29, 2006
10.24*	Form of Employment Agreement for Vice President and Executives not otherwise listed	10-K	001-08929	10.24	March 29, 2006
10.25*	Severance Agreement with Henrik C. Slipsager dated as of December 13, 2005	10-K	001-08929	10.25	March 29, 2006
10.26*	Form of Severance Agreement with James P. McClure, George B. Sundby, Steven M. Zaccagnini and Linda S. Auwers dated as of December 13, 2005	10-K	001-08929	10.26	March 29, 2006
10.27*	Description of 2006 Base Salary and Performance Incentive Program	10-K	001-08929	10.27	March 29, 2006
10.28*	2006 Base Salary and Performance Incentive Program: Chief Executive Officer	10-Q	001-08929	10.2	April 7, 2006
10.29*	ABM Executive Officer Incentive Plan	8-K	001-08929	99.2	May 5, 2006
10.30*‡	Form of Non-Qualified Stock Option Agreement — 2006 Equity Plan				
10.31*‡	Form of Restricted Stock Agreement — 2006 Equity Plan				
10.32*‡	Form of Restricted Stock Unit Agreement — 2006 Equity Plan				
10.33*‡	Form of Performance Share Agreement — 2006 Equity Plan				
10.34	Credit Agreement, dated as of May 25, 2005, among ABM Industries Incorporated, various financial institutions and Bank of America, N.A., as Administrative Agent	10-Q	001-08929	10.5	June 9, 2005
10.35	Settlement Agreement and Release of All Claims with IAH-JFK Airport Parking Co., LLC dated February 15, 2006	10-Q	001-08929	10.1	April 7, 2006

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Exhibit No.	Exhibit Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
10.36‡	Master Professional Services Agreement with International Business Machines ("IBM") effective October 1, 2006				
21.1‡	Subsidiaries of the Registrant				
23.1‡	Consent of the Independent Registered Public Accounting Firm				
31.1‡	Certification of Chief Executive Officer pursuant to Securities Exchange Act of 1934 Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
31.2‡	Certification of Chief Financial Officer pursuant to Securities Exchange Act of 1934 Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				
32.1†	Certifications pursuant to Securities Exchange Act of 1934 Rule 13a-14(b) or 15d-14(b) and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				

\* Indicates management contract or compensatory plan, contract or arrangement

‡ Indicates filed herewith

† Indicates furnished herewith

**ABM DEFERRED COMPENSATION PLAN**

**Effective July 1, 1993**

**As Amended October 19, 2000**

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**Article I**  
**DEFINITIONS**

The following terms as used herein shall have the meaning hereinafter set forth unless the context clearly indicates a different meaning is required. Whenever in these definitions a word or phrase not previously defined is used, such word or phrase shall have the meaning thereafter given to it in Article I unless otherwise specified.

- 1.01 "Account" means the account established and maintained by the Administrative Committee for each Participant.
- 1.02 "Administrative Committee" or "Committee" means those individuals designated by the Board of Directors of the Employer to administer the Plan, and any successors appointed in accordance with Section 8.02 of the Plan.
- 1.03 "Beneficiary" means the Person last designated by a Participant on a form provided by the Administrative Committee or by the terms of the Plan to receive any amounts payable under the Plan following the death of the Participant. A Participant may change the Beneficiary from time to time on a form provided by the Administrative Committee.
- 1.04 "Compensation" means all amounts (including bonuses) paid by the Employer to the Employee while a Participant with respect to services rendered during the Plan Year, including all Deferrals elected by the Participant during the Plan Year.
- 1.05 "Deferral" means an amount that a Participant has elected to defer under Article III.
- 1.06 "Effective Date" means July 1, 1993.
- 1.07 "Eligible Employee" means any individual, including an officer of the Employer, who is employed (other than as a director) by the Employer, who is not an hourly manual employee, who is not in a unit of employees covered by a collective bargaining agreement, and who is determined to be a Highly Paid Employee as defined in Article 1.10 during the Plan Year.
- 1.08 "Employer" means American Building Maintenance Industries, Inc., its subsidiaries (within the meaning of Section 414(b) and (c) of the Internal Revenue Code), and its successors or assigns.
- 1.09 "ERISA" means Public Law No. 93-406, the Employee Retirement Income Security Act of 1974, as amended from time to time.
- 1.10 "Highly Paid Employee" means any Employee whose annualized base rate of pay is greater than the amount specified for determining a highly compensated employee by Internal Revenue Code Section 414(q) (as adjusted from time to time by the Internal Revenue Service, and is \$85,000 for the calendar year, 2001).

- 1.11 “Internal Revenue Code” or “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 1.12 “Participant” means any Eligible Employee or former Employee who has satisfied the eligibility requirements of Section 2.01 who is, or may become, eligible to receive a benefit or whose Beneficiary may be eligible to receive a benefit under the Plan.
- 1.13 “Person” means any individual, partnership, joint venture, corporation, mutual company, joint stock company, trust, estate, unincorporated organization, association, or employee organization, and shall, where appropriate, include two or more of the above.
- 1.14 “Plan” means the ABM Deferred Compensation Plan, which is intended to be an unfunded plan for the benefit of a select group of management or highly compensated individuals, as such are defined in ERISA.
- 1.15 “Plan Administrator” means the Employer.
- 1.16 “Plan Year” means the twelve (12) month period commencing January 1 and ending on the following December 31.
- 1.17 “Valuation Date” means March 31, June 30, September 30 and December 31 of each Plan Year.

**Article II**  
**ELIGIBILITY FOR PARTICIPATION**

**2.01 Eligibility Requirements**

Each Eligible Employee of the Employer may become a Participant under the Plan as of any January 1, and any newly hired Eligible Employee may become a Participant during a year by executing the appropriate forms specified by the Administrative Committee and filing the executed forms with the Administrative Committee within 30 days of the Eligible Employee's date of hire.

**2.02 Participation Rules Upon Reemployment**

A Participant who terminates employment with the Employer and who later returns to the employ of the Employer shall be eligible to participate the January 1st coincident with or immediately following the date on which he resumes employment.

**2.03 Change in Employment Status**

A Participant's participation in the Plan shall terminate immediately as of the date on which he ceases to be an Eligible Employee as defined under the terms of the Plan, except that the Participant shall retain the right to receive his Account. He shall again become eligible to participate in the Plan as of the January 1st coincident with or immediately following the date on which he regains the status of an Eligible Employee under the Plan.

**2.04 Determination of Eligibility**

The Administrative Committee shall determine whether each Eligible Employee has satisfied the eligibility requirements for participation in the Plan. The Committee's determination shall be conclusive and binding upon all persons.

**Article III**  
**CONTRIBUTIONS**

**3.01 Deferrals**

For each Plan Year, a Participant may elect to defer receipt of a portion of his Compensation that he would otherwise receive from the Employer. The amount of the Deferral must equal (a) a whole percentage not exceeding twenty percent (20%) of the amount of the Participant's Compensation.

**3.02 Elective Deferral Election**

For each Plan Year, a Participant (or any Eligible Employee who is expected to become eligible to participate in the Plan) may make an election described in Section 3.01 by filing an election form with the Administrative Committee within a reasonable period of time, as specified by the Committee, before the beginning of the Plan Year to which the Deferral election applies. A Deferral election may not be changed during the Plan Year that it is effective; provided, that with the consent of the Administrative Committee, a Participant may at any time revoke his Deferral election with respect to Compensation he has not yet earned during the Plan Year. A Participant who revokes his Deferral election may not again make an election to defer the receipt of Compensation effective before the beginning of the next Plan Year.

**Article IV**  
**ACCOUNTS, FUNDING AND VALUATION**

**4.01 Establishment of Account**

The Administrative Committee shall open and maintain a separate Account for each Participant. Such Account shall be credited with all Deferrals for the Participant. As soon as reasonably possible after each Valuation Date, each Participant shall be notified of the value of his Account.

**4.02 Valuation of Account**

- (a) Interest shall be credited to each Participant's Account as of each Valuation Date equal to the product of
  - (1) the amount credited to the Participant's Account as of the last preceding Valuation Date, less any distributions or withdrawals and plus one-half (1/2) of Deferrals, if any, since the last preceding Valuation Date, multiplied by
  - (2) the applicable interest rate.
- (b) On each Valuation Date, each Participant's Account will be credited with interest. The amount of interest will be derived from the prime interest rate published in The Wall Street Journal on the last business day coinciding with or next preceding the Valuation Date. Any prime rate up to 6% will be considered in full and 1/2 of any prime rate over 6% will be considered. The amount credited will be a proration of the prime rate considered taking into consideration the period of time elapsed since the last Valuation Date.

For example, if the Plan is valued quarterly and on March 31, the prime rate is 7%, the rate credited will be  $(1/4 \times 6\%) + (1/4 \times 1/2 \times 1\%)$  or 1.625%.

**Article V**  
**PARTICIPANTS' VESTED INTERESTS**

5.01 Vesting

Each Participant shall always be one hundred percent (100%) vested in the portion of his Account attributable to Deferrals.

**Article VI**  
**DISTRIBUTION OF BENEFITS**

**6.01 Distribution of Benefits**

Except as provided in Article 6.03 below, a Participant's Account may not be distributed to a Participant or his Beneficiary before the date the Participant terminates employment with the Employer.

**6.02 Retirement and Termination**

- (a) If a Participant terminates employment, his Account shall be distributed, or distribution shall commence, as soon as administratively feasible. The amount in his Account shall be determined as of the Valuation Date that last precedes the date of distribution, plus Deferrals and less any withdrawals or distributions, if any, for the period from the last preceding Valuation to the date of distribution.
- (b) The distribution shall be made in the form elected by the Participant under Section 6.04. If the Participant made no election at the time specified in Section 6.04, his benefit shall be paid as a lump sum.

**6.03 Unforeseeable Emergency Withdrawals**

- (a) A Participant may withdraw up to one hundred percent (100%) of the amount in his Deferral Account in the event of an unforeseeable emergency to the extent provided in this Section 6.03.
- (b) For purposes of this Section 6.03, unforeseeable emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the Participant's control.
- (c) The withdrawal under the Section 6.03 may not exceed the amount reasonably necessary to satisfy the financial need (including the amount of any federal, state or local income taxes or penalties reasonably anticipated to result from the withdrawal). The withdrawal may not be made to the extent the need may be satisfied (1) through reimbursement or compensation by insurance or otherwise, (2) by liquidation of the Participant's assets, to the extent the liquidation of the assets would not itself cause severe financial hardship, or (3) by ceasing Deferrals under the Plan.
- (d) A Participant who wishes to withdraw any amount pursuant to this Section 6.03 must submit, on a form provided by the Administrative Committee, a written request by the Participant that states:

- (1) The unforeseeable emergency for which the withdrawal is requested;
  - (2) The amount needed to satisfy the financial need, which amount may include any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal;
  - (3) A representation that the need cannot be satisfied in any of the ways stated in the second sentence of subsection (c);
  - (4) The date the funds are required; and
  - (5) Any other information the Administrative Committee deems necessary.
- (e) The Administrative Committee will determine if an unforeseeable emergency withdrawal will be, allowed by applying the standards set forth in subsections (b) and (c).
- (f) A withdrawal from a Participant's Account under Section 6.03 shall be paid in a lump sum.

#### 6.04 Form of Distribution

A Participant may elect in writing, on a form prescribed by the Administrative Committee, to have his or her benefit (other than an unforeseen emergency withdrawal) paid (a) as a lump sum, (b) partially as a lump sum and partially in substantially equal, annual installments over a period of years (not to exceed 10) chosen by the Participant, or (c) entirely in substantially equal, annual installments over a number of years (not to exceed 10) chosen by the Participant. No election made by a Participant on or after the January 1 of the first Plan Year in which the Participant is a Participant shall be effective unless it is made at least six (6) full calendar months before the month the Participant's employment with the Employer terminates. Absent any timely election by the Participant, his or her benefit shall be paid as a lump sum as soon as administratively possible following termination from employment with the Employer.

## **Article VII**

### **DEATH**

#### **7.01 Death**

If a Participant dies before distribution of his Account has begun or been completed, the remaining portion of the Participant's Account shall constitute a Death Benefit and shall be payable to the Participant's Beneficiary in a lump sum as soon as administratively feasible after the date of death. The value of the Participant's Account shall be determined in accordance with the rules set forth in Section 6.02.

## **Article VIII**

### **THE ADMINISTRATIVE COMMITTEE**

#### **8.01 Designation and Acceptance**

The Employer shall designate the persons to serve as the Administrative Committee who shall each signify acceptance of this responsibility by joining in the execution of the documents creating or amending this Plan or by acceptance in writing as provided in Section 8.02.

#### **8.02 Resignation and Removal; Appointment of Successor**

Any member of the Administrative Committee may resign at any time by delivering to the Employer a written notice of resignation, to take effect at a date specified therein, which shall not be less than thirty (30) days after the delivery thereof, unless such notice shall be waived.

Any member of the Administrative Committee may be removed with or without cause by the Employer by delivery of written notice of removal, to take effect at a date specified therein, which shall be not less than thirty (30) days after delivery thereof, unless such notice shall be waived.

The Employer, upon receipt of or giving notice of the resignation or removal of a member of the Administrative Committee, shall promptly designate a successor administrator who must signify acceptance of this position in writing. In the event no successor is appointed, the remaining member(s) or, if none, the Board of Directors of the Employer will function as the Administrative Committee until vacancies have been filled.

#### **8.03 Allocation and Delegation of Responsibilities**

The Administrative Committee may engage agents to assist in carrying out the Administrative Committee's functions hereunder.

#### **8.04 Duties and Responsibility**

The Committee shall administer the Plan and shall have full discretionary authority to construe this Plan and to determine all questions of interpretation or policy in a manner not inconsistent with the Plan and the Administrative Committee's construction or determination in good faith shall be final and conclusive and binding on all parties including but not limited to the Employer and any Participant or Beneficiary, except as otherwise provided by law. The Administrative Committee may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan, provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall be an unfunded plan for the benefit of a select group of management or highly compensated individuals for

purposes of the Code and ERISA. The Administrative Committee shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrative Committee shall be charged with the duties of the general administration of the Plan, including but not limited to, the following:

- (a) To determine all questions relating to the eligibility of employees to participate in or remain a Participant hereunder;
- (b) To maintain all the necessary records for the administration of the Plan;
- (c) To interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are not inconsistent with the terms hereof;
- (d) To make any adjustments in the allocations, to Accounts under the Plan necessary to comply with any provision of law;
- (e) To compute and certify to the Employer initially and from time to time the sums of money necessary to be contributed to the Trust;
- (f) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

The Administrative Committee shall also be responsible for preparing and filing such annual disclosure reports as may be required by law.

Whenever it is determined by the Administrative Committee to be in the best interest of the Plan and its Participants and Beneficiaries, the Administrative Committee may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

#### **8.05 Expenses and Compensation**

The expenses necessary to administer the Plan and the expenses incurred by the Administrative Committee shall be paid by the Employer.

#### **8.06 Information from Employer**

The Employer shall supply full and timely information to the Administrative Committee on all matters relating to the compensation of all Participants, their continuous regular employment, their retirement, death, disability or termination of employment, and such other pertinent facts as the Administrative Committee may require.

#### **8.07 Administrative Committee; Signature**

The signature of one member of the Administrative Committee may be accepted by any interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth. No person receiving documents or written

instructions and acting in good faith and in reliance thereon shall be obliged to ascertain the validity of such action under the terms of this Agreement. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.

## **Article IX**

### **PARTICIPANTS' RIGHTS**

#### **9.01 Special Disclosures**

The Administrative Committee shall furnish at least every six (6) months each Participant or Beneficiary with a written statement, based on the latest available Information, indicating his total benefits accrued.

Upon termination of employment, a Participant in the Plan is entitled to a written explanation of and accounting for his Account and of any applicable options regarding the disposition of such Account.

#### **9.02 Filing a Claim for Benefits**

A Participant or Beneficiary or the Employer acting in his behalf shall notify the Administrative Committee of a claim for benefits under the Plan. Such request may be in any form acceptable to the Administrative Committee and shall set forth the basis of such claim and shall authorize the Administrative Committee to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan. The procedures for review of any claim for benefits shall be consistent with the requirements of § 2560.503-1 of the regulations of the Department of Labor.

#### **9.03 Denial of a Claim**

Whenever a claim for benefits by any Participant or Beneficiary has been denied, a written notice, prepared in a manner calculated to be understood by the Participant or Beneficiary must be provided, setting forth the specific reasons for the denial and explaining the procedure for an appeal and review of the decision by the Administrative Committee. The procedures for an appeal and review of any decision of the Administrative Committee shall be consistent with the requirements of § 2560.503-1 of the regulations of the Department of Labor.

#### **9.04 Limitation of Rights**

Participation hereunder shall not grant any Participant the right to be retained in the service of the Employer or any rights or interest other than those specifically herein set forth.

**Article X**  
**AMENDMENT AND TERMINATION**

**10.01 Amendment or Termination**

The Employer may at any time and from time to time amend or terminate this Plan in whole or in part (including retroactively). The Employer shall promptly deliver to the Administrative Committee a written copy of the document amending or terminating the Plan. The Employer shall not have the right to amend or terminate the Plan retroactively in such a manner as to deprive any Participant or Beneficiary of any benefit to which he was entitled under the Plan by reason of Deferrals or Employer Contributions allocated by the Employer prior to the amendment or termination.

**10.02 Procedure Upon Termination of the Plan**

Upon complete termination of the Plan, Participants shall fully vest in their Accounts, and the amount in their Account shall be distributed to them as soon as administratively feasible.

**Article XI**  
**MISCELLANEOUS**

**11.01 Execution of Receipts and Releases**

Any payment to any Participant or Beneficiary, in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Plan, and the Administrative Committee may require such Participant or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as the Administrative Committee shall determine.

**11.02 Notice and Unclaimed Benefits**

Each Participant and Beneficiary must file with the Employer from time to time in writing his post office address and each change of post office address. Any communication, statement, or notice addressed to a Participant or Beneficiary at his last post office address filed with the Employer (or if no address was filed with the Employer, then at his last post office address shown on his "Employer's Records") will be binding on the Participant and his Beneficiary for all purposes of the Plan. Neither the Employer, Administrative Committee, nor any insurance company providing annuity contracts under the Plan shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary. For the purpose of this Section, "Employer Records" means the payroll records maintained by an Employer. Such records shall be conclusive, unless shown to the Employer's satisfaction to be incorrect.

The Committee shall notify any Participant or Beneficiary when a distribution is required under the Plan. The Committee may also request the Social Security Administration to notify the Participant or Beneficiary in accordance with any procedures the Administration has established for this purpose. In the event that the Participant or Beneficiary shall fail to respond to any notice from the Committee, the amount in his Account shall be forfeited.

**11.03 Non-Alienation of Benefits**

Except in the case of a qualified domestic relations order, as defined in Code § 414(p):

- (a) No Participant or Beneficiary, and no creditor of a Participant or Beneficiary shall have any right to assign, pledge, sell, hypothecate, anticipate or in any way create a lien upon his benefits under the Plan by operation of law or otherwise, and any attempt to do so shall be void; nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefits.
- (b) No interest in the Plan shall be subject to assignment or transfer or otherwise be alienable, either by voluntary or involuntary act or by operation of law or equity, or subject to attachment, execution, garnishment, sequestration, levy or other

seizure under any legal, equitable or other process, or be liable in any way for the debts or defaults of Participants and Beneficiaries.

**11.04 Loans to Participants**

A Participant may not receive a loan from the Plan of any portion of his Account.

**11.05 Benefits Payable to Incompetents**

Each individual receiving benefit payments under the Plan shall be conclusively presumed to have been legally competent until the date upon which the Administrative Committee shall have received written notice in the form and manner acceptable to it that such individual is an incompetent for whom a guardian or other person legally vested with his care shall have been appointed. From and after the date of receipt of such notice by Administrative Committee, all future benefit payments to which such individual is entitled under the Plan shall be payable to his guardian or other person legally vested with his care, until such time as the Administrative Committee shall be furnished with evidence satisfactory to it that such individual is legally competent.

**11.06 Applicable Law**

This Plan shall be governed and construed under the laws of the State of California and to the extent applicable, ERISA and regulations thereunder.

**11.07 Headings as Guide**

The headings of this Plan are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

**11.08 Pronouns**

When necessary to the meaning hereof, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.

**11.09 Reference to Laws**

Any reference to any section or regulation under the Internal Revenue Code or ERISA or to any other statute or law shall be deemed to include any successor law of similar import.

**11.10 Agent Designated for Service of Process**

The designated person upon whom service of process may be made in any action involving the Plan shall be any member of the Administrative Committee.

#### **11.11 Participant's Rights Unsecured**

The right of the Participant or his designated Beneficiary to receive a distribution hereunder shall be an unsecured claim against the general assets of the Corporation, and neither the Participant nor his designated beneficiary shall have any rights in or against any amount credited to his Account or any other specific assets of the Corporation. All amounts credited to an Account shall constitute general assets of the Corporation and may be disposed of by the Corporation at such time and for such purposes as it may deem appropriate. An Account may not be encumbered or assigned by a Participant or any Beneficiary.

Executed at this 25th day of June, 1993 to be effective as of July 1, 1993.

EMPLOYER:

AMERICAN BUILDING MAINTENANCE INDUSTRIES, INC.

By \_\_\_\_\_

**ABM DEFERRED COMPENSATION PLAN  
FOR NON-EMPLOYEE DIRECTORS  
Effective October 31, 2006**

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**Article I**  
**DEFINITIONS**

The following terms as used herein shall have the meaning hereinafter set forth unless the context clearly indicates a different meaning is required. Whenever in these definitions a word or phrase not previously defined is used, such word or phrase shall have the meaning thereafter given to it in Article I unless otherwise specified.

- 1.01 "Account" means the account established and maintained by the Administrative Committee for each Participant.
- 1.02 "Administrative Committee" or "Committee" means the Governance Committee of the Board of Directors of the Company.
- 1.03 "Beneficiary" means the Person last designated by a Participant on a form provided by the Administrative Committee or by the terms of the Plan to receive any amounts payable under the Plan following the death of the Participant. A Participant may change the Beneficiary from time to time on a form provided by the Administrative Committee.
- 1.04 "Board" means the Board of Directors of the Company.
- 1.05 "Company" means ABM Industries Incorporated, and, where appropriate, its successors or assigns.
- 1.06 "Compensation" means all the annual retainer and board meeting fees paid by the Company to the Eligible Director while a Participant with respect to services rendered during the Plan Year.
- 1.07 "Deferral" means an amount that a Participant has elected to defer under Article III.
- 1.08 "Director" means any individual who is a member of the Board and who is not an employee of the Company.
- 1.09 "Effective Date" means October 31, 2006.
- 1.10 "Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986, as amended from time to time.
- 1.11 "Participant" means any Director or former Director who has satisfied the eligibility requirements of Section 2.01 who is, or may become, eligible to receive a benefit or whose Beneficiary may be eligible to receive a benefit under the Plan.
- 1.12 "Person" means any individual, partnership, joint venture, corporation, mutual company, joint stock company, trust, estate, unincorporated organization, association, or employee organization, and shall, where appropriate, include two or more of the above.
- 1.13 "Plan" means the ABM Deferred Compensation Plan for Non-Employee Directors.

- 1.14 “Plan Administrator” means the Company.
- 1.15 “Plan Year” means the calendar year.
- 1.16 “Unforeseeable Emergency” means shall mean a severe financial hardship to the Participant or his or her Beneficiary resulting from: (i) an illness or accident of the Participant or Beneficiary, the Participant’s or Beneficiary’s spouse, or the Participant’s or Beneficiary’s dependent (as defined in Code section 152(a)); (ii) loss of the Participant’s or Beneficiary’s property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance); or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Hardship shall not constitute an Unforeseeable Emergency to the extent that it is, or may be, relieved by: (a) reimbursement or compensation, by insurance or otherwise; (b) liquidation of the Participant’s or Beneficiary’s assets to the extent that the liquidation of such assets would not itself cause severe financial hardship; or (c) cessation of deferrals under the Plan. An Unforeseeable Emergency does not include (among other events): (y) sending a child to college; or (z) purchasing a home.
- 1.17 “Valuation Date” means March 31, June 30, September 30 and December 31 of each Plan Year.

**Article II**  
**ELIGIBILITY FOR PARTICIPATION**

**2.01 Eligibility Requirements**

Each Director of the Company shall become a Participant under the Plan on the date he or she makes an election to defer Compensation under the Plan.

**2.02 Change in Status**

A Participant's participation in the Plan shall terminate immediately as of the date on which he or she ceases to be a Director, except that the Participant shall retain the right to receive his or her Account.

**2.03 Determination of Eligibility**

The Administrative Committee shall determine whether each Director has satisfied the eligibility requirements for participation in the Plan. The Committee's determination shall be conclusive and binding upon all persons.

**Article III**  
**CONTRIBUTIONS**

**3.01 Deferrals**

For each Plan Year commencing with 2007, a Participant may elect to defer receipt of all or any portion of his or her Compensation that he or she would otherwise receive from the Company. In addition, in October 2006 each Eligible Director who is a party to a Director Retirement Plan benefit agreement may elect to have such benefit converted to a credit to the Account established pursuant to this Plan, effective November 1, 2006.

**3.02 Elective Deferral Election**

For each Plan Year, a Participant may make an election described in Section 3.01 by filing an election form with the Administrative Committee within a reasonable period of time, as specified by the Committee, before the beginning of the Plan Year to which the Deferral election applies. A Deferral election may not be changed during the Plan Year that it is effective; provided, that upon a showing of an Unforeseeable Emergency and with the consent of the Administrative Committee, a Participant may at any time revoke his or her Deferral election with respect to Compensation he or she has not yet earned during the Plan Year. A Participant who revokes his or her Deferral election may not again make an election to defer the receipt of Compensation effective before the beginning of the next Plan Year.

**Article IV**  
**ACCOUNTS, FUNDING AND VALUATION**

**4.01 Establishment of Account**

The Administrative Committee shall open and maintain a separate Account for each Participant. Such Account shall be credited with all Deferrals for the Participant. In addition, the Account of each Eligible Director who has elected to convert his or her Director Retirement Plan benefits to an Account credit under this Plan shall be credited on November 1, 2006, with the amount approved by the Governance Committee pursuant to its resolution adopted on September 5, 2006. As soon as reasonably possible after each Valuation Date, each Participant shall be notified of the value of his or her Account.

**4.02 Valuation of Account**

- (a) Interest shall be credited to each Participant's Account as of each Valuation Date equal to the product of
  - (1) the amount credited to the Participant's Account as of the last preceding Valuation Date, less any distributions or withdrawals and plus one-half (1/2) of Deferrals, if any, since the last preceding Valuation Date, multiplied by
  - (2) the applicable interest rate; provided, however, that for the December 31, 2006 Valuation Date, interest shall be based on the Account balance on November 1, 2006, if any.
- (b) On each Valuation Date, each Participant's Account will be credited with interest. The amount of interest will be derived from the prime interest rate published in The Wall Street Journal on the last business day coinciding with or next preceding the Valuation Date. Any prime rate up to 6% will be considered in full and 1/2 of any prime rate over 6% will be considered. The amount credited will be a proration of the prime rate considered taking into consideration the period of time elapsed since the last Valuation Date (or since November 1, 2006, in the case of the December 31, 2006 Valuation Date).

For example, if the Plan is valued quarterly and on March 31, the prime rate is 7%, the rate credited will be  $(1/4 \times 6\%) + (1/4 \times 1/2 \times 1\%)$  or 1.625%.

**Article V**  
**PARTICIPANTS' VESTED INTERESTS**

**5.01 Vesting**

Each Participant shall always be one hundred percent (100%) vested in his or her Account; provided, however, that any amount credited to a Participant's Account on November 1, 2006 pursuant to the election described in Section 3.01 shall be forfeited if the Participant voluntarily resigns his or her position as a Director before November 1, 2007 for any reason other than disability, as determined pursuant to Section 409A(a)(2)(C) of the Code or in connection with a Change in Control. A "Change in Control" means that any of the following events occurs:

(i) any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") (A) is or becomes the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than 35% of the combined voting power of the then-outstanding Voting Stock of the Company or succeeds in having nominees as directors elected in an "election contest" within the meaning of Rule 14a-12(c) under the Exchange Act and (B) within 18 months thereafter, individuals who were members of the Board of Directors of the Company immediately prior to either such event cease to constitute a majority of the members of the Board of Directors of the Company; or

(ii) a majority of the Board ceases to be comprised of Incumbent Directors; or

(iii) the consummation of a reorganization, merger, consolidation, plan of liquidation or dissolution, recapitalization or sale or other disposition of all or substantially all of the assets of the Company or the acquisition of the stock or assets of another Company, or other transaction (each, a "Business Transaction"), unless, in any such case, (A) no Person (other than the Company, any entity resulting from such Business Transaction or any employee benefit plan (or related trust) sponsored or maintained by the Company, any Subsidiary or such entity resulting from such Business Transaction) beneficially owns, directly or indirectly, 35% or more of the combined voting power of the then outstanding shares of Voting Stock of the entity resulting from such Business Transaction and (B) at least one-half of the members of the Board of Directors of the entity resulting from such Business Transaction were Incumbent Directors at the time of the execution of the initial agreement providing for such Business Transaction.

**Article VI**  
**DISTRIBUTION OF BENEFITS**

**6.01 Distribution of Benefits**

Except as provided in Article 6.03 below, a Participant's Account may not be distributed to a Participant or his or her Beneficiary before the date the Participant ceases to be a member of the Board.

**6.02 Retirement and Termination**

- (a) When a Participant's status as a Director terminates, the vested portion of his or her Account shall be distributed, or distribution shall commence within 90 days following termination of Director status. The amount in his or her Account shall be determined as of the Valuation Date that last precedes the date of distribution, plus Deferrals and less any withdrawals or distributions, if any, for the period from the last preceding Valuation to the date of distribution.
- (b) The distribution shall be made in the form elected by the Participant under Section 6.04. If the Participant made no election at the time specified in Section 6.04, his or her benefit shall be paid as a lump sum.

**6.03 Unforeseeable Emergency Withdrawals**

- (a) A Participant may withdraw up to one hundred percent (100%) of the amount in his or her Deferral Account in the event of an Unforeseeable Emergency to the extent provided in this Section 6.03.
- (b) A Participant who wishes to withdraw any amount pursuant to this Section 6.03 must submit, on a form provided by the Administrative Committee, a written request by the Participant that states:
  - (1) The Unforeseeable Emergency for which the withdrawal is requested;
  - (2) The amount needed to satisfy the financial need, which amount may include any federal, state, or local income taxes or penalties reasonably anticipated to result from the withdrawal;
  - (3) A representation that the need cannot be satisfied in any of the ways stated in the definition of Substantial Hardship;
  - (4) The date the funds are required; and
  - (5) Any other information the Administrative Committee deems necessary.

- (c) The Administrative Committee will determine if an Unforeseeable Emergency withdrawal will be allowed by applying the standards set forth in the definition of Substantial Hardship.
- (d) A withdrawal from a Participant's Account under Section 6.03 shall be paid in a lump sum.

**6.04 Form of Distribution**

A Participant may elect in writing, on a form prescribed by the Administrative Committee, to have his or her benefit (other than an Unforeseeable Emergency withdrawal) paid (a) as a lump sum, or (b) in substantially equal annual installments over a ten (10) year period. Such election must be made within 30 days following the date the Eligible Director becomes eligible to participate in the Plan (i.e., the later of the date of the Eligible Director's election to the Board or October 31, 2006). If the Participant fails to make such election or later wishes to change such election, he or she may make a later election, subject to the following restrictions: (i) The later election must be made no later than 12 months before the date payment is scheduled to be made or commence; (ii) The later election must defer the payment date for a minimum of five years from the previously scheduled payment date; and (iii) The later election must not accelerate the date of any payment or distribution. For purposes of the Plan, installment payments shall be treated as a single distribution under Code section 409A.

## **Article VII**

### **DEATH**

#### **7.01 Death**

If a Participant dies before distribution of his or her Account has begun or been completed, the remaining portion of the Participant's Account shall constitute a Death Benefit and shall be payable to the Participant's Beneficiary in a lump sum within six months after the date of death. The value of the Participant's Account shall be determined in accordance with the rules set forth in Section 6.02. If the Participant has not designated a Beneficiary or if the named Beneficiary does not survive the Participant, payment shall be made to the Participant's surviving spouse, if any, or if none to the Participant's surviving children, if any, in equal shares or if none to the Participant's estate.

**Article VIII**  
**THE ADMINISTRATIVE COMMITTEE**

**8.01 Duties and Responsibility**

The Committee shall administer the Plan and shall have full discretionary authority to construe this Plan and to determine all questions of interpretation or policy in a manner not inconsistent with the Plan and the Administrative Committee's construction or determination in good faith shall be final and conclusive and binding on all parties including but not limited to the Company and any Participant or Beneficiary, except as otherwise provided by law. The Administrative Committee may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan, provided, however, that any interpretation or construction shall be done in a nondiscriminatory manner and shall be consistent with the intent that the Plan shall be an unfunded plan. The Administrative Committee shall have all powers necessary or appropriate to accomplish its duties under this Plan.

The Administrative Committee shall be charged with the duties of the general administration of the Plan, including but not limited to, the following:

- (a) To determine all questions relating to the eligibility of Directors to participate in or remain a Participant hereunder;
- (b) To maintain all the necessary records for the administration of the Plan;
- (c) To interpret the provisions of the Plan and to make and publish such rules for regulation of the Plan as are not inconsistent with the terms hereof;
- (d) To make any adjustments in the allocations, to Accounts under the Plan necessary to comply with any provision of law; and
- (e) To advise, counsel and assist any Participant regarding any rights, benefits or elections available under the Plan.

The Administrative Committee shall also be responsible for preparing and filing such annual disclosure reports as may be required by law.

Whenever it is determined by the Administrative Committee to be in the best interest of the Plan and its Participants and Beneficiaries, the Administrative Committee may request such variances, deferrals, extensions, or exemptions or make such elections for the Plan as may be available under the law.

**8.02 Allocation and Delegation of Responsibilities**

The Administrative Committee may engage agents to assist in carrying out the Administrative Committee's functions hereunder.

**8.03 Expenses and Compensation**

The expenses necessary to administer the Plan and the expenses incurred by the Administrative Committee shall be paid by the Company.

**8.04 Information from Company**

The Company shall supply full and timely information to the Administrative Committee on all matters relating to the compensation of all Participants, their continuous regular employment, their retirement, death, disability or termination of employment, and such other pertinent facts as the Administrative Committee may require.

**8.05 Administrative Committee; Signature**

The signature of one member of the Administrative Committee may be accepted by any interested party as conclusive evidence that the Administrative Committee has duly authorized the action therein set forth. No person receiving documents or written instructions and acting in good faith and in reliance thereon shall be obliged to ascertain the validity of such action under the terms of this Agreement. The Administrative Committee shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting or in writing without a meeting.

**Article IX**  
**PARTICIPANTS' RIGHTS**

**9.01 Disclosures**

The Administrative Committee shall furnish at least every six (6) months each Participant or Beneficiary with a written statement, based on the latest available information, indicating the value of his or her Account.

Upon termination of his or her status as a Director, a Participant is entitled to a written explanation of and accounting for his or her Account.

**9.02 Filing a Claim for Benefits**

A Participant or Beneficiary or the Company acting in his or her behalf shall notify the Administrative Committee of a claim for benefits under the Plan. Such request may be in any form acceptable to the Administrative Committee and shall set forth the basis of such claim and shall authorize the Administrative Committee to conduct such examinations as may be necessary to determine the validity of the claim and to take such steps as may be necessary to facilitate the payment of any benefits to which the Participant or Beneficiary may be entitled under the terms of the Plan.

**9.03 Denial of a Claim**

Whenever a claim for benefits by any Participant or Beneficiary has been denied, a written notice, prepared in a manner calculated to be understood by the Participant or Beneficiary must be provided, setting forth the specific reasons for the denial and explaining the procedure for an appeal and review of the decision by the Administrative Committee.

**9.04 Limitation of Rights**

Participation hereunder shall not grant any Participant the right to be retained as a member of the Board of Directors of the Company or any rights or interest other than those specifically herein set forth.

**Article X**  
**AMENDMENT AND TERMINATION**

**10.01 Amendment or Termination**

The Company, by action of the Board, may at any time and from time to time amend or terminate this Plan in whole or in part (including retroactively). The Company shall not have the right to amend or terminate the Plan retroactively in such a manner as to deprive any Participant or Beneficiary of any benefit to which he or she was entitled under the Plan by reason of Deferrals prior to the amendment or termination.

**10.02 Procedure Upon Termination of the Plan**

Upon complete termination of the Plan, Participants' Accounts shall be paid at the form and time determined pursuant to Articles VI and VII; provided, however, that Participants' Accounts may, in the discretion of the Board, be distributed within the period beginning 12 months after the date the Plan was terminated and ending 24 months after the date the Plan was terminated (or, if earlier, pursuant to Articles VI or VII), in which case the Board shall terminate all account balance non-qualified deferred compensation plans with respect to all Directors and shall not adopt a new account balance non-qualified deferred compensation plan for Directors for at least five years after the date the Plan was terminated; provided, further, that the Board may terminate the Plan upon a corporate dissolution of the Company that is taxed under Section 331 of the Code or with the approval of a bankruptcy court pursuant to 11 U.S.C. section 503(D)(1)(A), provided the Participants' Accounts are distributed and included in the gross income of the Participants by the later of (i) the year in which the Plan terminates, or (ii) the first calendar year in which distribution of Participants' Accounts is administratively practicable; provided, further, that the Board, in its discretion, may terminate the Plan 30 days prior to or 12 months following a "change in the ownership or effective control or a change in the ownership of a substantial portion of the assets" of the Company, as defined in regulations promulgated under Section 409A of the Code and distribute the Accounts of the Participants within the 12-month period following termination of the Plan, in which case the Board shall terminate all account balance non-qualified deferred compensation plans with respect to all Directors and shall not adopt a new account balance non-qualified plan for Directors for at least five years after the Plan was terminated.

**Article XI**  
**MISCELLANEOUS**

**11.01 Execution of Receipts and Releases**

Any payment to any Participant or Beneficiary, in accordance with the provisions of this Plan, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Plan, and the Administrative Committee may require such Participant or Beneficiary, as a condition precedent to such payment, to execute a receipt and release therefor in such form as the Administrative Committee shall determine.

**11.02 Notice and Unclaimed Benefits**

Each Participant and Beneficiary must file with the Company from time to time in writing his or her post office address and each change of post office address. Any communication, statement, or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Company will be binding on the Participant and his or her Beneficiary for all purposes of the Plan. Neither the Company nor the Administrative Committee shall be obliged to search for or ascertain the whereabouts of any Participant or Beneficiary.

The Committee shall notify any Participant or Beneficiary when a distribution is required under the Plan. The Committee may also request the Social Security Administration to notify the Participant or Beneficiary in accordance with any procedures the Administration has established for this purpose. In the event that the Participant or Beneficiary shall fail to respond to any notice from the Committee, the amount in his or her Account shall be forfeited.

**11.03 Non-Alienation of Benefits**

Except in the case of a qualified domestic relations order, as defined in Code § 414(p):

- (a) No Participant or Beneficiary, and no creditor of a Participant or Beneficiary shall have any right to assign, pledge, sell, hypothecate, anticipate or in any way create a lien upon his or her benefits under the Plan by operation of law or otherwise, and any attempt to do so shall be void; nor shall any such benefits in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefits.
- (b) No interest in the Plan shall be subject to assignment or transfer or otherwise be alienable, either by voluntary or involuntary act or by operation of law or equity, or subject to attachment, execution, garnishment, sequestration, levy or other seizure under any legal, equitable or other process, or be liable in any way for the debts or defaults of Participants and Beneficiaries.

**11.04 Loans to Participants**

A Participant may not receive a loan from the Plan of any portion of his or her Account.

**11.05 Benefits Payable to Incompetents**

Each individual receiving benefit payments under the Plan shall be conclusively presumed to have been legally competent until the date upon which the Administrative Committee shall have received written notice in the form and manner acceptable to it that such individual is an incompetent for whom a guardian or other person legally vested with his or her care shall have been appointed. From and after the date of receipt of such notice by Administrative Committee, all future benefit payments to which such individual is entitled under the Plan shall be payable to his or her guardian or other person legally vested with his or her care, until such time as the Administrative Committee shall be furnished with evidence satisfactory to it that such individual is legally competent.

**11.06 Applicable Law**

This Plan shall be governed and construed under the laws of the State of California.

**11.07 Headings as Guide**

The headings of this Plan are inserted for convenience of reference only and are not to be considered in construction of the provisions hereof.

**11.08 Pronouns**

When necessary to the meaning hereof, either the masculine or the neuter pronoun shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall be deemed to include the plural.

**11.09 Reference to Laws**

Any reference to any section or regulation under the Internal Revenue Code or to any other statute or law shall be deemed to include any successor law of similar import.

**11.10 Participant's Rights Unsecured**

The right of the Participant or his or her designated Beneficiary to receive a distribution hereunder shall be an unsecured claim against the general assets of the Corporation, and neither the Participant nor his or her designated beneficiary shall have any rights in or against any amount credited to his or her Account or any other specific assets of the Corporation. All amounts credited to an Account shall constitute general assets of the Corporation and may be disposed of by the Corporation at such time and for such purposes as it may deem appropriate. An Account may not be encumbered or assigned by a Participant or any Beneficiary.

Executed at this 5th day of December, 2006 to be effective as of October 31, 2006.

COMPANY:

ABM INDUSTRIES INCORPORATED

By /s/ Erin M. Andre  
Erin M. Andre  
Senior Vice President — Human Resources

**ABM INDUSTRIES INCORPORATED  
STATEMENT OF TERMS AND CONDITIONS APPLICABLE TO  
OPTIONS, RESTRICTED STOCK, RESTRICTED STOCK UNITS  
AND PERFORMANCE SHARES GRANTED TO EMPLOYEES  
PURSUANT TO THE 2006 EQUITY INCENTIVE PLAN**  
*(As Adopted October \_\_2, 2006)*

**I. INTRODUCTION**

The following terms and conditions shall apply to each Award granted under the Plan to an Employee eligible to participate in the Plan. This Statement of Terms and Conditions is subject to the terms of the Plan and of any Award made pursuant to the Plan. In the event of any inconsistency between this Statement of Terms and Conditions and the Plan, the Plan shall govern.

**II. DEFINITIONS**

Capitalized terms not otherwise defined in this Statement of Terms and Conditions shall have the meaning set forth in the Plan. When capitalized in this Statement of Terms and Conditions, the following additional terms shall have the meaning set forth below:

- A. Grant Date means the date the Administrator grants the Award.
- B. Option Period means the period commencing on the Grant Date of an Option and, except at otherwise provided in Section III.E, ending on the Termination Date.
- C. Termination Date means the date that an Option expires as set forth in the Option Agreement.

**III. OPTIONS**

A. Option Notice and Agreement. An Option granted under the Plan shall be evidenced by an Option Agreement setting forth the terms and conditions of the Option, including whether the Option is an Incentive Stock Option or a Nonqualified Stock Option and the number of Shares subject to the Option. Each Option Agreement shall incorporate by reference and be subject to this Statement of Terms and Conditions and the terms and conditions of the Plan.

B. Exercise Price. The Exercise Price of an Option, as specified in the Option Agreement, shall be equal to or greater than the Fair Market Value of the Shares underlying the Option on the Grant Date.

C. Option Period. An Option shall be exercisable only during the applicable Option Period, and during such Option Period the exercisability of the Option shall be subject to the vesting provisions of Section III.D as modified by the rules set forth in Sections III.E, V and VI. The Option Period shall be not more than seven years from the Grant Date.

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**D. Vesting of Right to Exercise Options.**

1. Except as provided in Sections V and VI, an Option shall be exercisable during the Option Period in accordance with the following vesting schedule: (i) 25 percent of the Shares subject to the Option shall vest on the first anniversary of the Grant Date; (ii) an additional 25 percent of the Shares shall vest on the second anniversary of the Grant Date; (iii) an additional 25 percent of the Shares shall vest on the third anniversary of the Grant Date; and (iv) the remaining 25 percent of the Shares subject to the Option shall vest on the fourth anniversary of the Grant Date. Notwithstanding the foregoing, the Administrator may specify a different vesting schedule at the time the Option is granted and as specified in the Option Agreement.

2. Any vested portion of an Option not exercised hereunder shall accumulate and be exercisable at any time on or before the Termination Date, subject to the rules set forth in Sections III.E, V and VI. No Option may be exercised for less than 5 percent of the total number of Shares then available for exercise under such Option. In no event shall the Company be required to issue fractional shares.

**E. Termination of Employment. In addition to the terms set forth in the Plan with respect to termination of employment:**

1. If a Participant ceases to be a bona fide employee of the Company or an Affiliate due to his or her Retirement, Disability or death during the Option Period, in addition to any Shares vested under the Option Agreement prior to the date of Disability or death, the Option shall vest in the number of Shares equal to 25 percent of the number of Shares originally subject to the Option, multiplied by the number of whole months between the most recent anniversary date of the Option grant and the date of Retirement, Disability or death, and divided by 12.

2. If a Participant who ceases to be a bona fide employee of the Company or an Affiliate is subsequently rehired prior to the expiration of his or her Option, then the Option shall continue to remain outstanding until such time as the Participant subsequently terminates employment or the Option otherwise terminates pursuant to this Statement of Terms and Conditions. Upon the Participant's subsequent termination of employment, the post-termination exercise period calculated pursuant to the terms and conditions of this Section III.E shall be reduced by the number days between the date of the Participant's initial termination of employment and his or her rehire date; provided, however, that if the rehired Participant continues to be employed by the Company or an Affiliate for at least one year from his or her rehire date, then the post-termination exercise period for the Option shall be determined in accordance with the Plan and shall not be adjusted as described above.

**F. Method of Exercise.** A Participant may exercise an Option with respect to all or any part of the exercisable Shares as follows:

1. By giving the Company, or its authorized representative designated for this purpose, written notice of such exercise specifying the number of Shares as to which the Option is so exercised. Such notice shall be accompanied by an amount equal to the Exercise Price of such Shares, in the form of any one or combination of the following:
  - a. cash or certified check, bank draft, postal or express money order payable to the order of the Company in lawful money of the United States;
  - b. if approved by the Company at the time of exercise, personal check of the Participant;
  - c. if approved by the Company at the time of exercise, a "net exercise" pursuant to which the Company will not require a payment of the exercise price from the Participant but will reduce the number of Shares issued upon the exercise by the largest number of whole Shares that has a Fair Market Value that does not exceed the aggregate exercise price. With respect to any remaining balance of the aggregate exercise price, the Company shall accept payment in a form identified in (a) or (b) of this section;
  - d. if approved by the Company at the time of exercise, by tendering to the Company or its authorized representative Shares which have been owned by the Participant for at least six months prior to said tender, and having a Fair Market Value, as determined by the Company, equal to the Exercise Price. In the event a Participant tenders Shares to pay the Exercise Price, tender of Shares acquired through exercise of an Incentive Stock Option may result in unfavorable income tax consequences unless such Shares are held for at least two years from the Grant Date of the Incentive Stock Option and one year from the date of exercise of the Incentive Stock Option;
  - e. if approved by the Company at the time of exercise, delivery (including by FAX transmission) to the Company or its authorized representative of an executed irrevocable option exercise form together with irrevocable instructions to an approved registered investment broker to sell Shares in an amount sufficient to pay the Exercise Price plus any applicable withholding taxes and to transfer the proceeds of such sale to the Company; and
2. If required by the Company, by giving satisfactory assurance in writing, signed by the Participant, the Participant shall give his or her assurance that the Shares subject to the Option are being purchased for investment and not with a view to

the distribution thereof; provided that such assurance shall be deemed inapplicable to (i) any sale of the Shares by such Participant made in accordance with the terms of a registration statement covering such sale, which has heretofore been (or may hereafter be) filed and become effective under the Securities Act of 1933, as amended (the "Securities Act") and with respect to which no stop order suspending the effectiveness thereof has been issued, and (ii) any other sale of the Shares with respect to which, in the opinion of counsel for the Company, such assurance is not required to be given in order to comply with the provisions of the Securities Act.

G. Limitations on Transfer. An Option shall, during a Participant's lifetime, be exercisable only by the Participant. No Option or any right granted thereunder shall be transferable by the Participant by operation of law or otherwise, other than as set forth in the Plan. In the event of any attempt by a Participant to alienate, assign, pledge, hypothecate, or otherwise dispose of an Option or of any right thereunder, except as provided herein, or in the event of the levy of any attachment, execution, or similar process upon the rights or interest hereby conferred, the Company at its election may terminate the affected Option by notice to the Participant and the Option shall thereupon become null and void.

H. No Shareholder Rights. Neither a Participant nor any person entitled to exercise a Participant's rights in the event of the Participant's death shall have any of the rights of a shareholder with respect to the Shares subject to an Option except to the extent that an Option has been exercised.

#### **IV. RESTRICTED STOCK, RESTRICTED STOCK UNITS, AND PERFORMANCE SHARES**

A. Agreement. A Restricted Stock Award, Restricted Stock Unit Award, or Performance Share Award granted under the Plan shall be evidenced by an Agreement to be executed by the Participant and the Company setting forth the terms and conditions of the Award. Each Award Agreement shall incorporate by reference and be subject to this Statement of Terms and Conditions and the terms and conditions of the Plan.

B. Special Restrictions. Each Restricted Stock Award, Restricted Stock Unit Award, or Performance Share Award made under the Plan shall contain the following terms, conditions and restrictions and such additional terms, conditions and restrictions as may be determined by the Administrator; provided, however, that no Award shall be subject to additional terms, conditions and restrictions which are more favorable to a Participant than the terms, conditions and restrictions set forth in the Plan, the Restricted Stock Agreement, Restricted Stock Unit Award Agreement, Performance Share Award Agreement, or this Statement of Terms and Conditions.

1. Restrictions. Until the restrictions imposed on any Restricted Stock Award shall lapse, shares of Restricted Stock granted to a Participant: (a) shall not be sold, assigned, transferred, pledged, hypothecated, or otherwise disposed of, and (b) shall, if the Participant's continuous employment with the

Company or an Affiliate shall terminate for any reason (except as otherwise provided in the Plan or in Section IV.B.2) be returned to the Company forthwith, and all the rights of the Participant to such Shares shall immediately terminate. A Participant shall not be permitted to sell, transfer, pledge, assign or encumber such Restricted Stock Units or Performance Shares, other than pursuant to a qualified domestic relations order as defined in the Code or Title I of the Employee Retirement Income Security Act. If a Participant ceases to be a bona fide employee of the Company or an Affiliate (except as otherwise provided in the Plan or in Section IV.B.2) prior to the lapse of the restrictions imposed on a Restricted Stock Unit Award or Performance Share Award, the unvested portion of the Restricted Stock Unit Award or Performance Share Award shall be forfeited to the Company, and all the rights of the Participant to such Award shall immediately terminate. If a Participant is absent from work with the Company or an Affiliate because of his or her short-term disability or because the Participant is on an approved leave of absence, the Participant shall not be deemed during the period of any such absence, by virtue of such absence alone, to have terminated employment with the Company or an Affiliate except as the Administrator may otherwise expressly determine. Notwithstanding the foregoing, if the Participant is on a voluntary leave of absence for the purpose of serving the government of the country of which the Participant is a citizen or in which the Participant's principal place of employment is located such leave shall be considered an approved leave of absence.

2. Termination of Employment by Reason of Retirement, Disability or Death.

- a. Restricted Stock Awards and Restricted Stock Unit Awards. Notwithstanding any provision contained herein or in the Plan or the Restricted Stock Agreement or Restricted Stock Unit Agreement to the contrary, if a Participant who has been in the continuous employment of the Company or an Affiliate since the Grant Date of a Restricted Stock Award or Restricted Stock Unit Award ceases to be a bona fide employee of the Company or an Affiliate as a result of Retirement, Disability or death, then the restrictions shall lapse as to the number of Shares or Share Equivalents equal to:  
(i) 50 percent of the number of Shares or Share Equivalents originally subject to the Award, multiplied by (ii) the number of whole months between the Grant Date (or if the Grant Date occurred more than two years prior to the date of Retirement, Disability or death, the second anniversary of the Grant Date) and the date of Retirement, Disability or death, divided by (iii) 24.
- b. Performance Share Awards. Notwithstanding any provision contained herein or in the Plan or the Performance Share Agreement to the contrary, if a Participant who has been in the continuous employment

of the Company or an Affiliate since the Grant Date of a Performance Share Award ceases to be a bona fide employee of the Company or an Affiliate as a result of Retirement, Disability or death, then at the end of the performance period the restrictions shall lapse as to the number of Share Equivalents equal to: (i) the number of Performance Shares vested in accordance with the performance objectives established by the Administrator for the Award, multiplied by (ii) the number of whole months between the Grant Date and the date of Retirement, Disability or death, divided by (iii) the number of months in the performance period.

C. Dividends, Dividend Equivalents, and Business Transactions. Upon cash dividends being paid on outstanding shares of ABM common stock, dividends shall be paid with respect to Restricted Stock during the Restriction Period and shall be converted to additional shares of Restricted Stock, which shall be subject to the same restrictions as the original Award for the duration of the Restricted Period. Upon cash dividends being paid on outstanding shares of ABM common stock, dividend equivalents shall be credited in respect of Restricted Stock Units and Performance Shares, which shall be converted into additional Restricted Stock Units or Performance Shares, which will be subject to all of the terms and conditions of the underlying Restricted Stock Unit Award or Performance Share Award, including the same vesting restrictions as the underlying Award. Upon stock dividends being paid on outstanding shares of ABM common stock or a Business Transaction, the Administrator is authorized to take such actions and make such changes with respect to outstanding Awards, including the performance criteria for the termination of restrictions on Awards, as are consistent with the Plan and this Statement of Terms and Conditions to effect the terms of the Awards.

D. Election to Recognize Gross Income in the Year of Grant. If any Participant validly elects within thirty days of the Grant Date, to include in gross income for federal income tax purposes an amount equal to the Fair Market Value of the Shares of Restricted Stock granted on the Grant Date, such Participant shall pay to the Company, or make arrangements satisfactory to the Administrator to pay to the Company in the year of such grant, any federal, state or local taxes required to be withheld with respect to such shares in accordance with Section VII.F.

E. No Shareholder Rights for Restricted Stock Units or Performance Shares. Neither a Participant nor any person entitled to exercise a Participant's rights in the event of the Participant's death shall have any of the rights of a shareholder with respect to the Share Equivalents subject to a Restricted Stock Unit Award or Performance Share Award except to the extent that a stock certificate has been issued with respect to such Shares upon the payment of any vested Restricted Stock Unit Award or Performance Share Award.

F. Time of Payment of Restricted Stock Units and Performance Shares. Upon the lapse of the restriction imposed on Restricted Stock Unit Awards or Performance Share Award,

all Restricted Stock Units and Performance Shares that were not forfeited pursuant to Sections IV.B.1 or V shall be paid to the Participant as soon as reasonably practicable after the restrictions lapse but not later than two and one-half months following the end of the calendar year in which the restrictions lapse. Payment shall be made in Shares in the form of a stock certificate. The foregoing notwithstanding, the Participant may elect to defer payment of the Restricted Stock Units in the manner described in Section IV.G.

G. **Deferral Election.** Each Participant, pursuant to rules established by the Administrator, may be entitled to elect to defer all or a percentage of any payment in respect of a Restricted Stock Unit Award or Performance Shares that he or she may be entitled to receive as determined pursuant to Section IV.F. This election shall be made by giving notice in a manner and within the time prescribed by the Administrator and in compliance with Code Section 409A. Each Participant must indicate the percentage (expressed in whole percentages) he or she chooses to defer of any payment he or she may be entitled to receive. If no notice is given, the Participant shall be deemed to have made no deferral election. Each deferral election filed with the Company shall become irrevocable in accordance with the terms and conditions of the Company's Deferred Compensation Plan (or any successor plan) and in compliance with Code Section 409A.

#### **V. SPECIAL FORFEITURE AND REPAYMENT RULES**

Any other provision of this Statement of Terms and Conditions to the contrary notwithstanding, if the Administrator determines that a Participant has engaged in conduct which constitutes Cause prior to, or during the 12 month period following, the exercise of an Option or the vesting of an Award, the consequences set forth in Section 16 of the Plan govern and the following consequences shall apply:

A. Any outstanding Option shall immediately and automatically terminate, be forfeited and shall cease to be exercisable, without limitation. In addition, any shares of Restricted Stock, Restricted Stock Units or Performance Shares as to which the restrictions have not lapsed shall immediately and automatically be forfeited, all of the rights of the Participant to such shares or share equivalents shall immediately terminate, and any Restricted Stock shall be returned to the Company.

B. Any exercise of an Option during the period beginning 12 months prior to through 24 months after the Participant's termination of employment with the Company or an Affiliate shall be rescinded and all outstanding Awards shall be canceled up to 24 months after the Participant's termination of employment with the Company or an Affiliate. The Participant shall deliver to the Company the Shares received by the Participant upon exercise of an Option if such exercise has been rescinded and the Shares retained by the Participant.

C. The lapse of restrictions on or vesting of Restricted Stock, Restricted Stock Units, or Performance Shares that have vested or upon which the restrictions have lapsed during the period beginning 12 months prior to through 24 months after the Participant's termination of employment with the Company or an Affiliate

shall be rescinded and all outstanding Awards shall be cancelled up to 24 months after the Participant's termination of employment with the Company or an Affiliate. The Participant shall deliver to the Company the Shares delivered upon vesting or lapse of restrictions if such vesting or lapse of restrictions has been rescinded and the Shares retained by the Participant.

D. The Participant shall pay over to the Company the proceeds (less the Participant's purchase price, if any) received by the Participant upon (1) the sale, transfer or other transaction involving the Shares acquired upon the exercise of any Option exercised during the period beginning 12 months prior to through 24 months after the Participant's termination of employment with the Company or an Affiliate or (2) the sale, transfer or other transaction involving the Shares acquired upon the vesting of any Award or lapse of restrictions on any Award within 12 months prior to through 24 months after the Participant's termination of employment with the Company or an Affiliate in such manner and on such terms and conditions as may be required, and, without limiting any other remedy the Company or an Affiliate may have, the Company shall be entitled to set-off against the amount of any such proceeds any amount owed the Participant by the Company or an Affiliate to the fullest extent permitted by law.

The Administrator shall determine in its sole discretion whether the Participant has engaged in conduct that constitutes Cause.

Any provision of Section 16 of the Plan and this Section V which is determined by a court of competent jurisdiction to be invalid or unenforceable should be construed or limited in a manner that is valid and enforceable and that comes closest to the business objectives intended by such invalid or unenforceable provision, without invalidating or rendering unenforceable the remaining provisions of this Section V.

## **VI. CHANGE IN CONTROL**

A. Effect of Change in Control on Options. Subject to the limitations set forth in Section VI.C, in the event of a Change in Control, the surviving, continuing, successor, or purchasing Company or other business entity or parent thereof, as the case may be (the "Acquiror") may, without the consent of any Participant, either assume or continue the Company's rights and obligations under outstanding Options or substitute for outstanding Options substantially equivalent options covering the Acquiror's stock. Options that are assumed or continued in connection with a Change in Control shall be subject to such additional accelerated vesting and/or exercisability in connection with the Participant's subsequent termination of employment (i) as are set forth in a Severance Agreement between the Participant and the Company approved by the Board of Directors or the Compensation Committee, or (ii) as the Board may determine. Any Options granted one year or more prior to the Change in Control that are neither assumed nor continued by the Acquiror in connection with the Change in Control shall, contingent on the Change in Control, become fully vested and

exercisable immediately prior to the Change in Control. Any Option granted less than one year prior to the Change of Control that is neither assumed nor continued by the Acquiror in connection with the Change in Control shall, to the extent not previously vested and exercisable, immediately prior to the Change in Control become vested and exercisable as to the number of Shares subject to such Option equal to (i) the number of Shares originally subject to such Option, multiplied by (ii) the number of whole months between the Grant Date and the Change in Control, divided by (iii) the number of months between the Grant Date and the date on which all Shares originally subject to such Option would have been fully vested and exercisable; and such Option shall terminate with respect to all remaining Shares subject to such Option.

**B. Effect of Change in Control on Awards Other than Options.** Subject to the limitations set forth in Section VI.C, in the event of a Change in Control, the Acquiror may, without the consent of any Participant, either assume or continue the Company's rights and obligations under outstanding Awards other than Options or substitute for such Awards substantially equivalent awards covering the Acquiror's stock. Awards that are assumed or continued in connection with a Change in Control shall be subject to such additional accelerated vesting or lapse of restrictions in connection with the Participant's subsequent termination of employment without Cause (i) as are set forth in a Severance Agreement between the Participant and the Company approved by the Board of Directors or the Compensation Committee; or (ii) as the Board may determine. Any Award granted one year or more prior to the Change in Control that is neither assumed nor continued by the Acquiror in connection with the Change in Control shall, upon the Change in Control, become fully vested and all restrictions shall be released immediately prior to the Change in Control. Restricted Unit Awards and Performance Share Awards granted one year or more prior to such Change in Control also shall become immediately payable. Subject to the limitations set forth in Section VI.C, in the event of a Change in Control outstanding Awards other than Options granted less than one year prior to the Change in Control, shall, immediately prior to the Change of Control, become vested and all restrictions shall to the extent not previously released be released with respect to the number of Shares equal to (i) the number of Shares originally subject to such Award, multiplied by (ii) the number of whole months between the Grant Date and the Change in Control, divided by (iii) the number of months between the Grant Date and the date on which the restrictions on such Award would otherwise have terminated. To the extent such restrictions are released, Restricted Unit Awards and Performance Share Awards also shall become immediately payable. Awards shall terminate to the extent such Awards do not become vested and restrictions do not terminate.

**C. Excess Parachute Payments.** Subject to a Severance Agreement between the Participant and the Company approved by the Board of Directors or the Compensation Committee, if any amount or benefit to be paid or provided under an Award or any other agreement between a Participant and the Company would be an Excess Parachute Payment but for the application of this sentence, then the payments and benefits to be paid or provided under the Award and any other agreement will be reduced to the minimum extent necessary (but in no event to less than zero) so that no portion of

any such payment or benefit, as so reduced, constitutes an Excess Parachute Payment. The determination of whether any reduction in such payments or benefits to be provided under the Award or any other agreement or otherwise is required pursuant to the preceding sentence will be made at the expense of the Company by independent accountants or the Company's benefits consultant. The fact that the Participant's right to payments or benefits may be reduced by reason of the limitations contained in this paragraph will not of itself limit or otherwise affect any other rights of the Participant under any other agreement. In the event that any payment or benefit intended to be provided is required to be reduced pursuant to this paragraph, the Participant will be entitled to designate the payments and/or benefits to be so reduced in order to give effect to this paragraph. The Company will provide the Participant with all information reasonably requested by the Participant to permit the Participant to make such designation. In the event that the Participant fails to make such designation within 10 business days after receiving notice from the Company of a reduction under this paragraph, the Company may effect such reduction in any manner it deems appropriate.

## VII. MISCELLANEOUS

A. No Effect on Terms of Employment. Subject to the terms of any employment contract entered into by the Company and a Participant to the contrary, the Company (or an Affiliate which employs him or her) shall have the right to terminate or change the terms of employment of a Participant at any time and for any reason whatsoever.

B. Grants to Participants in Foreign Countries. In making grants to Participants in foreign countries, the Administrator has the full discretion to deviate from this Statement of Terms and Conditions in order to adjust Awards under the Plan to prevailing local conditions, including custom and legal and tax requirements.

C. Information Notification. Any information required to be given under the terms of an Award Agreement shall be addressed to the Company in writing by mail, overnight delivery service, or by electronic transmission to the Senior Vice President, Human Resources and the Assistant Vice President & Director of Compensation. Any notice to be given to a Participant shall be given in writing by mail, overnight delivery service, or by electronic transmission.

D. Administrator Decisions Conclusive. All decisions of the Administrator administering the Plan upon any questions arising under the Plan, under this Statement of Terms and Conditions, or under an Award Agreement, shall be conclusive.

E. No Effect on Other Benefit Plans. Nothing herein contained shall affect a Participant's right to participate in and receive benefits from and in accordance with the then current provisions of any pensions, insurance or other employment welfare plan or program offered by the Company.

**F. Withholding.** Each Participant shall agree to make appropriate arrangements with the Company and his or her employer for satisfaction of any applicable federal, state or local income tax withholding requirements or payroll tax requirements. If approved by the Company at the time of exercise, such arrangements may include an election by a Participant to have the Company retain some portion of the Stock acquired pursuant to exercise of an Option to satisfy such withholding requirements. The election must be made prior to the date on which the amount to be withheld is determined. If a qualifying election is made, then upon exercise of an Option, in whole or in part, the Company will retain the number of Shares having a value equal to the amount necessary to satisfy any withholding requirements. Calculation of the number of Shares to be withheld shall be made based on the Fair Market Value of the Stock. In no event, however, shall the Company be required to issue fractional shares of Stock. The Administrator shall be authorized to establish such rules, forms and procedures as it deems necessary to implement the foregoing.

With respect the vesting of an Award other than an Option, if the Participant does not make an arrangement with Company and his or her employer for satisfaction of the applicable income and withholding requirements or social security requirements in advance of the vesting date, the Company shall retain the number of Shares (that otherwise would have been payable to the Participant) having a value equal to the amount necessary to satisfy any withholding requirements. Calculation of the number of such Shares shall be as described above.

**G. Successors.** This Statement of Terms and Conditions and the Award Agreements shall be binding upon and inure to the benefit of any successor or successors of the Company. "Participant" as used herein shall include the Participant's Beneficiary.

**H. Governing Law.** The interpretation, performance, and enforcement of this Statement of Terms and Conditions and all Award Agreements shall be governed by the laws of the State of Delaware.

ABM INDUSTRIES INCORPORATED  
NON-QUALIFIED STOCK OPTION AGREEMENT  
2006 EQUITY INCENTIVE PLAN

The Compensation Committee of the Board of Directors of ABM Industries Incorporated (the “**Company**”) is pleased to grant you (the “**Grantee**”) a nonqualified stock option under the Company’s 2006 Equity Incentive Plan (the “**Plan**”) to purchase shares of common stock of the Company as described below:

**Grantee Name:** \_\_\_\_\_

**Number of Shares** \_\_\_\_\_  
**Subject to Option:** \_\_\_\_\_

**Price Per Share:** \_\_\_\_\_

**Grant Date:** \_\_\_\_\_

**Vesting Schedule:** 25% on each of the first four anniversary dates of the Grant Date

**Expiration Date:** 7 years from Grant Date (or earlier if employment terminates)

Provided you continue to provide services to the Company or any subsidiary or parent of the Company through the applicable vesting date, the Option will vest as provided above. The unvested portion of the Option may be subject to forfeiture if you terminate employment before the vesting date, as set forth in the Plan and the Statement of Terms and Conditions attached hereto.

The Plan and the Statement of Terms and Conditions attached hereto are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Statement of Terms and Conditions, as applicable.

The Grantee acknowledges receipt of a copy of the Plan, the Statement of Terms and Conditions and the Plan Prospectus, represents that the Grantee has carefully read and is familiar with their provisions, and hereby accepts the Option subject to all of their terms and conditions.

Please sign your name in the space provided below on this Option Agreement and return an executed copy to Sandra Briggs, ABM Industries Incorporated, 160 Pacific Ave., Ste. 222, San Francisco, CA 94111.

By their signatures below, the Company and the Grantee agree that the Option is granted under and governed by this Option Agreement and by the provisions of the Plan and the Statement of Terms and Conditions.

ABM INDUSTRIES INCORPORATED

GRANTEE

By: \_\_\_\_\_

Henrik C. Slipsager  
President & Chief Executive Officer

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENTS:

2006 Equity Incentive Plan  
Statement of Terms and Conditions  
2006 Equity Incentive Plan Prospectus

ABM INDUSTRIES INCORPORATED  
RESTRICTED STOCK AGREEMENT  
2006 EQUITY INCENTIVE PLAN

The Compensation Committee of the Board of Directors of ABM Industries Incorporated has approved a grant to you (the “**Grantee**”) of shares of Restricted Stock (“**Restricted Shares**”) of ABM Industries Incorporated pursuant to the ABM Industries Incorporated 2006 Equity Incentive Plan (the “**Plan**”), as described below.

**Grantee Name:** \_\_\_\_\_

**Number of Shares Granted:** \_\_\_\_\_

**Date of Grant:** \_\_\_\_\_

**Vesting Schedule:** 50% on the second anniversary of the Grant Date;  
remaining shares on the fourth anniversary of the Grant Date

Provided you continue to provide services to the Company or any Affiliate of the Company through the applicable vesting date, the Restricted Shares will vest as provided above. Unvested Restricted Shares may be subject to forfeiture if you terminate employment before the vesting date, as set forth in the Plan and the Statement of Terms and Conditions attached hereto.

**Additional Terms:**  If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto are applicable and are incorporated herein by reference. (No document need be attached as Attachment 1).

The Plan and the Statement of Terms and Conditions are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Statement of Terms and Conditions, as applicable.

By their signatures below, the Company and the Grantee agree that the Restricted Shares are granted under and governed by this Restricted Share Agreement and by the provisions of the Plan and the Statement of Terms and Conditions attached hereto.

The Grantee acknowledges receipt of a copy of the Plan, the Statement of Terms and Conditions and the Plan Prospectus, represents that the Grantee has carefully read and is familiar with their provisions, and hereby accepts the Restricted Shares subject to all of their terms and conditions. The Grantee acknowledges that there may be adverse tax consequences upon vesting or disposition of the Restricted Shares and that Grantee should consult a tax adviser prior to such vesting or disposition.

Please sign your name in the space provided below on this Restricted Stock Agreement and return an executed copy to Sandra Briggs, ABM Industries Incorporated, 160 Pacific Ave., Ste. 222, San Francisco, CA 94111.

ABM INDUSTRIES INCORPORATED

GRANTEE

By: \_\_\_\_\_

Henrik C. Slipsager  
President & Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENTS:

2006 Equity Incentive Plan  
Statement of Terms and Conditions  
Prospectus

ABM INDUSTRIES INCORPORATED  
RESTRICTED STOCK UNIT AGREEMENT  
2006 EQUITY INCENTIVE PLAN

The Compensation Committee of the Board of Directors of ABM Industries Incorporated has approved a grant to you (the “**Grantee**”) of Restricted Stock Units (“**RSUs**”) pursuant to the ABM Industries Incorporated 2006 Equity Incentive Plan (the “**Plan**”), as described below.

**Grantee Name:** \_\_\_\_\_

**Number of RSUs Granted:** \_\_\_\_\_

**Date of Grant:** \_\_\_\_\_

**Vesting Schedule:** 50% on the second anniversary of the Grant Date;  
remaining shares on the fourth anniversary of the Grant Date

**Vesting Schedule:** Provided you continue to provide services to the Company or any subsidiary or parent of the Company through the applicable vesting date, the RSUs will vest and restrictions will lapse as provided above. Unvested RSUs may be subject to forfeiture if you terminate employment before the vesting date, as set forth in the Plan and the Statement of Terms and Conditions attached hereto.

**Additional Terms:**  If this box is checked, the additional terms and conditions set forth on Attachment 1 hereto are applicable and are incorporated herein by reference. (No document need be attached as Attachment 1).

By their signatures below, the Company and the Grantee agree that the RSUs are granted under and governed by this Restricted Stock Unit Agreement and by the provisions of the Plan and the Statement of Terms and Conditions attached hereto. The Plan and the Statement of Terms and Conditions are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Statement of Terms and Conditions, as applicable.

The Grantee acknowledges receipt of a copy of the Plan, the Statement of Terms and Conditions and the Plan Prospectus, represents that the Grantee has carefully read and is familiar with their provisions, and hereby accepts the RSUs subject to all of their terms and conditions. The Grantee acknowledges that there may be adverse tax consequences upon settlement of the RSUs or disposition of the shares, if any, received in connection therewith and that Grantee should consult a tax adviser prior to such settlement or disposition.

Please sign your name in the space provided below on this Restricted Stock Unit Agreement and return an executed copy to Sandra Briggs, ABM Industries Incorporated, 160 Pacific Ave., Ste. 222, San Francisco, CA 94111.

ABM INDUSTRIES INCORPORATED

GRANTEE

By: \_\_\_\_\_

Henrik C. Slipsager  
President & Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENTS:

2006 Equity Incentive Plan  
Statement of Terms and Conditions  
Prospectus

ABM INDUSTRIES INCORPORATED  
PERFORMANCE SHARE AGREEMENT  
2006 EQUITY INCENTIVE PLAN

The Compensation Committee of the Board of Directors of ABM Industries Incorporated has approved a grant to you (the “**Grantee**”) of Performance Share Equivalents (“**PSs**”) pursuant to the ABM Industries Incorporated 2006 Equity Incentive Plan (the “**Plan**”), as described below.

**Grantee Name:** \_\_\_\_\_  
**Number of PSs Granted:** \_\_\_\_\_  
**Date of Grant:** \_\_\_\_\_  
**Performance Date:** \_\_\_\_\_

**Performance Share Settlement:** Provided you continue to provide services to the Company or any subsidiary or parent of the Company through the applicable Performance Date, the PSs will become vested and paid out in accordance with the performance objectives, performance period, and other terms set forth on Attachment 1 hereto, which are incorporated herein by reference. Unvested PSs may be subject to forfeiture if you terminate employment before the vesting date, as set forth in the Plan and the Statement of Terms and Conditions attached hereto.

The Plan and the Statement of Terms and Conditions are incorporated herein by reference. Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan or in the Statement of Terms and Conditions, as applicable.

The Grantee acknowledges receipt of a copy of the Plan, the Statement of Terms and Conditions and the Plan Prospectus, represents that the Grantee has carefully read and is familiar with their provisions, and hereby accepts the PSs subject to all of their terms and conditions. The Grantee acknowledges that there may be adverse tax consequences upon settlement of the PSs or disposition of the shares, if any, received in connection therewith and that Grantee should consult a tax adviser prior to such settlement or disposition.

By their signatures below, the Company and the Grantee agree that the PSs are granted under and governed by this Performance Share Agreement and by the provisions of the Plan and the Statement of Terms and Conditions attached hereto.

Please sign your name in the space provided below on this Performance Share Agreement and return an executed copy to Sandra Briggs, ABM Industries Incorporated, 160 Pacific Ave., Ste. 222, San Francisco, CA 94111.

ABM INDUSTRIES INCORPORATED

GRANTEE

By: \_\_\_\_\_  
Henrik C. Slipsager  
President & Chief Executive Officer  
Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENTS:

2006 Equity Incentive Plan  
Statement of Terms and Conditions  
Prospectus

**MASTER PPROFESSIONAL SERVICE AGREEMENT**

**Effective October 1, 2006**

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## MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (this “**Agreement**”) is entered into effective October 1, 2006 (the “**Effective Date**”) by and between ABM Industries Incorporated, a Delaware corporation having a principal place of business in San Francisco, California (“**ABM or Customer**”), and International Business Machines Corporation, a New York corporation having a principal place in Somers, New York (“**Supplier**”).

WHEREAS, ABM and Supplier have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement; and

WHEREAS, ABM desires to procure from Supplier, and Supplier desires to provide to ABM and the Eligible Recipients the Services described in this Agreement and in the Companion Agreement(s) (defined below), on the terms and conditions specified herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, ABM and Supplier (the “**Parties**” and each, a “**Party**”) hereby agree as follows:

### **1. BACKGROUND AND OBJECTIVES**

#### **1.1 ITO Services.**

ABM desires that certain application management, telecommunication, IT infrastructure, help desk, and other information technology services presently performed and managed by or for ABM and the Eligible Recipients and certain additional information technology services, as each is described in this Agreement (collectively “**ITO Services**”) be performed and managed by Supplier. Supplier has carefully reviewed ABM’s requirements, has performed all due diligence it deems necessary, and desires to perform and manage such ITO Services for ABM and the Eligible Recipients.

#### **1.2 Goals and Objectives.**

The Parties acknowledge and agree that the specific goals and objectives of the Parties in entering into this Agreement are to:

- (a) attain ABM’s specific objectives for the Services, including:
  - (i) providing Services and solutions in full alignment with business unit requirements and exploiting the technologies and associated services for competitive advantage;
  - (ii) maintaining and continuously improving quality of the Services, improving availability and responsiveness of the Services and meeting deliverables on time and on budget;
  - (iii) reducing overall expenses and efficiently deploying capital associated with the Services; and
  - (iv) measuring and improving overall customer satisfaction, proactively anticipating customer needs and maintaining clear accountability with respect to the Services; and
- (b) attain ABM’s broader objectives for entering into this Agreement with Supplier, including:
  - (i) improving ABM’s and the Eligible Recipients’ access to resources and technology, and leveraging Supplier’s size, scale, and expertise to make overall improvements in delivery of the Services; and

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- (ii) achieving additional reductions in expenses and capital that are otherwise not achievable by ABM, changing fixed costs to variable costs by procuring Services as needed, based on business demand and providing better linkage of cost to the discrete Services provided, and increasing ABM's and the Eligible Recipients' ease and accuracy associated with invoicing and internal chargeback capabilities.

### 1.3 Interpretation.

The provisions of this **Article 1** are intended to be a general introduction to this Agreement and are not intended to expand the scope of the Parties' obligations or alter the plain meaning of this Agreement's terms and conditions, as set forth hereinafter. However, to the extent the terms and conditions of this Agreement are unclear or ambiguous, such terms and conditions are to be construed so as to be consistent with the background and objectives set forth in this **Article 1**.

## 2. DEFINITIONS AND DOCUMENTS

### 2.1 Definitions.

As used in this Agreement:

- (1) "**ABM Data**" shall mean any data or information of ABM or any Eligible Recipient that is provided to or obtained by Supplier in connection with the negotiation and execution of this Agreement or the performance of its obligations under this Agreement, including data and information with respect to the businesses, customer, operations, facilities, products, rates, regulatory compliance, competitors, consumer markets, assets, expenditures, mergers, acquisitions, divestitures, billings, collections, revenues and finances of ABM or any Eligible Recipient. ABM Data also shall mean any data or information of ABM or an Eligible Recipient (i) created, generated, collected or processed by Supplier in the performance of its obligations under this Agreement, including data processing input and output, asset information, Reports, third party service and product agreements of ABM or an Eligible Recipient, retained expenses and Pass-Through Expenses or (ii) that resides in or is accessed through Software, Equipment or Systems provided, operated, supported, or used by Supplier in connection with the Services, as well as information derived from this data and information. ABM Data shall not include any Supplier Proprietary Information.
- (2) "**ABM Facilities**" means the facilities listed in **Schedule O.1** provided by ABM or the Eligible Recipient for the use of Supplier to the extent necessary to provide the Services.
- (3) "**ABM Owned Materials**" shall have the meaning given in **Section 14.1(a)**.
- (4) "**ABM Owned Software**" means Software owned by ABM or an ABM Affiliate or an Eligible Recipient and used, operated, maintained or supported by Supplier or a Subcontractor under or in connection with this Agreement.
- (5) "**ABM Personal Data**" shall mean that portion of ABM Data that is subject to any Privacy Laws.
- (6) "**ABM Contract Manager**" shall have the meaning given in **Section 10.1**.
- (7) "**ABM Personnel**" shall mean the employees, agents, contractors or representatives of ABM employed by ABM or its Affiliates or Eligible Recipients as of the Effective Date who performed, in the ordinary course of business, any of the services to be provided by Supplier during the twelve (12) months preceding the Commencement Date.
- (8) "**ABM Sites**" or "**Sites**" shall mean the offices or other facilities listed on **Schedule O.5** at or to which Supplier is to provide the Services.

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- (9) “**ABM Third Party Contractors**” shall have the meaning given in **Section 4.4(a)**.
- (10) “**Acceptance**” shall mean the determination, in ABM’s reasonable discretion, and in accordance with the Policy and Procedures Manual or other criteria agreed to by the Parties, following implementation, installation, testing and execution in the production environment for an agreed upon number of business cycles that Software, Equipment, Systems and/or other contract deliverables are in Compliance in all material respects with the Specifications.
- (11) “**Additional Resource Charge**” or “**ARC**” is the charge per Resource Unit that is applicable whenever the actual consumption of a Resource Unit by the Eligible Recipients exceeds the Resource Baseline set forth in **Schedule J**. The total additional charges will be calculated by multiplying the Additional Resource Charge by the number of Resource Units in excess of the Resource Baseline actually consumed by the Eligible Recipients.
- (12) “**Affected Employees**” means the individuals identified in **Schedule M**.
- (13) “**Affiliate**” shall mean, generally, with respect to any Entity, any other Entity Controlling, Controlled by or under common Control with such Entity.
- (14) “**Agreement**” shall have the meaning given in the Preamble.
- (15) “**Allocation of Pool Percentage**” means for a particular Critical Performance Indicator, the portion of At Risk Amount allocated to such Critical Performance Indicator and used to calculate the Service Level Credit payable to ABM in the event of a Service Level Default in such Critical Performance Indicator. In no event shall the sum of all Allocations of Pool Percentage exceed one hundred percent (100%).
- (16) “**Antivirus Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to monitor for, filter and detect the presence of Malicious Code and repair or remediate the effects of Malicious Code to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Antivirus Software shall include all such programs or programming in use as of the Effective Date (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Antivirus Software also shall include all such programs or programming selected on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (17) “**Applications Software**” or “**Applications**” shall mean those software application programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) used to support day-to-day business operations and accomplish specific business objectives to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Applications Software shall include all such programs or programming in use as of the Effective Date (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Applications Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (18) “**Asset Management Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to record, track and report information required to manage asset inventories to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Asset Management Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to

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which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Asset Management Software also shall include all such programs or programming selected on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.

- (19) “**At Risk Amount**” means, for any month during the Term, an amount, expressed as a percentage of the Monthly Charges, which is the maximum amount that the Supplier will have at risk for Service Level Credits. The At Risk Amount shall be 10% of the Monthly Charges.
- (20) “**Authorized User**” means (i) all Eligible Recipients and their respective employees, contractors, subcontractors, customers, agents and representatives (other than Supplier and its Subcontractors), and (ii) other persons or Entities designated by ABM to receive or use the Systems or Services provided by Supplier.
- (21) “**Baseline FTE Project Hours**” and “**Baseline FTE Project Dollars**” shall have the meaning given in **Section 11.8(a)**.
- (22) “**Benchmark Standard**” has the meaning given in **Section 11.11(d)**.
- (23) “**Benchmarker**” has the meaning given in **Section 11.11(a)**.
- (24) “**Benchmarking**” has the meaning given in **Section 11.11(a)**.
- (25) **Reserved.**
- (26) “**Change Management**” means the processes and procedures relating to managing, planning and performing all System Changes pertaining to the Services, including System Changes to individual components, and the coordination of such changes across all components as set forth in **Schedule E** and the Policy and Procedures Manual. Change Management will support and include checkpoints to ensure that System Changes may be implemented in accordance with the Change Control Procedures.
- (27) “**Charges**” means the amounts set forth in this Agreement, including in **Article 11** and **Schedule J**, as charges for the Services, excluding Pass-Through Expenses, Service Taxes and ABM retained expenses.
- (28) “**Commencement Date**” shall mean October 1, 2006, or such other date as the Parties may agree upon in writing as the date on which Supplier will assume full responsibility for the Services.
- (29) “**Compiler**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to compile source code to executable code (e.g., C++, ADA, Cobol, JAVA, Fortran) to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Compiler shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Compiler also shall include all such programs or programming selected on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (30) “**Compliance**” and “**Comply**” shall mean, with respect to Software, Equipment, Systems or other contract deliverables to be implemented, designed, developed, delivered, integrated, installed and/or tested by Supplier, compliance in all material respects with the Specifications.
- (31) “**Contract Year**” means, for the first Contract Year, a period commencing on the Commencement Date and ending on October 31, 2006, and, for each ensuing Contract Year, a twelve (12) month

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period commencing on November 1 and ending on October 31 (or, if earlier, on the last day of the Term). If any Contract Year is less than twelve (12) months, the rights and obligations under this Agreement that are calculated on a Contract Year basis will be proportionately adjusted for such shorter period.

- (32) “**Control**” and its derivatives shall mean: (a) the legal, beneficial, or equitable ownership, directly or indirectly, of (i) at least 50% of the aggregate of all voting equity interests in an Entity or (ii) equity interests having the right to at least 50% of the profits of an Entity or, in the event of dissolution, to at least 50% of the assets of an Entity; (b) the right to appoint, directly or indirectly, a majority of the board of directors; (c) the right to control, directly or indirectly, the management or direction of the Entity by contract or corporate governance document; or (d) in the case of a partnership, the holding by an Entity (or one of its Affiliates) of the position of sole general partner.
- (33) “**Critical Deliverable**” shall have the meaning given in **Schedule G**.
- (34) “**Critical Performance Indicator(s)**” or “**CPI**” shall have the meaning given in **Schedule G**.
- (35) “**Database Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to deliver database services to the enterprise to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Database Software includes database engines such as Sybase, Oracle, DB2, SQL Server and associated modules (e.g., form builders, report generators, and backup software) and the tools used to manage and monitor performance of the database. Database Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Database Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (36) “**Deliverable**” means a Developed Material that is identified as a deliverable in the Agreement, or in a statement of work, project plan, or other writing by or between the Parties.
- (37) “**Deliverable Credits**” means the monetary amount(s) that Supplier shall pay to ABM (or apply against monthly Charges) if Supplier fails to meet its obligations with respect to a Critical Deliverable, as further described in **Section 7.2(b)** and **Schedules G** and **H**.
- (38) “**Derivative Work**” means a work based on one or more preexisting works, including a condensation, transformation, translation, modification, expansion, or adaptation, that, if prepared without authorization of the owner of the copyright of such preexisting work, would constitute a copyright infringement under applicable Law, but excluding the preexisting work.
- (39) “**Developed Materials**” shall mean any Materials (including Software), or any modifications, enhancements or Derivative Works thereof, developed by or on behalf of Supplier for ABM or the Eligible Recipients in connection with or as part of the Services.
- (40) “**Development Tool**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used in the development, testing, deployment and maintenance of Applications to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Development Tools shall include all such products in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Development Tools also shall include all such products selected and/or

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developed on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.

- (41) “**Direct Supplier Competitors**” shall mean the Entities identified in **Schedule P.2**, as such list of Entities may be modified by Supplier from time to time, provided, however, that such list shall at no time exceed twenty (20) Entities unless otherwise agreed by the Parties.
- (42) “**Direct ABM Competitors**” shall mean the Entities identified in **Schedule P.1**, as well as their Affiliates, successors and assigns, as such list of Entities may reasonably be modified by ABM from time to time.
- (43) “**Effective Date**” shall have the meaning given in the preamble to this Agreement.
- (44) “**Eligible Recipients**” means, collectively, the following:
  - (a) ABM;
  - (b) any Entity that is an Affiliate of ABM on the Commencement Date, or thereafter becomes an Affiliate of ABM;
  - (c) any Entity that purchases after the Commencement Date from ABM or any Affiliate of ABM, all or substantially all of the assets of ABM or such Affiliate, or of any division, marketing unit or business unit thereof, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
  - (d) any Entity that after the Effective Date is created using assets of ABM or any Affiliate of ABM, provided that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
  - (e) any Entity into which ABM or any Affiliate of ABM merges or consolidates, provided that such Entity has assumed ABM’s obligations under this Agreement, and provided further that such Entity agrees in writing to be bound by the terms and conditions of this Agreement;
  - (f) any Entity which merges into or consolidates with ABM or any Affiliate of ABM;
  - (g) any Entity, including any corporation, joint venture, partnership or manufacturing or retail facility, in which on or after the Commencement Date, ABM or any Affiliate of ABM has an ownership interest and as to which ABM or such Affiliate has management or operational responsibility;
  - (h) subject to **Section 11.1(e)(iii)**, any person or Entity engaged in the provision of products or services to ABM or an Eligible Recipient identified in clauses (a) through (g) (e.g., contract personnel working at an ABM Site), but only in connection with the provision of such products or services to ABM or such Eligible Recipient;
  - (i) subject to **Section 11.1(e)(iii)**, any customer of an Eligible Recipient identified in clauses (a) through (g) above, or an Entity to which such an Eligible Recipient is a subcontractor, but only in connection with the provision of products or services (other than the Services provided hereunder) by such Eligible Recipient to such customer; and
  - (j) other entities to which the Parties agree.

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Except as used in **Sections 17.1, 17.3, and 17.4**, Eligible Recipients shall include the employees, contractors, subcontractors, agents and representatives of the Entities identified as Eligible Recipients above.

As used in the following Sections, the term “Eligible Recipient(s)” shall not include the Eligible Recipient categories described in **Sections 2.1(44)(h) and (i)**:

- **Section 4.2(f)**;
- **Section 4.3(b)** (except **Section 4.3(b)(8)**);
- **Section 5.4** (provided that the failure to obtain a Required Consent with respect to the Eligible Recipient categories described in **Sections 2.1(44)(h) and (i)** may nonetheless impact the use and enjoyment of the Services by ABM or other Eligible Recipients);
- **Section 6.1(c)**; and
- **Section 9.4(a)**.

- (45) “**Employment Effective Date**” means, with respect to each Transitioned Employee, the date that such Transitioned Employee begins employment with Supplier, in accordance with applicable Laws.
- (46) “**Engineering Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to provide a specific engineering function or service to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Engineering Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Engineering Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (47) “**Entity**” means a corporation, partnership, joint venture, trust, limited liability company, association or other organization or entity.
- (48) “**Equipment**” shall mean all computing, networking and communications equipment procured, provided, operated, supported, or used by ABM, Supplier or Authorized Users in connection with the Services, including (i) mainframe, midrange, server and distributed computing equipment and associated attachments, features, accessories, peripheral devices, and cabling, (ii) personal computers, laptop computers, terminals, workstations and personal data devices and associated attachments, features, accessories, printers, multi-functional printers, peripheral or network devices, and cabling, and (iii) voice, data, video and wireless telecommunications and network and monitoring equipment and associated attachments, features, accessories, peripheral devices, and cabling.
- (49) “**Equipment Leases**” means all leasing arrangements whereby ABM, an Eligible Recipient or an ABM Third Party Contractor leases Equipment as of the Commencement Date which will be used by Supplier to perform the Services after such Commencement Date. Equipment Leases include those leases identified on **Schedule F.2**, and all other leases as to which Supplier received notice and/or access prior to the Effective Date.
- (50) “**Event of Loss**” shall have the meaning set forth in **Section 16.2**.

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- (51) “**Extraordinary Event**” shall have the meaning given in **Section 11.6(a)**.
- (52) “**Full Time Equivalent**” or “**FTE**” is a level of effort (whether by one person or more than one person), excluding vacation, holidays, training, administration and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one dedicated FTE is assumed to be at least 1,880 productive hours per Contract Year, and each non-dedicated FTE shall be deemed to be a fraction of an FTE equal to the number of productive hours worked by such non-dedicated FTE in a Contract Year divided by 1,880. Without ABM’s prior written approval, one (1) dedicated individual’s total work effort cannot amount to more than one FTE.
- (53) “**Functional Service Area**” means each of the areas defined in **Schedule E** in which Supplier will provide Services, (i.e., ).
- (54) “**Hazardous Materials**” means an element, compound, chemical mixture, contaminant, pollutant, waste or other substance which is defined as hazardous or toxic under any applicable Law or the release of which is prohibited or restricted under any applicable Law.
- (55) “**Include**” and its derivatives shall mean “including without limitation.” This term is as defined, whether or not capitalized in this Agreement.
- (56) “**Increased Impact Service Level**” shall have the meaning given in **Schedule G**.
- (57) “**Increased Impact Service Level Default**” means the Supplier’s level of performance for a particular Service Level fails to meet the applicable Increased Impact Service Level at any time during the measurement period.
- (58) “**Income Tax**” means any tax on or measured by the net income of a Party (including taxes on capital or net worth that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax or franchise tax for the privilege of doing business.
- (59) “**Initial Term**” shall have the meaning set forth in **Section 3.1**.
- (60) “**ITS Systems Life Cycle**” means the comprehensive IT/IS documentation maintained by ABM, including operating manuals, user guides, specifications, methodologies, policies/procedures and disaster recovery plans.
- (61) “**Key Performance Indicator(s)**” or “**KPI**” shall have the meaning given in **Schedule G**.
- (62) “**Key Supplier Personnel**” shall mean the Supplier Personnel filling the positions designated in **Schedule C** as Key Supplier Personnel.
- (63) “**LAN Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to operate, manage or monitor a LAN or maintain active status on a LAN port to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. LAN Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. LAN Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.

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- (64) “**Laws**” shall mean all federal, state and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other official releases of or by any government, or any authority, department or agency thereof or self regulatory organization (“**SRO**”), in any jurisdiction in which the Services are provided or received, including the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board and the Laws relating to data privacy, trans-border data flow or data protection (“**Privacy Laws**”). Subject to **Section 15.10**, Laws shall include generally accepted accounting principles (“**GAAP**”), applied in accordance with SAS-69, as such principles may be modified during the Term by the Public Company Accounting Oversight Board or other applicable authorities.
- (65) “**Local Area Networks**” or “**LANs**” shall mean the local, high-speed networks, consisting of Equipment, Software, Systems, telecommunications facilities, lines, interconnect devices and cabling, that are used to create, connect and transmit data, voice and video signals to, within or among ABM’s local area network segments. Local Area Networks interconnect Authorized User workstations, local servers, and printers and may connect with WANs. Local Area Networks shall include all LANs in use as of the Commencement Date, all LANs created by or for ABM, the Eligible Recipients or Supplier following the Commencement Date and all additions, modifications, substitutions, upgrades or enhancements to existing and future LANs.
- (66) “**Losses**” shall mean all losses, liabilities, damages, fines, penalties, settlements, judgments, and interest (including taxes) arising out of a third party claim against a Party or indemnitee, in each case that a court finally awards to a third party or which are included in the amount of any settlement paid to a third party and agreed to by the Party financially responsible for such settlement, and all related costs and expenses (including reasonable legal fees, disbursements and costs of investigation and litigation) as incurred.
- (67) “**Major Release**” means a new version of Software that includes changes to the architecture and/or adds new features and functionality in addition to the original functional characteristics of the preceding software release. These releases are usually identified by full integer changes in the numbering, such as from “7.0” to “8.0,” but may be identified by the industry as a major release without the accompanying integer change.
- (68) “**Malicious Code**” shall mean (i) any code, program, or sub-program whose knowing or intended purpose is to damage or maliciously interfere with the operation of the computer system containing the code, program or sub-program, or to halt, disable or maliciously interfere with the operation of the Software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent the normal security of the Software or the system containing the code.
- (69) “**MAN Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to operate, manage or monitor Metropolitan Area Networks (including campus area networks) or provide or maintain connectivity throughout a Metropolitan Area Network (or campus area network) to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. MAN Software shall include all such programs or programming in use or required to be used as of the Effective Date, including those set forth in **Schedule A**, and those as to which Supplier received reasonable notice and/or access prior to the Effective Date. MAN Software also includes all such programs or programming developed and/or introduced by or for ABM on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (70) “**Managed Third Parties**” shall mean the ABM Third Party Contractors listed on **Schedule K** and any substitute or replacement third party contractors reasonably designated by ABM, and shall include Fully Managed Third Parties and General Managed Third Parties, as defined in **Section**

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**6.11.** The Parties acknowledge and agree that, to the extent ABM has Software license and/or maintenance contracts with International Business Machines Corporation and such contracts are listed on **Schedule K**, International Business Machines Corporation shall be treated as a Managed Third Party for purposes of such contracts.

- (71) “**Management Tools**” means all software products and tools (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used by Supplier to deliver and manage the Services. Management Tools shall include all such products or tools in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier otherwise received notice and/or access prior to the Effective Date. Management Tools also shall include all such software products and tools selected and/or developed on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (72) “**Materials**” shall mean, collectively, Software, literary works, other works of authorship, documented specifications, designs, analyses, processes, methodologies, programs, program listings, programming tools, documentation, reports, drawings, databases, spreadsheets, financial models and work product.
- (73) “**Metropolitan Area Networks**” or “**MANs**” means the regional or campus, high-speed networks, consisting of Equipment, Software, Systems, telecommunications facilities, lines, interconnect devices and cabling, that are used to create, bundle, connect and transmit data, voice and video signals to, between or among 1) ABM’s or Eligible Recipients’ office buildings located within a campus or single metropolitan area, 2) LANs, and 3) WANs. Metropolitan Area Networks include all MANs in use or required to be used as of the Effective Date, all MANs created by or for ABM, the Eligible Recipients or Supplier following the Effective Date and all additions, modifications, substitutions, upgrades or enhancements to existing or future MANs.
- (74) “**Minimum Service Level**” shall have the meaning given in **Schedule G**.
- (75) “**Minimum Service Level Default**” means the Supplier’s level of performance for a particular Service Level fails to meet the applicable Minimum Service Level at any time during the measurement period.
- (76) “**Minor Release**” means a scheduled release containing small functionality updates and/or accumulated resolutions to defects or non-conformances made available since the immediately preceding release (whether Major Release or Minor Release). Minor Releases shall include “Maintenance Releases” which are supplemental to and made available between Major Releases and other Minor Releases, issued and provided under specific vendor service level or maintenance obligations and contain only accumulated resolutions or mandated changes. These releases are usually identified by a change in the decimal numbering of a release, such as “7.12” to “7.13.”
- (77) “**Monitoring Software**” shall mean all software programs and programming (and all modifications, replacements, upgrades, enhancements, documentation, materials and media related thereto) that are used to monitor and report on IT assets (e.g., software, computers, systems, networks, network devices or elements, circuits) to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Monitoring Software shall include all such software programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Monitoring Software also shall include all programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.

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- (78) “**Monthly Base Charge**” means the total Supplier price set forth in Schedule J associated with the performance of the Services in a given month in accordance with the Resource Baselines, Service Levels and Supplier responsibilities under this Agreement (excluding ARCs and RRCs).
- (79) “**Network Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to deliver and manage Services over networks to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1. Network Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in Schedule A, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Network Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1.
- (80) “**New Advances**” shall have the meaning given in Section 11.7(c).
- (81) “**New Services**” means services provided by Supplier to ABM that impose materially different obligations on Supplier and that require materially different levels of effort, resources or expense from Supplier and for which there is no current Resource Baseline or charging methodology.
- (82) “**Noncompliance**” shall mean, with respect to Software, Equipment, Systems or other contract deliverables to be implemented, designed, developed, delivered, integrated, installed and/or tested by Supplier, any failure to comply in all material respects with the Specifications.
- (83) “**Office Image**” means all office automation programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) installed on Authorized User workstations, including office productivity, word processing, spreadsheet, presentation, messaging, calendaring, middleware and menu systems, and associated Systems Software. The Office Image shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in Schedule A, or (ii) as to which Supplier otherwise received notice and/or access prior to the Effective Date. The Office Image also shall include all such programs or programming selected on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1.
- (84) “**Operating System Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to deliver and manage Services on a particular hardware platform including operating systems (e.g., UNIX, Windows 2000, VM and MVS) and network operating systems (e.g., NT Server, Windows 2000 and Novell) to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1. Operating System Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in Schedule A, or (ii) as to which Supplier otherwise received notice and/or access prior to the Effective Date. Operating System Software also shall include all such programs or programming developed and/or introduced after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1.
- (85) “**Out-of-Pocket Expenses**” shall mean reasonable and actual out-of-pocket expenses incurred by Supplier that are approved in advance by ABM and for which Supplier is entitled to be reimbursed by ABM under this Agreement. Out-of-Pocket Expenses shall not include Supplier’s overhead costs (or allocations thereof), general and/or administrative expenses or other mark-ups and shall be net of all rebates and allowances.

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- (86) “**Pass-Through Expenses**” shall mean the expenses listed in **Schedule J** for which ABM has agreed in advance to be financially responsible, in accordance with **Article 11** of this Agreement, following processing and review of the third party invoice by Supplier for accuracy. All Services to be performed by Supplier with respect to Pass-Through Expenses are included in the Monthly Base Charges. Supplier shall not charge any handling or administrative charge in connection with its processing or review of such invoices without ABM’s consent.
- (87) “**Policy and Procedures Manual**” shall have the meaning given in **Section 9.1(a)**.
- (88) “**Prior Agreement**” shall mean the agreement between ABM Industries and International Business Machines Corporation, dated December 20, 2004, for telecommunication, network and VOIP services.
- (89) “**Problem Management**” means the processes and procedures of tracking and managing all problems arising in ABM’s information technology (IT) or telecommunication environment or otherwise in connection with the Services, and resolving those problems arising from or related to the Services. Such process includes the provision of information to ABM to allow ABM to resolve problems that are not related to the Services.
- (90) “**Problem Management Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to track and manage problems to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Problem Management Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Problem Management Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (91) “**Project**” shall have the meaning given in **Section 11.8(a)**.
- (92) “**Proprietary Information**” shall have the meaning given in **Section 13.3(a)**.
- (93) “**Quality Assurance**” means the actions, planned and performed, to provide confidence that all business processes, Systems, Equipment, Software and components that influence the quality of the Services are working as expected, both individually and collectively.
- (94) “**Reduced Resource Credit**” or “**RRC**” is the credit per Resource Unit that is applicable whenever the actual consumption of a defined Resource Unit by the Eligible Recipients falls below the Resource Baseline set forth in **Schedule J**. The total credit will be calculated by multiplying the Reduced Resource Credit by the number of Resource Units below the Resource Baseline actually consumed by the Eligible Recipients.
- (95) “**Remote Management Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to control the operations of and manage from remote sites IT assets (e.g., software, computers, systems, networks, network devices or elements, circuits) to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Remote Management Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in **Schedule A**, or (ii) as to which Supplier received reasonable notice and/or reasonable access prior to the Effective Date. Remote Management Software also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.

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- (96) “**Renewal Term**” shall have the meaning set forth in **Section 3.2**.
- (97) “**Reports**” shall have the meaning set forth in **Section 9.2(a)**.
- (98) “**Required Consents**” shall mean the consents (if any) required to be obtained: (i) to assign or transfer to Supplier, or obtain for Supplier the right to use and/or access, any ABM licensed Third Party Software, Third Party Contracts or Equipment Leases or Acquired Assets; (ii) to grant Supplier the right to use and/or access the ABM licensed Third Party Software in connection with providing the Services; (iii) to grant ABM and the Eligible Recipients the right during the Term and any Termination Assistance Services period to use and/or access the Supplier Owned Software, Third Party Software and Equipment acquired, operated, supported or used by Supplier in connection with providing the Services; (iv) subject to **Sections 6.4(c), 6.5(d), and 6.6(c)**, to assign or transfer to ABM or its designee Supplier Owned Software, Third Party Software, Third Party Contracts, Equipment leases or other rights following the Term to the extent provided in this Agreement; and (v) all other consents required from third parties in connection with Supplier’s provision of the Services or performance of its obligations hereunder.
- (99) “**Resource Baselines**” shall mean the estimated number of Resource Units to be required and/or consumed by ABM and the Eligible Recipients during a defined period of time and included in the Monthly Base Charges. The Resource Baselines as of the Effective Date are set forth in **Schedule J**. The Resource Baselines will be revised from time to time by agreement of the Parties based on the business requirements of ABM and the Eligible Recipients and the Monthly Base Charges will be adjusted accordingly.
- (100) “**Resource Unit**” (“RU”) means a particular unit of resource, as described in **Schedule J**, which is measured to determine ABM’s actual utilization of such resource compared to the applicable Resource Baseline for purposes of calculating “**Additional Resource Charges**” (“**ARCs**”) and “**Reduced Resource Credits**” (“**RRCs**”) as described in **Schedule J**.
- (101) “**Retained Systems and Business Processes**” means those Systems and business processes of ABM or an Eligible Recipient for which Supplier has not assumed responsibility under this Agreement (including those provided, managed, operated, supported and/or used on their behalf by ABM Third Party Contractors). Retained Systems and Business Processes include equipment and software associated with such systems and business processes.
- (102) “**Root Cause Analysis**” is the formal process, specified in the Policy and Procedures Manual, to be used by Supplier to diagnose problems at the lowest reasonable level so that corrective action can be taken that will eliminate, to the extent reasonably possible, repeat failures. Supplier shall implement a Root Cause Analysis as specified in **Section 7.3** or as reasonably requested by ABM.
- (103) “**Service Level Credits**” shall have the meaning given in **Section 7.2** and **Schedule G**.
- (104) “**Service Level Default**” means a Minimum Service Level Default or an Increased Impact Service Level Default.
- (105) “**Service Levels**” shall mean, individually and collectively, the performance standards for the Services set forth in **Schedule G**.
- (106) “**Service Taxes**” shall mean all sales, use, excise, and other similar taxes that are assessed against either Party on the provision of the Services as a whole, or on any particular Service received by ABM or the Eligible Recipients from Supplier, excluding Income Taxes.
- (107) “**Services**” means, collectively: (i) the services, functions and responsibilities described in this Agreement as they may be supplemented, enhanced, modified or replaced during the Term in

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accordance with this Agreement; (ii) the Transition Services; (iii) the Termination Assistance Services; and (iv) any New Services and Projects.

- (108) “**Software**” shall mean all software programs and programming for which a Party is financially or operationally responsible under Schedule J.1 (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Applications, Antivirus Software, Compilers, Database Software, Development Tools, MAN Software, Management Tools, Monitoring Software, Network Software, Operating System Software, Office Images, Problem Management Software, Remote Management Software, Systems Software, Third Party Software and Utilities, unless a more specific reference is required by the context.
- (109) “**Specialized Services**” shall have the meaning given in Section 9.9.
- (110) “**Specifications**” shall mean, with respect to Software, Equipment, Systems or other contract deliverables to be designed, developed, maintained, modified, enhanced, delivered, integrated, installed and/or tested by Supplier, the technical, design and/or functional specifications set forth in Schedules E or H, in third party vendor standard documentation, in a New Services or Project description requested and/or approved by ABM or otherwise agreed upon in writing by the Parties.
- (111) “**Strategic Plan**” means the plans periodically developed by ABM that set forth ABM’s key business objectives and requirements and outline its strategies for achieving such objectives and requirements. ABM may revise the Strategic Plan from time to time. The Strategic Plan is likely to include both annual and multi-year strategies, objectives and requirements.
- (112) “**Subcontractors**” shall mean subcontractors (of any tier) of Supplier, including Shared Subcontractors (as defined in Section 9.12(b)). The initial list of Subcontractors approved by ABM is set forth on Schedule D. Schedule D may be amended during the Term in accordance with Section 9.12.
- (113) “**Supplier Account Executive**” shall have the meaning given in Section 8.5 and shall describe the Supplier representative responsible for both the day to day relationship with ABM as well as the delivery of all Services to ABM.
- (114) “**Supplier Facilities**” means, individually and collectively, the facilities owned, leased or used by Supplier or its Affiliates or Subcontractors from which any Services are provided or performed (other than Eligible Recipient Facilities). Supplier Facilities are listed on Schedule O.2.
- (115) “**Supplier Owned Materials**” shall have the meaning given in Section 14.3(a).
- (116) “**Supplier Owned Software**” means any Software owned by Supplier or its Affiliates and used to provide the Services.
- (117) “**Supplier Personnel**” shall mean those employees, representatives, contractors, subcontractors and agents of Supplier, Subcontractors and Supplier Affiliates who perform any Services under this Agreement. Supplier Personnel shall include Transitioned Employees.
- (118) “**System**” shall mean an interconnected grouping of manual or electronic processes, including Equipment, Software and associated attachments, features, accessories, peripherals and cabling, and all additions, modifications, substitutions, Upgrades or enhancements to such System, to the extent a Party has financial or operational responsibility for such System or System components under Schedule E or Schedule J.1. System shall include all Systems in use as of the Effective Date, all additions, modifications, substitutions, Upgrades or enhancements to such Systems and all Systems installed or developed by or for ABM or Supplier following the Effective Date.

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- (119) “**System Change**” means any change to the standards, processes, controls, Software, Equipment, Systems or operating environment.
- (120) “**Systems Software**” shall mean all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that perform tasks basic to the functioning of the Equipment and are required to operate the Applications Software or otherwise support the provision of Services by Supplier, including operating systems, systems utilities, data security software, compilers, performance monitoring and testing tools and database managers to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**. Systems Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth on **Schedule A**, or (ii) as to which Supplier otherwise received notice and/or access prior to the Effective Date. Systems Software also shall include all such programs or programming developed and/or introduced after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under **Schedule J.1**.
- (121) “**Term**” shall have the meaning given in **Section 3.2**.
- (122) “**Termination Assistance Services**” means the termination/expiration assistance requested by ABM to allow the Services to continue without unnecessary interruption or adverse effect and to facilitate the orderly transfer of the Services to ABM or its designee, as such assistance is further described in **Section 4.3** and **Schedule I**.
- (123) “**Termination Charge**” shall mean the termination charges payable by ABM upon certain termination events, as set forth in **Schedule N**. Termination Charges may include Wind Down Costs and/or a Termination Fee.
- (124) “Termination Fee” shall have the meaning given in Section 2(c) of **Schedule N**.
- (125) “**Third Party Contracts**” shall mean all agreements between third parties and ABM or an Eligible Recipient or between third parties and Supplier or its Subcontractors or Affiliates that have been or will be used to provide the Services, including those listed on **Schedule E.3** as to which Supplier will assume financial and operational responsibility as of the Commencement Date.
- (126) “**Third Party Materials**” shall mean intellectual property or other Materials that are owned by third parties and provided under license to Supplier (or Supplier Affiliates or Subcontractors) or ABM (or Eligible Recipients) and that have been or will be used or required to be used to provide or receive the Services. Third Party Materials include Materials owned by Subcontractors and used in the performance of the Services.
- (127) “**Third Party Software**” shall mean all Software products (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are provided under license or lease to Supplier or ABM or an Eligible Recipient to the extent a Party has financial or operational responsibility for such Software products under **Schedule J.1**. Third Party Software shall include all such programs or programming in use as of the Effective Date, (i) that are identified as such on **Schedule A** and **E.4**, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Third Party Software also shall include all such programs or programming licensed and/or leased after the Effective Date.
- (128) “**Transition Milestone**” means each date identified on the Transition Plan as a milestone by which Supplier shall have completed a certain task or set of tasks in the Transition Plan in accordance with the Transition Plan.

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- (129) “**Transition Period**” shall mean the period that commences on the Effective Date and expires 12:00:01 a.m., Pacific Time, on the date specified for the completion of the Transition Services as specified in the Transition Plan, unless expressly extended in writing by ABM.
- (130) “**Transition Plan**” means the plan set forth in Schedule H and developed pursuant to Section 4.2 hereof, which identifies all material transition tasks and deliverables to be undertaken by Supplier in connection with the transition of all Services to Supplier, the completion of all Transition Period enhancement projects to be completed during the Transition Period, and the dates by which each will be completed by Supplier.
- (131) “**Transition Services**” shall mean the services, functions and responsibilities described in Section 4.2 to be performed by Supplier during the Transition Period.
- (132) “**Transitioned Employees**” means the employees of ABM who accept Supplier’s offer of employment and become employed by Supplier pursuant to Article 8. Upon being employed by Supplier, such Transitioned Employees shall be deemed to be Supplier Personnel.
- (133) “**Upgrade**” and its derivatives shall mean updates, renovations, enhancements, additions and/or new versions or releases of Software or Equipment by Supplier. Unless otherwise agreed, financial responsibility for the costs, fees and expenses associated with an Upgrade of Software or Equipment shall be allocated between the Parties in accordance with Sections 6.4 and 6.5 and Schedule J.1.
- (134) “**Utilities**” shall mean all software programs or programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) which, when used in association with the Operating System Software, allow a Party to manage, secure access, or make available access to the production environment (e.g., tools for storage management, security, virus protection, backup and restoration, software distribution and license management) to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1. Utilities shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in Schedule A, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. Utilities also shall include all such programs or programming developed and/or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1.
- (135) “**WAN Software**” means all software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto) that are used to operate, manage or monitor the WAN or provide or maintain connectivity throughout the WAN to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1. WAN Software shall include all such programs or programming in use as of the Effective Date, (i) that are set forth in Schedule A, or (ii) as to which Supplier received notice and/or access prior to the Effective Date. WAN Software also shall include all such programs or programming developed or introduced on or after the Effective Date to the extent a Party has financial or operational responsibility for such programs or programming under Schedule J.1.
- (136) “**Wide Area Networks**” or “**WANs**” means long haul, high speed backbone transmission Networks, consisting of Equipment, Software, Systems, telecommunications facilities, lines, interconnect devices, cabling, sonet rings, ATM, frame relay, leased lines and other services as they become available, that are used to create, connect and transmit data, voice and video signals to within, between or among LANs and/or non-ABM locations that do business with ABM and for which ABM is responsible for providing connectivity. The WAN shall include all voice, data and video (image) traffic to be routed over the WANs. Wide Area Networks shall include all WANs in use as of the Commencement Date, all WANs created by or for ABM or Supplier following the

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Commencement Date and all additions, modifications, substitutions, upgrades or enhancements to existing or future WANs.

(137) “**Wind Down Costs**” shall mean the amounts described in Section 2(a) and (b) of Schedule N.

## 2.2 Other Terms.

The terms defined in this Article include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words “**herein**,” “**hereof**,” and “**hereunder**” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection or other subdivision. Article, Section, Subsection and Attachment references refer to articles, sections and subsections of, and attachments to, this Agreement. The words “**include**” and “**including**” shall not be construed as terms of limitation. The words “**day**,” “**month**,” and “**year**” mean, respectively, calendar day, calendar month and calendar year. As stated in Section 21.3, the word “**notice**” and “**notification**” and their derivatives shall mean notice or notification in writing. Other terms used in this Agreement are defined in the context in which they are used and shall have the meanings there indicated.

## 2.3 Associated Contract Documents.

This Agreement includes each of the following schedules and their attached exhibits, all of which are attached to this Agreement and incorporated into this Agreement by this reference. Unless otherwise expressly stated, references to specific Schedules include all numbered subsidiary Schedules (e.g., references to Schedule E include not only Schedule E, but also Schedules E.1, E.2, E.3, E.4 and E.5).

A	Software
B	Reserved
C	Key Supplier Personnel
D	Subcontractors
E	Statement of Work
E.1	Data Center and Server Services
E.2	Network Services
E.3	VIP and Workstation Services
E.4	Help Desk Services
E.5	Application Maintenance Services
F.1	List of Circuits
F.2	Equipment Leases
F.3	Third Party Contracts
F.4	Third Party Software
G	Service Levels
H	Transition Plan
I	Termination Assistance Services
J	Supplier Charges
J.1	Financial Responsibility/Asset Ownership Matrix
K	Managed Third Parties
L	Projects
L.1	J.D. Edwards Upgrade Project
M	Affected Employees
N	Termination Charges
O.1	ABM Facilities
O.2	Supplier Facilities
O.3	ABM Provided Equipment
O.4	ABM Rules
O.5	ABM Sites
P.1	Direct ABM Competitors
P.2	Direct Supplier Competitors

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Q	Satisfaction Survey
R	Reports
S	Approved Benchmarks
T	Governance
U	Refresh Schedule
V	Termination/Expiration Rights
W	Form of Companion Agreement

Exhibit 1: Form of Non-Disclosure Agreement

Exhibit 2: Form of Invoice

Exhibit 3: Form of Bill of Sale

### 3. TERM

#### 3.1 Initial Term.

The initial Term of this Agreement shall commence as of 12:00:01 a.m., Pacific Time on the Effective Date and continue until 11:59:59 p.m., Pacific Time, on December 31, 2013, unless this Agreement is terminated as provided herein or extended as provided in Section 3.2 or 4.3(a)(2), in which case the Term shall end at 11:59:59 p.m., Pacific Time, on the effective date of such termination or the date to which this Agreement is extended (the “**Initial Term**”).

#### 3.2 Extension.

By giving notice to Supplier no less than ninety (90) days prior to the expiration date of the Initial Term or any extension, ABM shall have the right to extend the Term for up to two (2) extension periods to be specified by ABM of up to one (1) year (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”), each on the terms and conditions set forth in this Agreement. Notwithstanding the foregoing, the time period between the provision of ABM’s non-renewal notice to Supplier and Supplier’s cessation of Termination Assistance Services shall not be shorter than 180 days. No Termination Charges shall be applicable to any termination on or after the expiration of the Initial Term.

### 4. SERVICES

#### 4.1 Overview.

- (a) **Services.** Commencing on the Commencement Date, Supplier shall provide the Services to ABM, and, upon ABM’s request, to Eligible Recipients designated by ABM. The Services shall consist of the following, as they may evolve during the Term of the Agreement or be supplemented, enhanced, modified or replaced, in each case in accordance with the terms of this Agreement:
  - (i) The services, functions and responsibilities described in this Agreement including its Schedules;
  - (ii) The application management, telecommunication, IT infrastructure, help desk, and information technology related services, functions and responsibilities performed in the ordinary course of business during the twelve (12) months preceding the Commencement Date by ABM Personnel who were displaced or whose functions were displaced as a result of this Agreement, even if the service, function, or responsibility is not specifically described in this Agreement (provided that, in the event of a direct conflict between Schedule E and the scope of services as described in this Section 4.1(a)(ii), this Section 4.1(a)(ii) shall not be construed as altering and/or superseding Schedule E); and
- (b) **Included Services.** If any subtasks not specifically described in this Agreement are an inherent or necessary part of the Services described herein or are required for proper performance of such

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Services, such subtasks shall be deemed to be included within the scope of the Services to be delivered for the Charges, as if such subtasks were specifically described in this Agreement.

- (c) **Required Resources.** Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for providing the facilities, personnel, Equipment, Software, technical knowledge, expertise and other resources necessary to provide the Services.
- (d) **Supplier Responsibility.** Supplier shall be responsible for the provision of the Services in accordance with this Agreement even if, by agreement of the Parties, such Services are performed or dependent upon services performed by (i) Subcontractors, (ii) Managed Third Parties to the extent provided in **Section 6.11** and **Schedule K**, or (iii) non-Supplier Personnel, including ABM employees, for whom Supplier is financially or operationally responsible under this Agreement; provided that, ABM will provide reasonable assistance in rectifying any problem affecting Supplier's provision of the Services which may be attributed to Managed Third Parties and/or ABM employees.
- (e) **Electronic Delivery.** To the maximum extent possible, Supplier shall deliver all Software, documentation, reports and other contract deliverables to ABM and the Eligible Recipients at the designated ABM Site by electronic transmission or by load and leave (where no tangible storage media is physically transferred to ABM or the Eligible Recipients).

#### 4.2 Transition Services.

- (a) **Transition.** During the Transition Period, Supplier shall perform the Transition Services and provide the deliverables described in the Transition Plan. If any subtasks not specifically described in the Transition Plan are an inherent or necessary part of the Transition Services or are required for proper performance of the Transition Services, such subtasks shall be deemed to be included within the scope of the Transition Services to be delivered for the transition charges, as if such subtasks were specifically described in the Transition Plan. During the Transition Period, ABM will perform those tasks which are designated to be ABM's responsibility in the Transition Plan; provided that, ABM shall not be obligated to perform any tasks during the Transition Period that are not set forth in such Transition Plan; and provided further that, if any subtasks not specifically described in the Transition Plan are an inherent or necessary part of the tasks specified in the Transition Plan as ABM's responsibility or are required for proper performance of such tasks, such subtasks shall be deemed to be included in the Transition Plan as ABM responsibilities as if such subtasks were specifically described therein. Unless otherwise agreed, ABM shall not incur any charges, fees or expenses payable to Supplier or third parties in connection with the Transition Services, other than those charges, fees and expenses specified in **Schedule J** and those incurred by ABM in connection with its performance of tasks designated in the Transition Plan as ABM's responsibility.
- (b) **Transition Plan.** The initial Transition Plan, which is attached as **Schedule H**, identifies the transition activities to be performed by Supplier, the date(s) by which each such activity or deliverable is to be completed ("Transition Milestones"), and the Deliverable Credits associated with the failure to meet specific Transition Milestones. Within thirty (30) days after the Effective Date, Supplier shall deliver to ABM a detailed Transition Plan for ABM's review, comment and approval. The proposed detailed Transition Plan shall describe in greater detail the specific transition activities to be performed by Supplier, but, unless otherwise agreed by ABM, shall be consistent in all material respects with the initial Transition Plan, including the activities, deliverables, Transition Milestones and Deliverable Credits described therein. The detailed Transition Plan shall identify and describe, among other things, (i) the transition activities to be performed by Supplier and the significant components and subcomponents of each such activity, (ii) the deliverables to be completed by Supplier, (iii) the date(s) by which each such activity or deliverable is to be completed, (iv) Supplier's plans for the hiring and long term retention of Transitioned Employees, (v) a process and set of standards acceptable to ABM to which Supplier

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shall adhere in the performance of the Transition Services and that will enable ABM to determine whether Supplier has successfully completed the transition and the activities and deliverables associated with each Transition Milestone, including measurable success criteria by Functional Service Areas that Supplier must meet before transitioning the work any further, (vi) a process for ABM to delay all or any part of the transition if ABM reasonably determines that any part of the transition poses a risk or hazard to ABM's or an Eligible Recipient's business interests (without any increase in Supplier's Charges if ABM's determination is based, at least in material part, on Supplier's failure to perform satisfactorily its transition obligations), (vii) the contingency or risk mitigation strategies to be employed by Supplier in the event of disruption or delay, and (viii) any transition responsibilities to be performed or transition resources to be provided by ABM.

- (c) **Performance.** Supplier shall perform the Transition Services described in the Transition Plan in accordance with the Transition Milestones set forth therein. Supplier shall provide the cooperation and assistance reasonably required or requested by ABM in connection with ABM's evaluation or testing of the deliverables set forth in the Transition Plan. Supplier shall perform the Transition Services so as to avoid or minimize to the extent reasonably possible (i) any disruption to or adverse impact on the business or operations of ABM or the Eligible Recipients, (ii) any degradation of the Services then being received by ABM or the Eligible Recipients, or (iii) any disruption or interference with the ability of ABM or the Eligible Recipients to obtain the full benefit of the Services, except as may be otherwise provided in the Transition Plan. Prior to undertaking any transition activity, Supplier shall discuss with ABM all known ABM-specific material risks and shall not proceed with such activity until ABM is reasonably satisfied with the plans with regard to such risks (provided that neither Supplier's disclosure of any such risks to ABM, nor ABM's acquiescence in Supplier's plans, shall operate or be construed as limiting Supplier's responsibilities under this Agreement); provided that, the Parties acknowledge and agree that any unreasonable delay in ABM's providing its agreement to proceed may result in a delay in Supplier's ability to meet the schedule set forth in the Transition Plan for which Supplier will be excused as and to the extent provided in **Section 10.2**. Supplier shall identify and resolve, with ABM's reasonable assistance, any problems that may impede or delay the timely completion of each task in the Transition Plan that is Supplier's responsibility and shall use commercially reasonable efforts to assist ABM with the resolution of applicable problems that may impede or delay the timely completion of each task in the Transition Plan that is ABM's responsibility.
- (d) **Reports.** Supplier shall meet at least weekly with ABM to report on its progress in performing the Transition Services set forth in the Transition Plan. Supplier also shall provide written reports to ABM at least weekly, or as otherwise agreed, regarding such matters, and shall provide oral reports more frequently if reasonably requested by ABM. Promptly upon receiving any information indicating that Supplier may not perform its responsibilities or meet the timetable set forth in the Transition Plan, Supplier shall notify ABM in writing of material delays and shall identify for ABM's consideration and approval specific measures to address such delay and mitigate the risks associated therewith.
- (e) **Failure to Meet Transition Milestones.** The Parties acknowledge and agree that the Transition Plan specifies various Transition Milestones by which material Transition activities and/or deliverables are to be completed. If Supplier fails to meet a Transition Milestone that is identified in **Schedule G** or **H** as a Critical Deliverable, it shall pay to ABM, at ABM's election, the applicable Deliverable Credit as liquidated damages and not as a penalty. The Parties agree that such Deliverable Credits are a reasonable estimate as of the date of this Agreement of the damages ABM will suffer in the event the respective Transition Milestone is not met. Notwithstanding the foregoing, if ABM terminates this Agreement for cause in accordance with **Section 4.2(f)**, ABM shall cease receiving Deliverable Credits and, subject to **Section 18.3**, shall be entitled to recover actual damages incurred in connection with such termination and relating to the period after the cessation of Deliverable Credits, to the extent ABM is able to prove such damages.
- (f) **Termination for Cause.** Notwithstanding the foregoing, ABM may terminate this Agreement for cause if (i) Supplier's failure to comply with its obligations with respect to Transition Services

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causes a material disruption to, or otherwise has a material adverse impact on, critical operations or functions of ABM or the Eligible Recipients, and Supplier fails to cure such failure within five (5) days after its receipt of notice, or (ii) Supplier commits any other material breach of its obligations with respect to Transition Services and fails to cure such breach within fifteen (15) days after its receipt of notice. In all such events, subject to **Section 18.3**, ABM may recover the damages suffered by ABM or Eligible Recipients in connection with such a termination and relating to the period after the cessation of Deliverable Credits.

#### 4.3 Termination Assistance Services.

- (a) **Availability.** As part of the Services, and for the Charges set forth in **Sections 4.3(b)(8)** and **4.3(b)(9)** and **Schedule J**, Supplier shall provide to ABM or ABM's designee the Termination Assistance Services described in **Section 4.3(b)** and **Schedule I**.
- (1) **Period of Provision.** Supplier shall provide such Termination Assistance Services to ABM or its designee (i) commencing upon notice up to six (6) months prior to the expiration of the Term or on such earlier date as ABM may reasonably request and continuing for up to twelve (12) months following the effective date of the expiration of the Term (as such Term may be extended pursuant to **Section 3.2**), (ii) commencing upon any notice of termination (including notice based upon breach or default by ABM, breach or default by Supplier or termination for convenience by ABM) of the Term with respect to all or any part of the Services, and continuing for up to twelve (12) months following the effective date of such termination of all or part of the Services, or (iii) commencing upon notice of termination of all or part of the Services to an Eligible Recipient no longer Controlled by or under common Control with ABM and continuing for up to twelve (12) months following the effective date of such termination.
- (2) **Extension of Services.** ABM may elect, upon sixty (60) days prior notice, to extend the effective date of any expiration/termination of all or part of the Services, in its sole discretion, provided that the total of all such extensions will not exceed one hundred and eighty (180) days following the originally specified effective date without Supplier's prior written consent. ABM also may elect, upon thirty (30) days prior notice, to extend the period following the effective date of any expiration/termination for the performance of Termination Assistance Services, provided that the period between such effective date and the completion of all Termination Assistance Services is not greater than eighteen (18) months. In each case, if ABM provides less than the applicable prior notice of an extension, Supplier shall nonetheless use commercially reasonable efforts to comply with ABM's request and provide the requested Services and/or Termination Assistance Services.
- (3) **Firm Commitment.** Supplier shall provide Termination Assistance Services to ABM or its designee regardless of the reason for the expiration or termination of the Term; provided, if the Agreement is terminated by Supplier under **Section 20.1(b)** for ABM's failure to pay amounts due under this Agreement, Supplier may require ABM to pay in advance for Termination Assistance Services provided or performed under this **Section 4.3** (including Services provided or performed pursuant to **Section 4.3(b)(8)**) in accordance with **Section 4.3(a)(5)**. At ABM's request, Supplier shall provide Termination Assistance Services directly to an Eligible Recipient or an Entity acquiring Control of an Eligible Recipient; provided that, unless otherwise agreed by the Parties, all such Termination Assistance Services shall be performed subject to and in accordance with the terms and conditions of this Agreement.
- (4) **Performance.** To the extent ABM requests Termination Assistance Services, such Services shall be provided subject to and in accordance with the terms and conditions of this Agreement. Supplier shall perform the Termination Assistance Services to the same

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degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar Services during the Term. The quality and level of performance of the Services provided by Supplier following the expiration or termination of the Term as to all or part of the Services or Supplier's receipt of a notice of termination or non-renewal shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect.

- (5) **Advance Payment.** If ABM is obligated to pay in advance for Termination Assistance Services, Supplier shall present an invoice for the estimated Charges for such Termination Assistance Services at least fifteen (15) days prior to the beginning of the month in which such Services are to be provided. Subject to Section 12.4 and the succeeding sentences, ABM shall then pay such Charges on or before the first day of such month. If ABM disputes and wishes to withhold any such Charges, it shall so notify Supplier and identify the basis for such dispute within five (5) days of its receipt of such invoice. In no event shall ABM withhold the base charges for the on-going Services provided under Section 4.3(b)(8). The Parties shall use commercially reasonable efforts to resolve any dispute relating to the Charges for Termination Assistance Services within five (5) days of ABM stating the basis for its dispute. If such dispute is not resolved within such time period, then the dispute shall be submitted to the senior executives of each Party in accordance with Section 19.1 for prompt resolution. The estimated Charges shall then be reconciled with the actual Charges for Termination Assistance Services provided in such month, and any additional Charges or credits will be reflected on the next invoice delivered after the end of such month. If, in such event, ABM fails to pay undisputed Charges for Termination Assistance Services on or before the first day of the month and fails to cure such default within thirty (30) days of notice from Supplier of its intention to terminate on this basis, Supplier may terminate the relationship and thereafter be relieved of any further responsibility to provide Termination Assistance Services.
- (b) **Scope of Service.** As part of the Termination Assistance Services, Supplier will timely transfer the control and responsibility for all application management, telecommunication, IT infrastructure, help desk, and information technology functions and Services previously performed by or for Supplier to ABM, Eligible Recipients and/or ABM's designees by the execution of any documents reasonably necessary to effect such transfers. Additionally, Supplier shall provide commercially reasonable assistance requested by ABM to allow:
- the Systems and processes associated with the Services to operate efficiently;
  - the Services to continue without unnecessary interruption or adverse effect; and
  - the orderly transfer of the Services to ABM and/or its designee(s).

The Termination Assistance Services shall include, as requested by ABM, the Services, functions and responsibilities set forth on Schedule I. In addition, in connection with such termination or expiration, Supplier will provide the following assistance and Services at ABM's direction:

- (1) **General Support.** Supplier shall (i) assist ABM and/or its designee in developing a written transition plan for the transition of the Services to ABM or ABM's designee, which plan shall include capacity planning, facilities planning, human resources planning, telecommunications planning and other planning necessary to effect the transition, (ii) perform programming and consulting services as requested to assist in implementing the transition plan, (iii) familiarize personnel designated by ABM in the use of any Equipment, Software, Systems, Materials or tools used in connection with the provision of the Services, (iv) catalog all Software, ABM Data, Equipment, Materials, Third Party Contracts and tools used to provide the Services, (v) provide machine readable and printed listings and associated documentation for source code for Software

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owned by ABM and source code to which ABM is entitled under this Agreement and assist in its re-configuration, (vi) analyze and report on the space required for the ABM Data and the Software needed to provide the Services; (vii) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to ABM or its designee has been successfully completed, (viii) create and provide copies of the ABM Data in the format and on the media reasonably requested by ABM, (ix) provide a complete and up-to-date, electronic copy of the Policy and Procedures Manual in the format and on the media reasonably requested by ABM, and (x) provide other technical assistance as requested by ABM.

(2) **Hiring.**

- (i) ABM or its designee shall be permitted to undertake, without interference from Supplier, Supplier Subcontractors (subject to Section 4.3(b)(2)(ii)) or Supplier Affiliates (including counter-offers), to hire, effective after the later of the termination of the Term or completion of any Termination Assistance Services requested under Section 4.3(b)(8), any Supplier Personnel primarily assigned to the performance of Services within the 12-month period prior to the expiration or termination date. Supplier shall waive, and shall cause its Affiliates to waive, their rights, if any, under contracts with such personnel restricting the ability of such personnel to be recruited or hired by ABM or its designee. ABM or its designee shall have reasonable access to such Supplier Personnel for interviews, evaluations and recruitment. ABM shall endeavor to conduct the above-described hiring activity in a manner that is not unnecessarily disruptive, in Supplier's reasonable determination, of the performance by Supplier of its obligations under this Agreement.
  - (ii) With respect to Subcontractors, Supplier shall use commercially reasonable efforts to (A) obtain for ABM, the Eligible Recipients and ABM's designees the rights specified in this Sections 4.3(b)(2), and (B) provide that the such rights are not subject to subsequent Subcontractor approval or the payment by ABM, the Eligible Recipients or ABM's designee of any fees. If Supplier is unable to obtain any such rights with respect to Subcontractors, it shall notify ABM in advance and shall not use such Subcontractors without ABM's approval (and absent such approval, Supplier's use of any such Subcontractors shall obligate Supplier to obtain or arrange, at no additional cost to ABM, the rights specified in this Section 4.3(b)(2), for ABM, the Eligible Recipients and ABM's designees upon expiration or termination).
- (3) **Software.** Supplier shall provide, and hereby grants to ABM, the Eligible Recipients and/or ABM's designee certain license, sublicense and/or other rights to certain Software and other Materials used by Supplier, Supplier Affiliates or Subcontractors in performing the Services, all as described in Section 14.6.
- (4) **Equipment.** Subject to Section 6.5(d) and (g), ABM, Eligible Recipients or ABM's designee shall have the right (but not the obligation) to purchase, or assume the lease for, any Equipment owned or leased by Supplier that is used on a dedicated basis by Supplier, Supplier Subcontractors or Supplier Affiliates to perform the Services. Such Equipment shall be transferred in good working condition, reasonable wear and tear excepted (other than Equipment transferred to Supplier by ABM which shall be in a condition at least as good as the condition in which it was provided to Supplier), as of the expiration or termination date or the completion of any Services requiring such Equipment requested by ABM under Section 4.3(b)(8), whichever is later. Supplier shall maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program at no additional charge to ABM. In the case of Supplier-owned equipment, Supplier shall grant to ABM or its designee a warranty of

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title and a warranty that such Equipment is free and clear of all liens and encumbrances. Such conveyance by Supplier to ABM or its designee shall be at fair market value. At ABM's request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of Supplier leased Equipment, Supplier shall (i) represent and warrant that to its knowledge, the lease is not in default, (ii) represent and warrant that all payments thereunder have been made through the date of transfer, and (iii) notify ABM of any lessor defaults of which it is aware at the time.

- (5) **ABM Facilities, Equipment and Software.** Supplier shall vacate the ABM Facilities and return to ABM, if not previously returned, all ABM owned Equipment, ABM leased Equipment, ABM Owned Software and ABM licensed Software, in condition at least as good as the condition thereof on the Commencement Date, ordinary wear and tear excepted. Such Equipment and Software shall be returned at the expiration or termination date or the completion of any Services requiring such Equipment and Software requested by ABM under Section 4.3(b)(8), whichever is later. Supplier shall vacate the ABM Facilities and remove, unless otherwise required under this Agreement, all Supplier owned Equipment, Supplier leased Equipment, Supplier Owned Software, Supplier licensed Third Party Software and other Supplier property within fourteen (14) days after the expiration date, termination date or date upon which such space is no longer required to perform the Services or Termination Assistance Services requested by ABM, whichever is later.
- (6) **Supplier Subcontracts and Third Party Contracts.** Supplier shall inform ABM of subcontracts or Third Party Contracts primarily used by Supplier, Supplier Subcontractors or Supplier Affiliates to perform the Services. Subject to Sections 6.4(c), 6.5(d), and 6.6(c), Supplier shall, at ABM's request, cause any such Subcontractors, Supplier Affiliates, or third party contractors to permit ABM or its designee to assume prospectively any or all such contracts or to enter into new contracts with ABM or its designee on substantially the same terms and conditions, including price. Supplier shall so assign the designated subcontracts and Third Party Contracts to ABM or its designee as of the expiration or termination date or the completion of any Termination Assistance Services requiring such subcontracts or Third Party Contracts requested by ABM under Section 4.3(b)(8), whichever is later. Unless otherwise agreed by ABM, there shall be no charge or fee imposed on ABM or its designee by Supplier or its Subcontractors, Affiliates or third party contractors for such assignment. Supplier shall (i) represent and warrant that to its knowledge, it is not in default under such subcontracts and Third Party Contracts, (ii) represent and warrant that all payments thereunder through the date of assignment are current, and (iii) notify ABM of any Subcontractor or third party contractors defaults with respect to such subcontracts and Third Party Contracts of which it is aware at the time.
- (7) **Other Subcontracts and Third Party Contracts.** In addition to its obligations under Section 4.3(b)(6), Supplier shall make available to ABM or its designee, pursuant to reasonable terms and conditions, any Subcontractor or third party services then being utilized by Supplier in the performance of the Services. Supplier shall retain the right to utilize any such Subcontractor or third party services in connection with the performance of services for any other Supplier customer. ABM and the Eligible Recipients shall retain the right to contract directly with any Subcontractor or third party previously utilized by Supplier to perform any Services or to assume Supplier's contract with such Subcontractor or third party to the extent provided in Section 4.3(b)(6).
- (8) **Extension of Services.** For a period of twelve (12) months following the expiration or termination date, Supplier shall provide to the Eligible Recipient(s), at ABM's request, any or all of the Services being performed by Supplier prior to the expiration or termination date, including those Services described in Section 4.1 and Schedule E; provided that ABM may extend the period for the provision of such Services for up to six

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(6) additional months in accordance with **Section 4.3(a)(2)**. ABM shall deliver notice to Supplier specifying the Services to be provided by Supplier pursuant to this **Section 4.3(b)(8)** and the period for which such Services are expected to be required on or before the following: (i) ninety (90) days prior to the expiration of the Term or any extension period in the case of contract expiration; (ii) sixty (60) days prior to the termination date in the case of a termination pursuant to **Sections 20.2, 20.3 or 20.4**; or (iii) within thirty (30) days after delivery of the notice of termination in all other cases; provided that, subject to **Section 4.3(a)(2)**, ABM may extend or shorten the period for the performance of such Services by delivering notice to Supplier at least thirty (30) days prior to the scheduled completion date for such Services. To the extent ABM requests such Services, ABM will pay Supplier the Charges specified in **Schedule J** that ABM would have been obligated to pay Supplier for such Services if this Agreement had not yet expired or been terminated. To the extent ABM requests a portion (but not all) of the Services included in a particular Charge, the amount to be paid by ABM will be equitably adjusted in proportion to the portion of the Services included in the applicable Charge that Supplier will not be providing or performing.

- (9) **Rates and Charges.** Except as provided in **Section 4.3(b)(8)**, if ABM requests that Supplier provide or perform Termination Assistance Services in accordance with this Agreement, ABM shall pay Supplier the rates and charges specified in **Schedule J** for the additional Supplier Personnel or resources required to perform such Termination Assistance Services. To the extent rates and charges for such Supplier Personnel or resources are not specified in **Schedule J**, ABM shall pay Supplier a negotiated fee, which shall not exceed Supplier's then-current commercially available rates. If the Termination Assistance Services requested by ABM can be provided by Supplier using Supplier Personnel and resources already assigned to ABM (and such personnel possess the skills required to perform the requested work), there will be no additional charge to ABM for such Termination Assistance Services. If the Termination Assistance Services requested by ABM cannot be provided by Supplier using personnel and resources already assigned to ABM without impacting Supplier's ability to meet the Service Levels and its other obligations under the Agreement, ABM, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such Termination Assistance Services using such personnel or resources.
- (10) **Proprietary Communications Network.** If Supplier uses a proprietary communications network to provide Services to ABM or the Eligible Recipients, then for a period of no more than eighteen (18) months following the expiration or termination date, ABM may request that Supplier continue to provide such proprietary communications network and other Network Services at the rates, and subject to the terms and conditions, set forth in this Agreement.
- (c) **Survival of Terms.** Pursuant to **Section 21.10**, this **Section 4.3** shall survive termination/expiration of the Term.

#### 4.4 Use of Third Parties.

- (a) **Right of Use.** Subject to **Section 13(d)** of **Schedule J**, nothing in this Agreement shall be construed as a requirements contract and this Agreement shall not be interpreted to prevent ABM or any Eligible Recipient from obtaining from third parties ("ABM Third Party Contractors"), or providing to itself, any or all of the Services described in this Agreement or any other services. Nor shall anything in this Agreement be construed or interpreted as limiting ABM's right or ability during the Term to add or delete Eligible Recipients or to increase or decrease its demand for Services. To the extent ABM or an Eligible Recipient obtains from ABM Third Party Contractors, or provides to itself, any of the Services in accordance with the terms of this

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Agreement, the Charges will be equitably adjusted downward in accordance with **Schedule J**. Similarly, to the extent ABM adds or deletes Eligible Recipients or increases or decreases its demand for Services, the amount to be paid to Supplier by ABM will be adjusted in accordance with **Schedule J** and the rates specified therein.

- (b) **Supplier Cooperation.** Supplier shall reasonably cooperate with and work in good faith with ABM or ABM Third Party Contractors as described in **Schedule E** or requested by ABM and at no additional charge to ABM. Such cooperation may include: (i) timely providing access to any facilities being used to provide the Services, as reasonably necessary for ABM personnel or ABM Third Party Contractors to perform the work assigned to them; (ii) timely providing reasonable electronic and physical access to the business processes and associated Equipment, Software and/or Systems to the extent necessary and appropriate for ABM personnel or ABM Third Party Contractors to perform the work assigned to them; (iii) timely providing written requirements, standards, policies or other documentation for the business processes and associated Equipment, Software or Systems procured, operated, supported or used by Supplier in connection with the Services; or (iv) any other cooperation or assistance reasonably necessary for ABM personnel or ABM Third Party Contractors to perform the work in question. ABM personnel and ABM Third Party Contractors shall comply with Supplier's reasonable security and confidentiality requirements, and shall, to the extent performing work on Software, Equipment or Systems for which Supplier has operational responsibility, comply with Supplier's reasonable standards, methodologies, and procedures.
- (c) **Notice by Supplier.** Supplier shall expeditiously notify ABM when it becomes aware that an act or omission of an ABM Third Party Contractor will cause, or has caused, a problem or delay in providing the Services, and shall use commercially reasonable efforts to work with ABM and the ABM Third Party Contractor to prevent or circumvent such problem or delay. Supplier shall cooperate with ABM and ABM Third Party Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by ABM or ABM Third Party Contractors.

#### 4.5 Companion Agreements

- (a) At ABM's request, the terms of this Master Agreement shall be incorporated by reference into individual Companion Agreements, which shall be executed by International Business Machines Corporation or an Affiliate of International Business Machines Corporation and ABM Industries Incorporated or an Eligible Recipient. Unless otherwise agreed, the form of the Companion Agreement shall be as set forth in **Schedule W**. All Services shall be provided by International Business Machines Corporation or the applicable Affiliate of International Business Machines Corporation pursuant to this Master Agreement or an executed Companion Agreement. Unless and to the extent an individual Companion Agreement expressly provides otherwise, each Companion Agreement shall incorporate by reference the terms and conditions of this Master Agreement and shall not be construed as altering or superseding the rights and obligations of the Parties under this Master Agreement. If requested by ABM, the Parties will execute a Companion Agreement in a form acceptable to each Party.
- (b) The Supplier Account Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of Supplier.
- (c) The ABM Relationship Manager (and his or her designees(s)) shall remain responsible for the administration of this Master Agreement and the individual Companion Agreements on a day-to-day basis on behalf of ABM and the Eligible Recipients.

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## **5. REQUIRED CONSENTS**

### **5.1 Supplier Responsibility.**

At no additional cost to ABM, Supplier shall undertake all administrative activities necessary to obtain all Required Consents. At Supplier's request, ABM will cooperate with Supplier in obtaining the Required Consents by executing certain ABM approved written communications and other documents prepared or provided by Supplier. With ABM's approval, Supplier shall exercise for the benefit of ABM any rights Supplier has to utilize or transfer license rights or other applicable rights under Supplier's existing third party licenses, leases or contracts.

### **5.2 Financial Responsibility.**

Supplier shall pay all transfer, relicensing or termination fees or expenses associated with obtaining any Required Consents or, subject to **Section 5.4**, terminating any licenses or agreements as to which Supplier is unable to obtain such Required Consents (provided that, with respect to Third Party Software, Third Party Contracts or Equipment leases procured by ABM after the Effective Date, ABM shall be responsible for obtaining any Required Consents and paying any fees or expenses associated therewith in connection with its procurement of such license or agreement).

### **5.3 Contingent Arrangements.**

If, despite using commercially reasonable efforts, Supplier is unable to obtain a Required Consent, then, unless and until such Required Consent is obtained, Supplier shall use commercially reasonable efforts to determine and adopt, subject to ABM's reasonable prior approval, such alternative approaches as are necessary and sufficient to provide the Services without such Required Consent. If such alternative approaches are required for a period longer than ninety (90) days following the Commencement Date, the Parties shall equitably adjust the terms and reduce the prices specified in this Agreement to reflect any additional costs being incurred by ABM and any Services not being received by ABM and the Eligible Recipients.

### **5.4 Failure to Obtain Required Consents.**

If, despite using commercially reasonable efforts for a reasonable period of time, Supplier is unable to obtain a Required Consent, the Parties shall take such actions and execute and deliver such documents as may be necessary to cause the Parties to realize the practical effects of the allocation of responsibilities intended to be effected by this Agreement. If, however, Supplier fails to obtain any Required Consent within ninety (90) days of the Commencement Date and such failure has a material adverse impact on the use or enjoyment of the Services by ABM or the Eligible Recipients, ABM may terminate this Agreement or any affected portions thereof without payment of any Termination Charges. Except as otherwise expressly provided herein, the failure to obtain any Required Consent will not relieve Supplier of its obligations under this Agreement and Supplier will not be entitled to any additional compensation or reimbursement amounts in connection with obtaining or failing to obtain any Required Consent or implementing any alternative approach.

## **6. FACILITIES, SOFTWARE, EQUIPMENT, CONTRACTS AND ASSETS ASSOCIATED WITH THE PROVISION OF SERVICES**

### **6.1 Service Facilities**

#### **(a) Service Facilities.**

- (i) The Services shall be provided at or from (i) the ABM Facilities described on **Schedule O.1**, (ii) the Supplier Facilities described on **Schedule O.2** (as such **Schedule** is amended

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from time to time with ABM's prior approval), each of which must be approved in advance by ABM, or (iii) any other service location approved by Supplier and ABM. Supplier shall provide ABM with reasonable notice of its intention to relocate the provision of a Service to a new or different Supplier Facility not identified on **Schedule O.2** and shall obtain ABM's approval prior to doing so (provided that Supplier shall not be obligated to obtain ABM's approval with respect to Supplier Facilities to which **Section 6.1(a)(ii)** applies). Supplier shall notify ABM in advance of any new or additional Service Taxes for which ABM would be financially responsible associated with the provision of Services from new or changed service location(s). ABM shall be entitled to withhold approval of any such new or changed service location in its sole discretion if the delivery of Services from such new or changed service location would (i) result in new or additional Services Taxes for which ABM would be financially responsible under this Agreement (unless Supplier assumes financial responsibility for such new or additional Service Taxes), (ii) result in the delivery of Services from locations or by personnel outside the United States, or (iii) have an adverse impact or require changes as described in **Section 9.6(c)**.

- (ii) Notwithstanding **Section 6.1(a)(i)** above, Supplier may relocate Services from an approved Supplier Facility in the United States to another Supplier Facility in the United States, provided: (A) Supplier provides notice to ABM at least sixty (60) days prior to the effective date of such relocation; (B) the Supplier Facility to which the Services are to be relocated is comparable or superior in all material respects to the approved Supplier Facility from which such Services had previously been performed; (C) the Supplier Facility to which the Services are to be relocated complies with all relevant requirements and Supplier obligations under this Agreement; (D) the Supplier Facility to which the Services are to be relocated presents no greater risk from a disaster recovery or business continuity perspective; (E) Supplier promptly provides ABM with information and documentation demonstrating that such Supplier Facility complies with the criteria specified in Subsections (B), (C) and (D) and provides ABM with a reasonable opportunity to independently verify such compliance; (F) Supplier remedies any known non-compliance with the criteria specified in Subsections (B), (C) and (D) prior to relocating the Services in question; and (G) Supplier agrees to be financially responsible for any additional costs, taxes or expenses related to or resulting from such relocation, including any costs or expenses (e.g., audit or Sarbanes-Oxley compliance costs) incurred or experienced by ABM or any Eligible Recipient as a result of such relocation; provided that, within thirty (30) days after ABM has been notified of the potential relocation, ABM notifies Supplier of any ABM controlled costs and expenses (excluding any taxes) that will be incurred or experienced by ABM or any Eligible Recipient as a result of such relocation.
- (b) **ABM Facilities.** ABM shall provide Supplier with the use of and access to the ABM Facilities (or equivalent space) described in **Schedule O.1** for the periods specified therein solely as necessary for Supplier to perform its obligations under this Agreement. All ABM owned or leased assets provided for the use of Supplier under this Agreement shall remain in ABM Facilities unless ABM otherwise agrees. In addition, all improvements or modifications to ABM Facilities requested by Supplier shall be (i) subject to review and approval in advance by ABM, (ii) in compliance with ABM's then-current policies, standards, rules and procedures, and (iii) performed by and through ABM at then current industry commercial rates and at Supplier's expense. Supplier acknowledges and agrees that the facilities to be provided by ABM are sufficient for performing the Services and for satisfying Supplier's responsibilities under this Agreement. THE ABM FACILITIES ARE PROVIDED BY ABM TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ABM EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ABM FACILITIES, OR THEIR CONDITION OR SUITABILITY FOR USE BY SUPPLIER.

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- (c) **Furniture, Fixtures and Equipment.** At the ABM Facilities described in Schedule O.1, ABM shall provide office space and office furniture for up to the number of Supplier Personnel specified in Schedule O.1 for the period(s) specified in Schedule O.1. The office space and office furniture provided by ABM for the use of Supplier Personnel will be generally comparable to the office space and office furniture provided to (i) the Transitioned Employees prior to the Commencement Date or (ii) the then-standard office space and office furniture provided to similarly situated ABM employees. Other than as provided above and in Schedule O.1, Supplier shall be financially responsible for providing all other office space, office furniture and fixtures needed by Supplier or Supplier Personnel (including Transitioned Employees) to provide the Services, and for all upgrades, replacements and additions to such office furniture or fixtures; provided that such office furniture and fixtures must be approved in advance by ABM and meet ABM's then-current standards; and provided further that Supplier shall give reasonable consideration to the purchase and use of surplus ABM furniture and fixtures to the extent available. Notwithstanding the foregoing, to the extent Supplier demonstrates that unanticipated increases in the volumes of certain Services can be reasonably met only by locating additional Supplier Personnel at certain ABM Facilities and that such additional Supplier Personnel cannot be reasonably accommodated within the space in such facilities then assigned to Supplier, ABM shall use commercially reasonable efforts to provide Supplier with additional office space and office furniture in such ABM Facilities to the extent vacant space and excess furniture are then available in such ABM Facilities; provided that Supplier shall use commercially reasonable efforts to minimize the extent to which additional office space and office furniture are required and the cost to ABM associated therewith. Supplier Personnel using the office facilities provided by ABM will be accorded reasonable access to the communications wiring in such facilities (including fiber, copper and wall jacks and reasonable access to the ABM data networks, subject to Section 6.1(d)) and the use of certain shared office equipment and services, such as photocopiers, local and long distance telephone service for ABM-related calls, telephone handsets, mail service, office support service (e.g., janitorial), heat, light, and air conditioning; provided that such access and usage shall be solely for and in connection with the provision of Services by such Supplier Personnel; and provided further that Supplier shall reimburse ABM for the additional incremental costs incurred by ABM or the Eligible Recipients if and to the extent Supplier's technology solution, service delivery model and/or inefficiency cause its usage or consumption of such resources to exceed verifiable historical levels. Subject to Section 6.5(a), Supplier shall be responsible for providing all other office related equipment and services needed by Supplier or Supplier Personnel at such ABM Facilities to provide the Services, and for upgrades, improvements, replacements and additions to such equipment or services.
- (d) **Supplier's Responsibilities Regarding the ABM Network.** To the extent any Equipment provided or used by Supplier or Supplier Personnel is connected directly to the network(s) of ABM or any Eligible Recipient, such Equipment shall be (i) subject to review and approval in advance by ABM, (ii) in compliance with ABM's then-current security policies, architectures, standards, rules and procedures, and (iii) in compliance with ABM's then-current hardware and software specifications. Supplier shall not install or permit the installation of any other software on such Equipment without ABM's prior approval.
- (e) **Supplier's Responsibilities.** Except as provided in Sections 6.1(a), (b) and (c) and Section 6.5, Supplier shall be responsible for providing all furniture, fixtures, Equipment, space and other facilities required to perform the Services and all upgrades, improvements, replacements and additions to such furniture, fixtures, Equipment, space and facilities. Without limiting the foregoing, Supplier shall (i) provide all maintenance, site management, site administration and similar services for the Supplier Facilities, and (ii) provide uninterrupted power supply services for the Software, Equipment, Systems and facilities as described in Schedule O.2.
- (f) **Physical Security.** Except as provided below, ABM shall be responsible for physical security at the ABM Facilities listed in Schedule O.1; provided that Supplier will be administratively responsible for access and control of the areas that Supplier is using in performing the Services and Supplier shall not permit any person to have access to, or control of, any such area unless such

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access or control is permitted in accordance with control procedures approved by ABM. Supplier shall be solely responsible for compliance by Supplier Personnel with such control procedures, including obtaining advance approval to the extent required.

Notwithstanding the foregoing, Supplier shall be responsible for physical security at ABM Facilities used exclusively by Supplier (i.e., the ABM data center, alternate disaster recovery site and tape vault); provided that ABM shall retain responsibility for the provision of any security guards assigned to such ABM Facilities and the maintenance of the key card systems, surveillance cameras and other security devices installed at such ABM Facilities.

- (g) **Standards, Requirements and Procedures at ABM Facilities.** Except as provided in Section 6.1(f), Supplier shall adhere to and enforce, and cause Supplier Personnel to adhere to and enforce, the operational, safety and security standards, requirements and procedures described in the applicable lease and/or then in effect at the ABM Facilities, as such standards, requirements and procedures may be modified from time to time by ABM and communicated to Supplier in accordance with Section 6.3(a). Supplier shall regularly advise ABM of other known operational, safety and security practices, procedures and safeguards where those practices, procedures and safeguards are of a higher standard than those contemplated in this Agreement.
- (h) **Employee Services.** Subject to applicable security requirements, ABM will permit Supplier Personnel to use certain employee facilities (e.g., designated parking facilities, cafeteria, and common facilities) at the ABM Facilities that are generally made available to the employees and contractors of ABM or the Eligible Recipients. The employee facilities in question and the extent of Supplier Personnel's permitted use shall be specified in writing by ABM and shall be subject to modification without advance notice in ABM's sole discretion. Supplier Personnel will not be permitted to use employee facilities designated by ABM for the exclusive use of certain ABM or Eligible Recipient employees and will not be entitled to the provision or reimbursement of paid parking.
- (i) **Use of ABM Facilities.** Unless Supplier obtains ABM's prior written agreement, which may be withheld by ABM in its sole discretion, Supplier shall use the ABM Facilities, and the Equipment and Software located therein, only to provide the Services to ABM and the Eligible Recipients. ABM reserves the right to relocate an ABM Facility from which the Services are then being provided by Supplier to another geographic location; provided that, in such event, ABM will provide Supplier with comparable space in the new location. In such event, ABM shall reimburse Supplier for any reasonable incremental Out-of-Pocket Expenses incurred by Supplier in moving to the new location and/or making any facility or network upgrades or changes required to perform the Services from such location; provided that Supplier notifies ABM of such incremental expenses, obtains ABM's approval prior to incurring such expenses; and uses commercially reasonable efforts to minimize such expenses.

ABM also reserves the right to direct Supplier to cease using all or part of the space in an ABM Facility from which the Services are then being provided by Supplier and to thereafter use such space for its own purposes. In such event, ABM shall reimburse Supplier for any reasonable incremental Out-of-Pocket Expenses incurred by Supplier in leasing substitute space, moving to the new location and/or making any facility or network upgrades or changes required to perform the Services from such location; provided that such direction is not expressly contemplated in this Agreement and that Supplier notifies ABM of such incremental expenses, obtains ABM's approval prior to incurring such expenses, and uses commercially reasonable efforts to minimize such expenses.

In both cases, Supplier shall be relieved of responsibility if and to the extent Supplier is unable to provide the Services in accordance with the Service Levels during the actual relocation of Supplier's operations; provided that such relocation is not expressly contemplated in this Agreement as of the Effective Date and that Supplier (1) uses commercially reasonable efforts to

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notify ABM in advance of its inability to perform during such relocation, (2) gives ABM a reasonable opportunity to address Supplier's concerns and thereby avoid such Supplier non-performance, (3) identifies and pursues commercially reasonable means to avoid or mitigate the impact of such relocation and (4) uses commercially reasonable efforts to perform notwithstanding such relocation.

- (j) **Conditions for Return.** When the ABM Facilities are no longer to be used by Supplier as contemplated by Section 6.1 or are otherwise no longer required for performance of the Services, Supplier shall notify ABM as soon as practicable and shall vacate and return such ABM Facilities (including any improvements to such facilities made by or at the request of Supplier) to ABM in substantially the same condition as when such facilities were first provided to Supplier, subject to reasonable wear and tear.
- (k) **No Violation of Laws.** Supplier shall (i) treat, use and maintain the ABM Facilities in a reasonable manner, and (ii) ensure that neither Supplier nor, subject to Section 9.12, any of its Subcontractors commits, and use reasonable efforts to ensure that none of its business visitors or invitees commits, any act in violation of any Laws in such Supplier occupied ABM Facility or any act in violation of ABM's insurance policies or in breach of ABM's obligations under the applicable real estate leases in such Supplier occupied ABM Facilities (in each case, to the extent Supplier has received notice of such insurance policies or real estate leases or should reasonably be expected to know of such obligations or limitations).

## 6.2 Use of Supplier Facilities.

During the Term, Supplier will provide to ABM at no charge (i) reasonable periodic use of Supplier facilities at Supplier sites where the Services are being performed and (ii) access to reasonable work/conference space at Supplier sites where the Services are being performed, for the conduct of ABM's business directly related to Supplier's performance of the Services.

## 6.3 ABM Rules/Employee Safety.

- (a) **ABM Rules and Compliance.** In performing the Services and using the ABM Facilities, Supplier shall observe and comply with all ABM policies, rules and regulations applicable to ABM Facilities or the provision of the Services (and all additions or modifications thereto), including those set forth on Schedule O.4 and those applicable to specific ABM Sites (collectively, "**ABM Rules**"). Supplier shall be deemed to have notice of ABM Rules (and additions or modifications thereto) communicated directly to Supplier or Supplier Personnel, disclosed to Supplier or Supplier Personnel in writing, conspicuously posted at an ABM Site, or communicated by any other means generally used by ABM to disseminate such information to its employees or contractors (including ABM Rules communicated to Supplier prior to the Effective Date and to Transitioned Employees prior to hiring by Supplier). Supplier shall be responsible for the promulgation and distribution of ABM Rules to Supplier Personnel as and to the extent necessary and appropriate.
- (b) **Safety and Health Compliance.** Supplier and Supplier Personnel shall familiarize themselves with the premises and operations at each ABM Site or ABM Facility at or from which Services are rendered and the ABM Rules applicable to each such Site or Facility. Supplier and Supplier Personnel shall observe and comply with the OSHA regulations, all applicable safety and environmental Laws, all industrial insurance, security and health regulations, and all other Laws applicable to the use of each ABM Facility or Site or the provision of the Services. Supplier and Supplier Personnel also shall observe and comply with all ABM Rules with respect to safety, health, security, industrial insurance, and the environment and shall take commercially reasonable precautions to avoid injury, property damage, spills or emissions of hazardous substances, materials or waste, and other dangers to persons, property or the environment. To the extent

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required by ABM, Supplier Personnel shall receive prescribed training prior to entering certain ABM Sites or Facilities.

#### 6.4 Software.

- (a) **Financial Responsibility.** Supplier shall be responsible for any third party fees or expenses on or after the Commencement Date associated with the provision of the Services described in this Agreement with respect to Software and related Third Party Contracts for which Supplier is financially responsible under Schedules E and J.1. Supplier also shall be responsible for any third party fees or expenses on or after the Commencement Date associated with new, substitute or replacement Software or related Third Party Contracts (including upgrades, enhancements, new versions or new releases of such Software) for which Supplier is financially responsible under Schedules E and J.1. With respect to Software licenses and related Third Party Contracts that are transferred to Supplier by ABM or for which Supplier otherwise assumes financial responsibility under this Agreement, including those listed on Schedules E.3 and E.4, Supplier shall (i) pay all amounts becoming due under such licenses or related Agreements, and all related expenses, for periods on or after the Commencement Date and which are not related to periods prior to the Commencement Date (e.g., late fees, penalties or other amounts relating to payments due prior to the Commencement Date) which remain ABM's responsibility; (ii) rebate to ABM any prepayment of such amounts in accordance with Section 11.10(a); (iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses that relate to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the acts or omissions of ABM in contravention of its obligations under this Agreement); (iv) pay all costs associated with the transfer of such licenses and contracts to Supplier, including all taxes associated with such transfer; and (v) be responsible for complying with Supplier's duties and obligations under such licenses or contracts on or after the Commencement Date and for curing any failure to so comply (except to the extent that such failure directly results from the acts or omissions of ABM in contravention of its obligations under this Agreement).
- (b) **Operational Responsibility.** With respect to Software and related Third Party Contracts for which Supplier is operationally responsible under Schedules E and J.1, Supplier shall be responsible for (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Software and related Third Party Contracts; (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Software and related Third Party Contracts (including upgrades, enhancements, new versions or new releases of such Software); (iii) the performance, availability, and operational reliability of the Application Software and the performance, availability, operational reliability, compatibility and interoperability of all other Software and Third Party Contracts, each in accordance with this Agreement, including the Service Levels and Change Management; (iv) the compliance with and performance of all operational, administrative and contractual obligations specified in such licenses and contracts; (v) the administration and exercise as appropriate of all rights available under such licenses and agreements; and (vi) the payment of any fees, penalties, charges, interest or other expenses due and owing under such Software Licenses and related Third Party Contracts that are incurred, caused by or result from Supplier's failure to comply with or perform its obligations under this Section 6.4(b) (except to the extent that such failure directly results from the acts or omissions of ABM in contravention of its obligations under this Agreement).
- (c) **Rights Upon Expiration/Termination.** With respect to all Third Party Software and related Third Party Contracts for which Supplier is financially responsible under Schedule E or J.1, Supplier shall use commercially reasonable efforts to (i) obtain for ABM (or, at ABM's direction, its designee) the license, sublicense, assignment and other rights specified or referenced in Sections 4.3(b)(3) and 14.6, (ii) ensure that such license, sublicense, assignment and other rights are at least broad enough to permit ABM (or, at ABM's direction, its designee) to use such Third

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Party Software and related Third Party Contracts to provide for ABM and the Eligible Recipients, or have provided for them by third party contractors, services similar to the Services, and for ABM and the Eligible Recipients to receive such services; (iii) ensure that, following the termination of all or part of the Services to an Eligible Recipient no longer Controlled by or under common Control with ABM, any such license, sublicense, assignment or other rights relating to Third Party Software or related Third Party Contracts used exclusively by or for such Eligible Recipient may be granted, at ABM Service's direction, directly to such Eligible Recipient, (iv) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by ABM (or, at ABM's direction, its designee) of license or transfer fees (other than regular periodic license fees for periods after the date of transfer), (v) ensure that the terms, conditions and prices applicable to ABM (or, at ABM's direction, its designee) following expiration or termination are no less favorable than those otherwise applicable to Supplier, and at least sufficient for the continuation of the activities comprising the Services, and (vi) ensure that neither the expiration/termination of this Agreement nor the assignment of the license or contract will trigger less favorable terms, conditions or pricing. If Supplier is unable to obtain any such rights and assurances, it shall notify ABM in advance and shall not use such Software or Third Party Contracts without ABM's approval (and absent such approval, Supplier's use of any such Software or Third Party Contract shall obligate Supplier to procure, at no additional cost to ABM, the license, sublicense, assignment and other rights described above for ABM (or, at ABM's direction, its designee) upon expiration or termination). If ABM consents to Supplier's use of specific Third Party Software licenses or Third Party Contracts under these circumstances, such consent will be deemed to be conditioned on Supplier's commitment to use commercially reasonable efforts to cause such third party to agree at expiration or termination of this Agreement or the completion of Termination Assistance Services to permit ABM (or, at ABM's direction, its designee) to assume prospectively the license or contract in question or to enter into a new license or contract with ABM (or, at ABM's direction, its designee) on substantially the same terms and conditions, including price. If ABM consents to Supplier's use of specific Third Party Software licenses or Third Party Contracts under these circumstances, such Third Party Software licenses or Third Party Contracts will be added to **Schedule V**.

- (d) **Evaluation of Third Party Software.** In addition to its obligations under **Section 6.4(a)** and **(b)** and in order to facilitate ABM's control of architecture, standards and plans pursuant to **Section 9.5**, Supplier shall use commercially reasonable efforts to assist ABM in evaluating any Third Party Software selected by or for ABM to determine whether such Software will adversely affect ABM's environment and/or Supplier's ability to provide the Services. Supplier shall complete and report the results of such evaluation to ABM within thirty (30) days of its receipt of ABM's request; provided, that Supplier shall use commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation.
- (e) **Benefits Pass-Through.** With respect to all products and services procured by Supplier for ABM on a cost-plus, cost-reimbursement or Pass-Through Expense basis during the course of performing the Services, Supplier shall use commercially reasonable efforts to pass through to ABM all benefits offered by the manufacturers and/or suppliers of such products and services (including, as applicable, all warranties, refunds, credits, rebates, discounts, training, technical support and other consideration offered by such manufacturers and suppliers) except to the extent otherwise agreed by ABM. If Supplier is unable to pass through any such benefit to ABM, it shall notify ABM in advance and shall not purchase such product or service without ABM's prior written approval.

## 6.5 Equipment.

- (a) **ABM Provided Equipment.** ABM shall provide Supplier with the use of the ABM owned and leased Equipment identified on **Schedule O.3** (collectively, the "ABM Provided Equipment") for the periods specified in such Schedule solely for and in connection with the provision of the

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Services. Notwithstanding the foregoing, except as provided in this **Section 6.5(a)** and **Sections 6.1(a), (b) and (c)**, Supplier shall be responsible for providing all Equipment required to perform the Services and all Upgrades, improvements, replacements and additions thereto in accordance with the applicable refresh schedule. Upon the expiration of the period specified in **Schedule O.3** for each item of ABM Provided Equipment (or when such ABM Provided Equipment is no longer required by Supplier for the performance of the Services), Supplier shall promptly return such ABM Provided Equipment to ABM in substantially the same condition (as it may have been modified or improved by Supplier with ABM's approval) as when such ABM Provided Equipment was first provided to Supplier, subject to reasonable wear and tear. THE ABM PROVIDED EQUIPMENT IS PROVIDED BY ABM TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS. ABM EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE ABM PROVIDED EQUIPMENT, OR ITS CONDITION OR SUITABILITY FOR USE BY SUPPLIER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- (b) **Financial Responsibility.** Supplier shall be responsible for third party fees or expenses on or after the Commencement Date associated with Equipment, Equipment leases and related Third Party Contracts for which Supplier is financially responsible under **Schedules E and J.1**. Supplier also shall be responsible for any third party fees or expenses relating to periods on or after the Commencement Date associated with new, substitute or replacement Equipment, Equipment leases or related Third Party Contracts (including upgrades, enhancements or new releases of such Equipment) for which Supplier is financially responsible under **Schedules E and J.1**. With respect to Equipment, Equipment Leases and related Third Party Contracts that are transferred to Supplier by ABM or for which Supplier otherwise assumes responsibility under this Agreement, including the Equipment Leases and Third Party Contracts listed on **Schedules F.2 and F.3**, Supplier shall (i) pay all amounts becoming due with respect to such Equipment, leases or agreements, and all related expenses, for periods on or after the Commencement Date and which are not related to periods prior to the Commencement Date (e.g., late fees, penalties or other amounts relating to payments due prior to the Commencement Date) which remain ABM's responsibility; (ii) rebate to ABM any prepayment of such amounts in accordance with **Section 11.10(a)**; (iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses that relate to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the acts or omissions of ABM in contravention of its obligations under this Agreement); (iv) pay all costs associated with the transfer of such Equipment leases and contracts to Supplier, including all taxes associated with such transfer; and (v) be responsible for complying with Supplier's duties and obligations with respect to such Equipment, leases or agreements on or after the Commencement Date and for curing any failure to so comply (except to the extent that such failure directly results from the acts or omissions of ABM in contravention of its obligations under this Agreement).
- (c) **Operational Responsibility.** With respect to Equipment, Equipment leases and related Third Party Contracts for which Supplier is operationally responsible under **Schedules E and J.1**, Supplier shall be responsible for (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Equipment, Equipment leases and related Third Party Contracts; (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Equipment, Equipment leases; (iii) the performance of such Third Party Contracts and the performance, availability, reliability, compatibility and interoperability of such Equipment, each in accordance with this Agreement, including the Service Levels and Change Management; (iv) the compliance with and performance of all operational, administrative and contractual obligations with respect to such Equipment, leases and contracts, including nondisclosure obligations; (v) the administration and exercise as appropriate of all rights available with respect to such Equipment or agreements; and (vi) the payment of any fees, penalties, interest or other expenses due and owing under such contracts that are incurred, caused by or result from Supplier's failure to comply with or perform its obligations under this **Section 6.5(c)** (except to the extent

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that such failure directly results from the acts or omissions of ABM in contravention of its obligations under this Agreement).

- (d) **Rights Upon Expiration/Termination.** With respect to all Equipment and related Third Party Contracts for which Supplier is financially responsible under Schedule E or J.1, Supplier shall use commercially reasonable efforts to (i) obtain for ABM (or, at ABM's direction, its designee) the rights specified in Section 4.3(b)(4), (ii) ensure that such rights are at least broad enough to permit ABM (or, at ABM's direction, its designee) to use such Equipment and related Third Party Contracts to provide for ABM and the Eligible Recipients, or have provided for them by third party contractors, services similar to the Services, and for ABM and the Eligible Recipients to receive such services; (iii) ensure that, following the termination of all or part of the Services to an Eligible Recipient no longer Controlled by or under common Control with ABM, any such rights relating to Equipment or related Third Party Contracts used exclusively by or for such Eligible Recipient may be granted, at ABM Service's direction, directly to such Eligible Recipient, (iv) ensure that the granting of such rights is not subject to subsequent third party approval or the payment by ABM (or, at ABM's direction, its designee) of transfer fees, and (v) ensure that the terms, conditions and prices applicable to ABM (or, at ABM's direction, its designee) following expiration or termination of this Agreement are no less favorable than those otherwise applicable to Supplier and at least sufficient for the continuation of the activities comprising the Services. If Supplier is unwilling or unable to offer or obtain any such rights and assurances, it shall notify ABM in advance and shall not use such Equipment, Equipment leases or related Third Party contract without ABM's prior approval (and absent such approval, Supplier's use of any such Equipment, Equipment leases or related Third Party Contract shall obligate Supplier to procure, at no additional cost to ABM, the rights described above for ABM (or, at ABM's direction, its designee) upon expiration or termination). If ABM consents to Supplier's use of specific Equipment leases or Third Party Contracts under these circumstances, such consent will be deemed to be conditioned on Supplier's commitment to use commercially reasonable efforts to cause such third party to agree at expiration or termination of this Agreement or the completion of Termination Assistance Services to permit ABM (or, at ABM's direction, its designee) to assume prospectively the lease or contract in question or to enter into a new lease or contract with ABM (or, at ABM's direction, its designee) on substantially the same terms and conditions, including price. If ABM consents to Supplier's use of specific Equipment leases or Third Party Contracts under these circumstances, such Equipment lease or Third Party Contracts will be added to Schedule V.
- (e) **Evaluation of Third Party Equipment.** In addition to its obligations under Section 6.5(b) and (c) and in order to facilitate ABM's control of architecture, standards and plans pursuant to Section 9.5, Supplier shall use commercially reasonable efforts to evaluate any Equipment selected by or for ABM to allow ABM to determine whether such Equipment will adversely affect ABM's environment and/or Supplier's ability to provide the Services. Supplier shall complete and report the results of such evaluation to ABM within thirty (30) days of its receipt of ABM's request; provided, that Supplier shall use commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation.
- (f) **Benefits Pass-Through.** With respect to all products and services procured by Supplier for ABM on a cost-plus, cost-reimbursement or Pass-Through Expense basis during the course of performing the Services, Supplier shall use commercially reasonable efforts to pass through to ABM all benefits offered by the manufacturers and/or suppliers of such products and services (including, as applicable, all warranties, refunds, credits, rebates, discounts, training, technical support and other consideration offered by such manufacturers and suppliers) except to the extent otherwise agreed by ABM. If Supplier is unable to pass through any such benefit to ABM, it shall notify ABM in advance and shall not purchase such product or service without ABM's prior written approval.
- (g) **Dedicated Equipment.** The Equipment used by Supplier and Supplier Personnel shall be dedicated to the provision of Services under this Agreement unless the use of shared Equipment is

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approved in advance by ABM. In seeking approval to use shared Equipment, Supplier shall notify ABM of the impact, if any, of the requested change on the Monthly Base Charges, the ARC and RRC Rates, the OEM retained costs, the Termination Charges and ABM's right to purchase such Equipment at expiration or termination.

## 6.6 Third Party Contracts.

- (a) **Financial Responsibility.** In addition to the Third Party Contracts identified in **Sections 6.4 and 6.5** and **Schedule E**, Supplier shall be responsible for any third party fees or expenses on or after the Commencement Date associated with Third Party Contracts (excluding Third Party Contracts administered by Supplier on a pass-through basis, which are addressed in **Section 11.2**) used by Supplier to provide the Services. Supplier also shall be responsible for any third party fees or expenses on or after the Commencement Date associated with new, substitute or replacement Third Party Contracts for which Supplier is financially responsible under **Schedules E** and **J.1**. With respect to Third Party Contracts that are transferred to Supplier by ABM or for which Supplier otherwise assumes financial responsibility under this Agreement, including those listed on **Schedule F.3**, Supplier shall (i) pay all amounts becoming due under such licenses or related Agreements, and all related expenses, for periods on or after the Commencement Date and which are not related to periods prior to the Commencement Date (e.g., late fees, penalties or other amounts relating to payments due prior to the Commencement Date) which remain ABM's responsibility; (ii) rebate to ABM any prepayment of such amounts in accordance with **Section 11.10(a)**; (iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses that relate to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the acts or omissions of ABM in contravention of its obligations under this Agreement); (iv) pay all costs associated with the transfer of such contract to Supplier, including all taxes associated with such transfer; and (v) be responsible for complying with Supplier's duties and obligations under such contracts on or after the Commencement Date and for curing any failure to so comply (except to the extent that such failure directly results from the acts or omissions of ABM in contravention of its obligations under this Agreement).
- (b) **Operational Responsibility.** With respect to the Third Party Contracts identified in **Section 6.6(a)** (excluding Third Party Contracts administered by Supplier on a pass-through basis, which are addressed in **Section 11.2**), and the services and products provided thereunder, Supplier shall, unless the Parties have otherwise agreed in **Schedule E**, be responsible for (i) the evaluation, procurement, use, support, management, administration, operation and maintenance of such Third Party Contracts and any new, substitute or replacement Third Party Contracts; (ii) the performance of such Third Party Contracts and the services and products provided thereunder as such relate to providing the Services; (iii) the compliance with and performance of any operational, administrative or contractual obligations imposed on ABM or Supplier under such Third Party Contracts, including nondisclosure obligations; (iv) the administration and exercise as appropriate of all rights available under such Third Party Contracts; and (v) the payment of any fees, penalties, interest or other expenses due and owing under such Third Party Contracts that are incurred, caused by or result from Supplier's failure to comply with or perform its obligations under this **Section 6.6**.
- (c) **Rights Upon Expiration/Termination.** With respect to any Supplier Third Party Contracts to be used to provide the Services, Supplier shall use commercially reasonable efforts to (i) obtain for ABM (or, at ABM's direction, its designee) the rights specified in **Section 4.3(b)(6)**, (ii) ensure that such rights are at least broad enough to permit ABM (or, at ABM's direction, its designee) to use such Third Party Contracts to provide for ABM and the Eligible Recipients, or have provided for them by third party contractors, services similar to the Services, and for ABM and the Eligible Recipients to receive such services; (iii) ensure that, following the termination of all or part of the Services to an Eligible Recipient no longer Controlled by or under common Control with ABM, any such rights relating to Third Party Contracts used exclusively by or for such Eligible Recipient

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may be granted, at ABM Service's direction, directly to such Eligible Recipient, (iv) ensure that the granting of such rights is not subject to subsequent third party approval or the payment by ABM (or, at ABM's direction, designee) of transfer fees, (v) ensure that neither the expiration/termination of this Agreement nor the assignment of the contract will trigger less favorable terms, conditions or pricing, and (iv) ensure that the terms, conditions and prices applicable to ABM (or, at ABM's direction, its designee) following expiration or termination are no less favorable than those otherwise applicable to Supplier and at least sufficient for the continuation of the activities comprising the Services. If Supplier is unwilling or unable to offer or obtain any such rights and assurances, it shall notify ABM in advance and shall not use any such Third Party Contract without ABM's approval (and absent such approval, Supplier's use of any such Third Party Contracts shall obligate Supplier to procure such rights, at no additional cost to ABM, upon expiration or termination). ). If ABM consents to Supplier's use of specific Third Party Contracts under these circumstances, such consent will be deemed to be conditioned on Supplier's commitment to use commercially reasonable efforts to cause such third party to agree at expiration or termination of this Agreement or the completion of Termination Assistance Services to permit ABM (or, at ABM's direction, designee) to assume prospectively the contract in question or to enter into a new lease or contract with ABM, the Eligible Recipients and/or their designee(s) on substantially the same terms and conditions, including price. If ABM consents to Supplier's use of specific Third Party Contracts under these circumstances, such Third Party Contracts will be added to Schedule V.

- (d) **Benefits Pass-Through.** With respect to all third party services procured by Supplier for ABM on a cost-plus, cost-reimbursement or Pass-Through Expense basis during the course of performing the Services, Supplier shall use commercially reasonable efforts to pass through to ABM all benefits offered by such third party service providers (including, as applicable, all warranties, refunds, credits, rebates, discounts, training, technical support and other consideration offered by such providers) except to the extent otherwise agreed by ABM. If Supplier is unable to pass through any such benefit to ABM, it shall notify ABM in advance and shall not purchase such product or service without ABM's prior written approval.

## 6.7 Assignment of Licenses, Leases and Related Agreements.

- (a) **Assignment and Assumption.** On and as of the Commencement Date, ABM shall assign to Supplier, and Supplier shall assume and agree to perform all obligations related to, the Software licenses, Equipment leases and Third Party Contracts for which Supplier is financially responsible under Sections 6.4, 6.5 and 6.6 and Schedules E and J.1, including those listed on Schedules F.2, F.3 and F.4; provided, however, that such assignment shall not include any assignment or transfer of any intellectual property rights in Materials developed under such Third Party Software licenses, Equipment leases and Third Party Contracts prior to the date of such assignment and, as between the Parties, ABM hereby expressly reserves and retains such intellectual property rights. ABM and Supplier shall execute and deliver a mutually satisfactory assignment and assumption agreement with respect to such leases, licenses and agreements, evidencing the assignment and assumption provided for herein.
- (b) **Items Not Assignable by Commencement Date.** With respect to any such Software licenses, Equipment Leases or Third Party Contracts that cannot, as of the Commencement Date, be assigned to Supplier without breaching their terms or otherwise adversely affecting the rights or obligations of ABM or Supplier thereunder, the performance obligations shall be deemed to be subcontracted or delegated to Supplier until any requisite consent, notice or other prerequisite to assignment can be obtained, given or satisfied by Supplier. It is understood that, from and after the Commencement Date, Supplier, as a subcontractor or delegate, shall be financially and operationally responsible for such Software license, Equipment Lease or Third Party Contract as ABM's agent pursuant to Section 9.11(b), provided, however, that any amounts becoming due under such Software license, Equipment Lease or Third Party Contract which are related to periods prior to the Commencement Date (e.g., late fees, penalties or other amounts relating to

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payments due prior to the Commencement Date) shall remain ABM's responsibility. Supplier shall use commercially reasonable efforts to satisfy the consent, notice or other prerequisites to assignment and, upon Supplier doing so, the Software license, Equipment Lease or Third Party Contract shall immediately be assigned and transferred to and assumed by Supplier.

- (c) **Non-Assignable Items.** The Parties acknowledge and agree that they believe that no restrictions will, after the commercially reasonable efforts of Supplier, preclude the assignment and assumption of such Software licenses, Equipment Leases or Third Party Contracts in accordance with this Agreement. However, if, after Supplier using commercially reasonable efforts for a reasonable period of time, a license, lease or agreement still cannot be assigned without breaching its terms or otherwise adversely affecting the rights or obligations of ABM or Supplier thereunder, the Parties shall take such actions and execute and deliver such documents as may be necessary to cause the Parties to realize the practical effects of the allocation of responsibilities intended to be effected by this Agreement.
- (d) **Modification and Substitution.** Supplier may terminate, shorten or extend the Software licenses, Equipment Leases and Third Party Contracts held by ABM for which Supplier is financially responsible under [Schedules E](#) and [J.1](#) of this Agreement and, subject to [Section 9.12](#), may substitute or change suppliers relating to goods or services covered thereby; provided that, except as otherwise disclosed by Supplier and agreed to by ABM, such change(s) (i) shall not constitute a breach of any obligation of ABM or the Eligible Recipients under such Software licenses, Equipment leases or Third Party Contracts, (ii) shall not result in additional financial obligations, financial or operational risk or damages to ABM or the Eligible Recipients; (iii) shall not result in any increase to ABM or the Eligible Recipients in the cost of receiving the Services; and (iv) shall not provide for less favorable terms, conditions or prices for ABM or its designee following the expiration or termination of the Term or any applicable Service than would otherwise be applicable to Supplier (except for terms, conditions or prices available to Supplier because of its volume purchases). Supplier's rights under the immediate preceding sentence are conditioned upon Supplier paying all applicable termination or cancellation charges, damages and other amounts associated with such action. Notwithstanding anything to the contrary herein, Supplier shall not terminate, shorten or modify without ABM's prior written consent any license for Third Party Software either created exclusively for ABM or the Eligible Recipients or otherwise not commercially available. Supplier shall reimburse ABM and the Eligible Recipient(s) for any termination charges, cancellation charges, or other amounts paid by them at Supplier's direction in connection with obtaining any such modification.

#### **6.8 License to ABM Third Party Software and Materials.**

As of the Commencement Date and subject to Supplier having obtained any Required Consents, ABM hereby grants to Supplier, for the sole purpose of performing the Services and solely to the extent of ABM's underlying rights, the same rights of access and use as ABM possesses under the applicable software licenses with respect to ABM licensed Third Party Software; provided that, Supplier shall pay all fees, costs and expenses associated with the granting of such rights if and to the extent the number of licenses or seats requested by Supplier exceeds the number historically used by ABM and the Eligible Recipients to perform the same Services and such increase is not attributable to actual or projected increases in Service volumes. ABM also shall grant such rights to Subcontractors designated by Supplier if and to the extent necessary for Supplier to provide the Services; provided that, Supplier shall pay all fees, costs and expenses associated with the granting of such rights to such Subcontractors. Except as otherwise agreed by the applicable third party licensors, Supplier and its Subcontractors shall comply with the duties, including use restrictions and those of nondisclosure, imposed on ABM by such licenses. In addition, each Subcontractor shall sign a written agreement to be bound by terms consistent with the terms contained herein applicable to such Third Party Software, including, to the extent applicable, the terms specified in this Section and those pertaining to the ownership of such Software and any derivative materials developed by the Parties, the scope and term of the license, the restrictions on the use of such Software, and the obligations of confidentiality. Except as otherwise requested or approved by ABM (or the relevant

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licensor), Supplier and its Subcontractors shall cease all use of such Third Party Software upon the end of the Term and the completion of any Termination Assistance Services requested by ABM pursuant to **Section 4.3(b)(8)**. THE ABM LICENSED THIRD PARTY SOFTWARE IS PROVIDED BY ABM TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. ABM EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH ABM LICENSED THIRD PARTY SOFTWARE, OR THE CONDITION OR SUITABILITY OF SUCH SOFTWARE FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **6.9 License to Supplier Third Party Software and Materials.**

- (a) As of the Commencement Date and subject to Supplier having obtained any Required Consents, Supplier hereby grants to ABM and the Eligible Recipients, at no additional charge, except as provided in **Section 6.9(b)** below, a non-exclusive, royalty-free right and license to access and/or use the Third Party Software and Materials as to which Supplier holds the license or for which Supplier is financially responsible under this Agreement (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto that are provided pursuant to the licenses for such Third Party Software and/or Materials) during the Term and any Termination Assistance Services period. In addition, at no additional Charge, and subject to obtaining any Required Consents, Supplier hereby grants to ABM Third Party Contractor(s) a non-exclusive, royalty-free right and license to access and/or use such Materials and Software (including all modifications, substitutions, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto provided to Supplier pursuant to the applicable licenses), during the Term and any Termination Assistance Services period, for the benefit of ABM and the Eligible Recipients. Such license and other rights described in the two preceding sentences shall be granted to ABM, the Eligible Recipients, and ABM Third Party Contractors only for the following purposes:
- (i) The receipt by ABM and the Eligible Recipients of the full benefit of the Services provided by Supplier;
  - (ii) The performance by ABM, the Eligible Recipients or ABM Third Party Contractors for ABM and/or the Eligible Recipients of services or functions that are ancillary to, but not part of, the Services provided by Supplier, including related application management, telecommunication, IT infrastructure, help desk, and information technology services and functions; and
  - (iii) The performance by ABM, the Eligible Recipients or ABM Third Party Contractors of services or functions previously performed by Supplier in circumstances in which the services or functions in question have not been terminated or taken completely away from Supplier.

ABM and the Eligible Recipients shall comply with relevant contractual obligations, including use restrictions and nondisclosure obligations, imposed on Supplier by such licenses to the extent such duties and restrictions have been disclosed in advance by Supplier to ABM. In addition, each ABM Third Party Contractor using Supplier licensed Third Party Software shall sign a written agreement that is consistent with the terms contained herein applicable to such Third Party Software and that contains any relevant contractual obligations, including use restrictions and nondisclosure obligations, imposed on Supplier by such license(s). The rights and obligations of ABM, the Eligible Recipients and ABM Third Party Contractors with respect to such Third Party Software following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6(d)**.

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- (b) To the extent an ABM Third Party Contractor requires a license to Supplier licensed Third Party Software for the purposes described in **Section 6.9(a)(iii)** and such Third Party Software is generally commercially available at established market rates, ABM or the Third Party Contractor shall either pay Supplier's then standard rate for such Third Party Software license, including any additional charges based on increased or changed usage (if Supplier sells such product) or obtain such license from other sources. In addition, to the extent a Third Party Contractor requires access to or the use of such Third Party Software for the purposes described in **Section 6.9(a)(iii)** and a Required Consent may be obtained only by paying a third party fee, ABM or the ABM Third Party Contractor shall pay or reimburse Supplier for such fee, provided that Supplier notifies ABM of such fee, obtains ABM's approval prior to incurring it; and uses commercially reasonable efforts to minimize any fee to be paid or reimbursed by ABM or the ABM Third Party Contractor. Except as provided in this **Section 6.9(b)**, neither ABM or the Eligible Recipients nor the ABM Third Party Contractors shall be required to pay any other fees or expenses in connection with the granting of such licenses to Third Party Software or obtaining of such Required Consents.
- (c) Supplier shall provide or obtain maintenance, support and/or enhancements as and to the extent necessary to support the use of Supplier licensed Third Party Software for the purposes described in **Section 6.9(a)(i)-(iii)**. ABM or the applicable ABM Third Party Contractor shall reimburse Supplier for any incremental Out-of-Pocket Expenses incurred by Supplier in providing such maintenance, support and/or enhancements to an ABM Third Party Contractor using such Supplier licensed Third Party Software for the purposes described in **Section 6.9(a)(iii)**; provided that Supplier notifies ABM of such incremental expenses, obtains ABM's approval prior to incurring them; and uses commercially reasonable efforts to minimize such expenses. Supplier shall not be obligated to provide source code to ABM Third Party Contractors under such circumstances.

## 6.10 Managed Third Parties

- (a) **Fully Managed Third Parties.** With respect to Managed Third Parties designated on **Schedule K** as “**Fully Managed Third Parties**” and any substitute or replacement therefor (each a “**Fully Managed Third Party**”), Supplier shall ensure that such Fully Managed Third Parties perform in accordance with this Agreement, including Service Levels, and comply with all applicable duties and obligations imposed on Supplier under this Agreement. Unless otherwise specified in **Schedule K** or agreed in writing by the Parties, the performance of such Fully Managed Third Parties shall be included in determining Supplier’s compliance with applicable Service Levels in **Schedule G** and Supplier shall be responsible for any Service Level Credits incurred as a result of any failure by such Fully Managed Third Parties or their personnel to perform in accordance with such Service Levels. Supplier shall manage each such Fully Managed Third Party and administer each such Third Party Contract as described in **Section 6.10(b)(i)-(ix)** below. Upon the expiration or termination for cause or convenience of a Fully Managed Third Party contract, Supplier shall be responsible for the continued performance of the services in accordance with this Agreement and shall either provide such services itself or enter into a contract for such services with a replacement Fully Managed Third Party.
- (b) **General Managed Third Parties.** With respect to Managed Third Parties identified on **Schedule K** as “**General Managed Third Parties**,” and any substitute or replacement therefor (each a “**General Managed Third Party**”), Supplier shall perform the following activities with respect to the management and administration of Third Party Contracts between ABM (and/or the Eligible Recipients) and such General Managed Third Parties, except as modified in **Schedule K**:
  - (i) manage the Managed Third Parties, including monitoring operational day-to-day service delivery, monitoring performance, escalating problems for resolution, and maintaining technical support relationships;

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- (ii) as requested by ABM, work with ABM to manage new and existing contractual relationships between ABM and Managed Third Parties as needed to provide the Services;
  - (iii) oversee Managed Third Party delivery of services and compliance with the Service Levels and the performance standards contained in ABM's agreement with the Managed Third Party;
  - (iv) notify ABM and the Managed Third Party of each Managed Third Party failure to perform in accordance with the Service Levels contained in **Schedule G** or the performance standards or other terms and conditions contained in ABM's agreement with the Managed Third Party;
  - (v) escalate Managed Third Party performance failures to Managed Third Party management as necessary to achieve timely resolution;
  - (vi) monitor and manage the Managed Third Party's efforts to remedy a failure of performance;
  - (vii) communicate to ABM the status of the Managed Third Party's efforts to remedy a failure of performance;
  - (viii) recommend retention, replacement, modification, or termination of an Managed Third Party based on the performance or cost benefits to ABM as tracked by Supplier;
  - (ix) participate and assist in the re-sourcing (e.g., extension, renegotiation or replacement) of such Managed Third Parties as and to the extent described in **Schedule K**; and
  - (x) except as otherwise provided in **Schedule K**, Supplier shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of services by a Managed Third Party Provider.
- (c) **Financial Responsibility.** Unless otherwise specified in **Schedule K** or **Schedule J.1** or agreed in writing by the Parties, the invoiced charges of Managed Third Parties shall be treated as a Pass-Through Expense. Supplier shall be ABM's and the Eligible Recipients' sole point of contact regarding the services provided by such Managed Third Parties.

#### 6.11 Notice of Defaults.

ABM and Supplier shall promptly inform the other Party in writing of any breach of, or misuse or fraud in connection with, any Third Party Contract, Equipment lease or Third Party Software license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse or fraud.

#### 6.12 Environmental

- (a) **ABM Obligations.** ABM shall (i) notify Supplier of the procedures and precautions to be taken at ABM Sites where Hazardous Materials are used or produced in operations performed by ABM in accordance with **Section 6.3(a)**, (ii) provide at its expense any special equipment or training required by Supplier to provide safely and properly the Services in the presence of such Hazardous Materials, (iii) be responsible for complying with all material applicable Laws concerning the treatment, storage, registration, handling or

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disposal of or reporting about, Hazardous Materials used or produced in operations performed by ABM at the ABM Sites, and (iv) be responsible for remedying any violation of Law with respect to the treatment, storage, registration, handling or disposal of or reporting about Hazardous Materials used or produced in operations performed by ABM at the ABM Sites.

- (b) **Supplier Obligations.** Supplier shall (i) notify ABM of the procedures and precautions to be taken at ABM or Supplier facilities where Hazardous Materials are used or produced by Supplier or its Affiliates or Subcontractors in the performance of the Services, (ii) provide at its expense any special equipment or training required by ABM to perform its operations safely and properly in the presence of such Hazardous Materials, (iii) be responsible for complying with all material applicable Laws concerning the treatment, storage, registration, handling or disposal of or reporting about Hazardous Materials used or produced by Supplier or its Affiliates or Subcontractors in the performance of the Services, and (iv) be responsible for remedying any violation of Law with respect to the treatment, storage, registration, reporting, handling or disposal of any Hazardous Materials used or produced in the performance by Supplier or its Affiliates or Subcontractors of the Services.
- (c) **Response.** In the event that Hazardous Materials are present at any ABM Site during the Term of this Agreement, Supplier may cease performance of any affected portion of the Services if and to the extent Supplier's ability to perform such portion of the Services safely is impacted by the presence of such Hazardous Materials and the unsafe condition cannot reasonably be circumvented by Supplier through the use of alternative approaches, workaround plans or other means; provided that ABM shall reimburse Supplier for any incremental costs incurred in implementing such alternative approaches, workload plans or other means as long as (i) Supplier notifies ABM of such incremental costs and obtains ABM Service' approval prior to incurring such costs; and (ii) Supplier uses commercially reasonable efforts to minimize the incremental costs to be reimbursed by ABM.
- (d) **Responsibility.** ABM shall be liable for and indemnify Supplier against all costs, expenses or other Losses incurred or suffered by Supplier as a result of the treatment, storage, registration, handling, disposal or release of or reporting about Hazardous Materials used or produced by operations performed by ABM at the ABM Sites or ABM Facilities, except to the extent that such costs, expenses or Losses were caused by the conduct of Supplier, Supplier Affiliates or Supplier Subcontractors or their employees, subcontractors, agents, invitees or representatives. Supplier shall be liable for and indemnify ABM and the Eligible Recipients against all costs, expenses or other Losses incurred or suffered by ABM or any Eligible Recipient as a result of the treatment, storage, registration, handling, disposal or release of or reporting about Hazardous Materials used or produced by Supplier in the performance of the Services, except to the extent such costs, expenses or Losses were caused by the conduct of ABM, ABM employees, invitees, contractors or other persons for whom ABM is legally responsible (which specifically excludes Supplier or Supplier's employees, subcontractors, agents or representatives). Neither Supplier nor ABM shall be liable to the other for any special, indirect, incidental or consequential damages.

## 7. SERVICE LEVELS

### 7.1 General.

Supplier shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness and productivity that are equal to or higher than the documented or otherwise verifiable levels of accuracy, quality, completeness, timeliness, responsiveness and productivity received by ABM or the Eligible Recipients in the twelve (12) months prior to the Commencement Date. Without limiting the generality of the foregoing or the other obligations of Supplier, Supplier shall perform the Services so as to meet or exceed the Service Levels set forth in **Schedule G**. If more than one Service Level applies to any particular obligation of Supplier, Supplier shall perform in accordance with the most stringent such Service Levels. Supplier shall be responsible for meeting or exceeding the applicable Service Levels even where doing so is dependent on the provision of Services by (i) Subcontractors, (ii) except as otherwise provided in **Section 6.11** or **Schedule K**, Managed Third Parties, or (iii) non-Supplier Personnel, including ABM employees,

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for whom Supplier is financially or operationally responsible under this Agreement; provided that ABM will provide reasonable assistance in rectifying any problem affecting Supplier's ability to meet the Service Levels which may be attributed to Managed Third Parties and/or ABM employees.

## 7.2 Service Level Credits and Deliverable Credits.

- (a) **Service Level Credits.** Supplier recognizes that ABM is paying Supplier to deliver the Services at specified Service Levels. If Supplier fails to meet such Service Levels, then Supplier shall pay or credit to ABM the performance credits specified in **Schedule G** ("Service Level Credits") in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service Level Credits be construed as ABM's sole or exclusive remedy for any failure to meet the Service Levels. If ABM recovers monetary damages from Supplier as a result of Supplier's failure to meet a Service Level, Supplier shall be entitled to set-off against such damages any Service Level Credits paid for the failure giving rise to such recovery. For avoidance of doubt, unless otherwise specified in **Schedule G**, Supplier's performance under the Master Agreement and all Companion Agreements shall be aggregated together for purposes of determining Supplier's compliance with applicable Service Levels and calculating and assessing any resulting Service Level Credits.
- (b) **Deliverable Credits.** Supplier recognizes that ABM is paying Supplier to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Supplier fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to ABM, Supplier shall pay or credit to ABM the Deliverable Credits specified in **Attachment G.7** to **Schedule G** and/or **Schedule H** or established by the Parties as part of the Project approval process on a case by case basis in recognition of the diminished value of the Services resulting from Supplier's failure to meet the agreed upon level of performance (not as a penalty). If ABM recovers monetary damages from Supplier as a result of Supplier's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Supplier shall be entitled to set-off against such damages any Deliverable Credits paid for the failure(s) giving rise to such recovery. Deliverable Credits are not counted toward and are not subject to the overall cap on Supplier's liability and are in addition to Service Level Credits.

## 7.3 Problem Analysis.

If Supplier fails to provide Services in accordance with the Service Levels and this Agreement, Supplier shall (after restoring service or otherwise resolving any immediate problem) (i) promptly investigate and report on the causes of the problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable, after such failure or ABM's request; (iii) use commercially reasonable efforts to implement remedial action and begin meeting the Service Levels as soon as practicable; (iv) advise ABM of the status of remedial efforts being undertaken with respect to such problem; and (v) demonstrate to ABM's reasonable satisfaction that, to the extent reasonably possible, the causes of such problem have been or will be corrected on a permanent basis. Supplier shall use commercially reasonable efforts to complete the Root Cause Analysis within the period specified in **Attachment G.2** to **Schedule G**; provided that, if it is not capable of being completed within such period using reasonable diligence, Supplier shall complete such Root Cause Analysis as quickly as possible and shall notify ABM prior to the end of the period specified in **Attachment G.2** as to the status of the Root Cause Analysis and the estimated completion date.

## 7.4 Continuous Improvement Reviews.

- (a) **Improvement of Services Quality.** Supplier acknowledges that the quality of the Services provided in certain Service areas can and will be improved during the Term and agrees that the Service Levels in such Service areas will be enhanced periodically in recognition of the anticipated improvement in service quality. Supplier will improve the quality of the Services

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provided in such areas to meet or exceed the enhanced Service Levels and will do so at no additional charge to ABM.

- (b) **Increase of Service Levels.** In addition to the foregoing, ABM and Supplier shall periodically review the Service Levels and the performance data collected and reported by Supplier in accordance with Schedule G. As part of this review process, the Parties shall, at no additional cost to ABM, increase the Service Levels to reflect the higher performance levels actually attained by Supplier in accordance with Schedule G. In addition, subject to Section 11.5, the Parties shall use commercially reasonable efforts to agree, to the extent reasonable and appropriate, to (i) increase the Service Levels to reflect improved performance capabilities associated with advances in the proven processes, technologies and methods generally available and in regular commercial use to perform services like the Services; (ii) add new Service Levels to permit further measurement or monitoring of the accuracy, quality, completeness, timeliness, responsiveness, cost-effectiveness, or productivity of the Services; (iii) modify or increase the Service Levels to reflect changes in the processes, architecture, standards, strategies, needs or objectives defined by ABM; and (iv) modify or increase the Service Levels to reflect agreed upon changes in the manner in which the Services are performed by Supplier.

## 7.5 Measurement and Monitoring.

Supplier shall implement measurement and monitoring tools and metrics as well as standard reporting procedures, all acceptable to ABM, to measure and report Supplier's performance of the Services against the applicable Service Levels. Supplier shall provide ABM with on-line access to up-to-date problem management data and other data regarding the status of service problems, service requests and user inquiries received by Supplier. Supplier also shall provide ABM with access to the data used by Supplier to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Supplier to generate such data for purposes of audit and verification. Except as otherwise provided in Attachment G.5 to Schedule G, ABM shall not be required to separately pay for such measurement and monitoring tools or the resource utilization associated with their use.

## 7.6 Satisfaction Surveys.

- (a) **Supplier Conducted Surveys.** Beginning on the Commencement Date, Supplier (and/or independent third parties engaged by Supplier) shall conduct satisfaction surveys at the intervals and in accordance with the survey protocols and procedures specified in Schedule Q. To the extent Supplier engages an independent third party to perform all or any part of any satisfaction survey, such third party shall be approved in advance by ABM.
- (b) **ABM Conducted Surveys.** In addition to the satisfaction surveys to be conducted by Supplier pursuant to Section 7.6(a), ABM may survey Authorized User satisfaction with Supplier's performance in connection with and as part of broader Authorized User satisfaction surveys periodically conducted by ABM. At ABM's request, Supplier shall cooperate and assist ABM with the formulation of the survey questions, protocols and procedures and the execution and review of such surveys.
- (c) **Survey Follow-up.** If the results of any satisfaction survey conducted pursuant to Section 7.6(a) or (b) indicate that the level of satisfaction with Supplier's performance of the Services is less than the target level specified in Schedule G and/or Q, Supplier shall promptly: (i) analyze and report on the root cause of the management or Authorized User dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction; (iii) present such plan to ABM for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of satisfaction. ABM and Supplier shall establish a schedule for completion of a Root Cause Analysis and the preparation and approval of the action plan which shall be reasonable and consistent with the severity and materiality of the problem; provided, that the time for completion of such tasks shall not exceed thirty (30) days from the date such user survey

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results are finalized and reported or as otherwise agreed. The action plan developed hereunder shall specify the specific measures to be taken by Supplier and the dates by which each such action shall be completed. The Parties may, by agreement, establish Deliverable Credits associated with the completion of particular activities by specified dates. Supplier shall implement such action plan in accordance with its terms. Following implementation of such action plan, Supplier will conduct follow-up surveys with the affected ABM users and management to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved. The Parties recognize that Supplier's failure to attain the prescribed levels of satisfaction or to take the actions set forth in such action plan by the agreed upon dates may have an adverse impact on the business and operations of ABM and the Eligible Recipients and that certain damages resulting from Supplier's failure to do so may not be capable of precise determination. Accordingly, if Supplier fails to attain the levels of satisfaction prescribed in **Schedule G**, then, in addition to any other remedies available to ABM under this Agreement, at law or in equity, Supplier shall pay to ABM the Service Level Credits specified in **Schedule G**. In addition, if Supplier fails take the actions set forth in the action plan by the agreed upon dates, then, in addition to any other remedies available to ABM under this Agreement, at law or in equity, Supplier shall pay to ABM the applicable Deliverable Credits, if any, specified and agreed upon in such action plan for such failure.

## **7.7 Notice of Adverse Impact.**

If Supplier becomes aware of any failure by Supplier to comply with its obligations under this Agreement or any other situation that has had or reasonably could have any other material adverse impact on the Services in question or the impacted business operations of ABM or the Eligible Recipients, then Supplier shall immediately inform ABM in writing of such situation and the impact or expected impact on the Services and Supplier and ABM shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

## **8. PROJECT PERSONNEL**

### **8.1 Transitioned Personnel.**

#### **(a) Offers and Employment.**

- (i) **Supplier Offers of Employment.** On September 12, 2006, Supplier extended offers of employment to the Affected Employees specified on **Schedule M**. Supplier represents and warrants that such offers of employment are consistent in all material respects with this **Article 8**. Such offers of employment were and are contingent upon the Parties' final approval and execution of this Agreement, and upon the Affected Employees' completion of Supplier's employment application and standard pre-employment process. Supplier, however, has waived background checks, drug testing and medical examinations as preconditions to such employment. Such offers were and are for employment with Supplier in positions reasonably comparable to those held by such individuals at ABM, and with initial base wages or salaries at least equal to that paid or provided by ABM to such individuals as of the date of such offers. The offers were and are for employment with Supplier for a period of six (6) months following the Commencement Date (the "**Interim Period**"). If such offers of employment are accepted, Supplier shall not reduce the base wages or salaries of such individuals ("**Transitioned Employees**") during the Interim Period. Unless otherwise specified in **Schedule M** and/or agreed by the Parties, Affected Employees accepting such offers shall become employees of Supplier as of the start date set forth in their offer letters, which shall be referred to herein as their "**Employment Effective Date**." It is understood and agreed that, on or before the end of their term of employment, Supplier may offer certain of the Affected Employees employment for an indeterminate period of time.

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- (ii) **Subsequent Offers of Regular Employment.** It is understood and agreed that, on or before the end of their term of employment, Supplier may offer certain of the Affected Employees employment for an indeterminate period of time. Supplier shall use commercially reasonable efforts to make any such offers of employment “Qualified Offers,” defined as regular employment in a position that reasonably matches the Transitioned Employee’s skills, with base wages or salary as described in Section 8.1(a)(i) and employee benefits as described in Section 8.2. If such offer is not a “Qualified Offer,” and the Transition Employee declines such offer, he or she shall be eligible for severance benefits as defined in Section 8.2(k)(ii). In addition, even if a Qualified Offer is extended, if the Transitioned Employee rejects the offer because it requires a change in work location that meets Supplier’s requirements for benefits under its U.S Mobility Plan (relocation plan), then the Transitioned Employee shall also be eligible for severance benefits as defined in Section 8.2(k)(ii). To qualify for benefits under Supplier’s U.S. Mobility Plan, the Transitioned Employee must be changing work location at the request of the Supplier, the change in work location must increase his or her one-way commute from his or her current residence by at least twenty (20) miles, and the resulting commute must be greater than fifty (50) miles.
- (iii) **Leave.** With respect to any Affected Employee identified on Schedule M who is on medical, family, disability, military or sick leave on the Commencement Date, but who returns to work within three (3) months after the Commencement Date with physician’s release or other appropriate documentation stating that such employee may return to work with or without an accommodation, Supplier shall offer employment to such Affected Employee for the remainder of the Interim Period. Such offer and any resulting employment shall be subject to and in strict accordance with this Article 8. If such offer is accepted, the individual in question shall thereafter be treated as a Transitioned Employee for all purposes.
- (iv) **Transitioned Employees.** All Affected Employees listed in Schedule M who receive and accept offers of employment and begin work with Supplier pursuant to the foregoing paragraphs are herein referred to as “**Transitioned Employees**.”
- (b) **Additional Transitioned Employees.** During the Interim Period, the Parties may agree upon additional ABM Personnel to whom offers of employment are to be extended by Supplier. The compensation and other terms and conditions of such offers of employment shall be as set forth in this Article 8, and ABM Personnel accepting such offers shall be treated as Transitioned Employees for all purposes.
- (c) **Reemployment of Transitioned Employees.** During the Interim Period, the Parties may agree upon one or more Transitioned Employees to whom ABM may extend offers of reemployment. Supplier shall not unreasonably interfere with ABM’s efforts to reemploy any such Transitioned Employee; provided, however, ABM shall inform Supplier at least ten (10) business days in advance of any intended solicitation or other efforts by ABM to recruit or otherwise reemploy any Transitioned Employee during this period, and the Parties shall agree that any such solicitation and/or reemployment of a Transitioned Employee(s) will not unduly hinder the Suppliers ability to delivery the agreed to services to ABM.
- (d) **Minimum Retention.** Supplier shall not terminate the employment of a Transitioned Employee during the Interim Period for any reason other than “cause” or “performance,” unless and to the extent ABM initiates a change and/or a reduction in the scope of Services provided by Supplier necessitating such termination of a Transitioned Employee. For purposes of this provision, “cause” shall mean flagrant disregard of Supplier’s rules (including any violation of Supplier’s Business Conduct Guidelines), insubordination or misconduct (as defined in Supplier’s human resource policies), or criminal conduct, and “performance” shall mean that the Transitioned Employee’s job performance is at a level that would justify dismissal under Supplier’s established human resource policies. Unless otherwise agreed by the Parties, Supplier also shall not relocate a

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Transitions Employee or his or her assigned “work location,” as such term is defined in the Supplier’s Relocation guidelines, during the Interim Period, unless ABM initiates a change and/or a reduction in the scope of Services provided by Supplier necessitating such relocation or reassignment, or Supplier identifies another assignment off of the ABM contract that is acceptable to the Transitions Employee, and provided that Supplier shall inform ABM in advance of any such relocation or reassignment during this period.

- (e) **No Coverage of Collective Bargaining Unit Employees.** ABM has confirmed that no individual eligible to be hired by Supplier pursuant to this Agreement is covered under a collective bargaining agreement.
- (f) **Subcontractors.** Unless otherwise specified in Schedule M, all offers of employment to Affected Employees must be for employment by Supplier. To the extent offers of employment are made to Affected Employees identified on Schedule M by Supplier Affiliates or Subcontractors, rather than by Supplier, Supplier shall cause such offers and any resulting employment to be subject to and in strict accordance with this Article 8.

## 8.2 Employee Benefit Plans.

- (a) **General.** Except as otherwise provided in this Article 8, each Transitions Employee and his or her eligible dependents (as determined under Supplier’s plans), shall be eligible effective as of his or her Employment Effective Date to enroll and participate in the employee plans that are made available to similarly situated employees of Supplier. Such participation shall be in accordance with the terms of such employee plans, which Supplier may change from time to time. During the Term of this Agreement and any extensions thereof, the employee benefits provided by Supplier to Transitions Employees shall be, in the aggregate, no less favorable than the employee benefits generally available to similarly situated Supplier employees. Unless otherwise specified in this Section 8.2, the rights and benefits described in this Section 8.2 shall be provided to Transitions Employees during the Interim Period and, if such period is extended or an offer of employment for an indefinite period is made, for the remainder of their employment with Supplier.
- (b) **Years of Service Credit.** Except as otherwise provided in this Article 8, the service of a Transitions Employee with ABM prior to his or her Employment Effective Date shall be recognized by the applicable Supplier employee plan for vacation (prorated based upon full months of employment during first calendar year), short term disability, long term disability and access to post-retirement medical group rates when such Transitions Employee is no longer employed by Supplier.
- (c) **Employee Welfare Benefit Plans.** Each Transitions Employee and his or her eligible dependents shall be eligible as of such Transitions Employee’s Employment Effective Date to participate immediately in Supplier’s employee health and welfare benefit plans provided to similarly situated Supplier employees (“**Welfare Plans**”). Such participation shall be in accordance with the terms of such Welfare Plans. The Welfare Plans shall include, to the extent applicable, medical benefits, hospitalization, prescription drug benefits, dental benefits, vision benefits, short-term disability, long-term disability and travel accident insurance (which includes an accidental death and dismemberment provision). Any eligible deductible expense incurred by the Transitions Employee at ABM, shall be applied against any similar deductible requirement under the Supplier’s medical plans. Subject to the general comparability requirements in Section 8.2(a), eligibility for, the benefits of, and the amount, if any, of employee contributions toward Welfare Plan coverage will be determined by Supplier; provided, however, that each of Supplier’s Welfare Plans shall waive all pre-existing conditions, exclusionary provisions, eligibility service requirements, and/or waiting periods for each such Transitions Employee and any eligible covered dependents.

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- (d) **Vacation and Personal Time Off.** Prior to their hire date, ABM will cash out each Transitioned Employee for their accrued and unused vacation. Subject to **Section 8.2(b)** above and beginning on their Employment Effective Date, Supplier shall provide vacation and sick leave benefits to all Transitioned Employees in accordance with its applicable plans. Transitioned Employees shall receive credit for their years of service with ABM for purposes of determining vacation eligibility, benefit calculation and benefit accrual under Supplier's vacation plan. Transitioned Employees shall immediately begin accruing vacation benefits. The vacation and personal time off benefits provided by Supplier to such Transitioned Employees shall be no less favorable than the vacation and personal time off benefits generally available to similarly situated Supplier employees. Supplier shall recognize vacation plans made by the Transitioned Employees for the current calendar year, provided such vacation plans have been approved by ABM and communicated to Supplier prior to their Employment Effective Date.
- (e) **Holidays.** Each Transitioned Employee shall be eligible as of his or her Employment Effective Date to participate in the Supplier Holiday Plan, which currently includes twelve (12) annual paid holidays. Supplier Personnel, including Transitioned Employees, assigned to perform Services under this Agreement will observe ABM local site national holidays and, if less than twelve (12), any remaining days will be treated as personal holidays.
- (f) **Stock Purchase Plan.** Each Transitioned Employee shall be eligible to enroll and participate in the then current Supplier Stock Purchase Plan during the first eligible open enrollment period following such Transitioned Employee's Employment Effective Date.
- (g) **Defined Contribution Plans.** Each Transitioned Employee shall be eligible as of his or her Employment Effective Date to participate immediately in Supplier's Employee Savings 401(k) Plan, and shall be immediately vested in all such employee contributions. Also, each Transitioned employee shall be eligible for the then current Supplier matching funds after completing twelve (12) months of employment with Supplier. Such defined contribution plans shall be no less favorable than the defined contribution plans generally available to similarly situated Supplier employees. Any changes to such defined contribution plans, including any changes in the vesting period for matching employer contributions, must be applicable to all similarly situated Supplier employees.
- (h) **Reimbursement Account and Flexible Spending Account Plans.** Transitioned Employees shall be eligible to participate immediately in all reimbursement account and flexible spending account plans offered to similarly situated Supplier employees.
- (i) **Tuition Assistance.** ABM shall remain financially responsible for courses which are in progress as of the enrolled Transitioned Employee's Employment Effective Date and courses for which tuition assistance has already been approved and paid by ABM. For purposes of the preceding sentence, "courses" refers to specific classes in progress and does not refer to a degree program. Transitioned Employees shall be eligible to participate, with prior Supplier management approval, in any tuition assistance programs provided by Supplier to its similarly situated employees. For courses and degree programs approved by ABM that are not scheduled to begin until after the Employment Effective Date and for which ABM has not yet paid the applicable tuition, Supplier shall review each such course and degree program, and if Supplier independently approves such course under Supplier's tuition reimbursement policies and procedures, Supplier shall reimburse Transitioned Employees in accordance with Supplier's policy.
- (j) **Bonus Programs.** Beginning in their second calendar year of employment with Supplier, Transitioned Employees shall be eligible to participate in the Employee Performance Bonus program provided by Supplier to its similarly situated employees, in accordance with Supplier's guidelines for such program. .

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(k) **Severance Pay Plans.**

- (i) **General.** Transitioned Employees who are offered and accept regular employment for an indeterminate period of time shall be eligible to participate in all severance pay plans provided by Supplier to its similarly situated employees. Except as provided in subsection (ii) below, Transitioned Employees shall not receive credit for their years of service with ABM for purposes of calculating their payments under Supplier's severance plans. Supplier shall be financially responsible for all severance payments made to such Transitioned Employees.
  - (ii) **Special Arrangement.** Notwithstanding Section 8.2(k)(i), if (1) Supplier terminates a Transitioned Employee's employment (A) at the end of the Interim Period or any extensions thereof agreed to by Supplier and the applicable employee or (B) prior to the end of the Interim Period for any reason other than "cause" or "performance" (as defined in Section 8.1(d)), or (2) a Transitioned Employee rejects a employment offer that does not qualify as a Qualified Offer (as defined in Section 8.1(a)(ii) above), or (3) the Transitioned Employee rejects a Qualified Offer because it requires a change in work location that meets Suppliers requirements for benefits under its U.S Mobility Plan, then Supplier shall pay such Transitioned Employee, upon receipt of a signed general release covering both ABM and IBM, a severance payment equal to one (1) week of their base pay for each fully completed combined (ABM and Supplier) year of employment, with a six (6) week minimum payment and a twenty-six (26) week maximum payment. Each such Transitioned Employee also shall be eligible for Supplier's Career Transition Services (CTS), subsidized Transitional Medical Program (COBRA) and Transitional Group Life Insurance (GLI) programs based upon combined ABM and IBM service. Supplier shall be financially responsible for all severance payments and other separation benefits provided to such Transitioned Employees. Thirty (30) days after the close of the Interim Period, Supplier shall calculate the total cost of the severance payments and other separation benefits provided to Transitioned Employees who were released by Supplier at the end of the Interim Period. Supplier will then either invoice or reimburse ABM, as appropriate, for any amounts above or below the planned eight hundred fifty thousand dollars (\$850,000) budgeted for such expenses. Notwithstanding the foregoing, if, during his or her specified term of employment, a Transitioned Employee is offered and accepts regular employment for an indeterminate period of time, such Transitioned Employee shall not be entitled to the enhanced severance benefits described in this Section 8.1.2(k)(ii).
- (l) **Access to Retiree Medical.** Transitioned Employees shall be eligible to participate in Supplier's post retirement medical coverage plans at group rates, based on Supplier age and service requirements and combined years of service with ABM and Supplier, provided they elect to participate in the program upon exit from Supplier.

**8.3 Other Employee Matters.**

As of the Employment Effective Date, the Transitioned Employees shall be employees of Supplier for all purposes. Supplier shall be responsible for funding and distributing benefits under the benefit plans in which Transitioned Employees participate on or after the Transitioned Employee's Employment Effective Date and for paying any compensation and remitting any income, disability, withholding and other employment taxes for such Transitioned Employees beginning on the Employment Effective Date. ABM shall be responsible for funding and distributing benefits under the ABM benefit plans in which Transitioned Employees participated prior to the Employment Effective Date and for paying any compensation and remitting any income, disability, withholding and other employment taxes for such Transitioned Employees for the period prior to the Employment Effective Date of such Transitioned Employee. ABM shall provide Supplier with such information in ABM's possession reasonably requested by Supplier in order to fulfill its obligations under this Article 8.

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## **8.4 Key Supplier Personnel**

- (a) **Approval of Key Supplier Personnel.**
- (i) Before assigning an individual to act as one of the Key Supplier Personnel whether as an initial assignment or a subsequent assignment, Supplier shall notify ABM of the proposed assignment, shall introduce the individual to appropriate ABM representatives, shall provide reasonable opportunity for ABM representatives to interview the individual, and shall provide ABM with a resume and such other information about the individual as may be reasonably requested by ABM. If ABM objects to the proposed assignment, the Parties shall attempt to resolve ABM's concerns on a mutually agreeable basis. If the Parties have not been able to resolve ABM's concerns within five (5) business days, or as otherwise agreed, of ABM communicating its concerns, Supplier shall not assign the individual to that position and shall propose to ABM the assignment of another individual of suitable ability and qualifications.
  - (ii) ABM may designate up to ten (10) positions to be held by Key Supplier Personnel during the period up to the migration to the Supplier data center (as provided for in **Schedule H**), and up to five (5) positions to be held by Key Supplier Personnel during the remainder of the Term. Supplier shall identify and obtain ABM's approval of all Key Supplier Personnel prior to the Commencement Date. The Key Supplier Personnel that have been approved as of the Effective Date are listed in **Schedule C**.
  - (iii) ABM may from time to time change the positions designated as Key Supplier Personnel under this Agreement with Supplier's approval which shall not be unreasonably withheld.
- (b) **Continuity of Key Supplier Personnel.** Supplier shall cause each of the Key Supplier Personnel to devote full time and effort for, at a minimum, the period specified in **Schedule C** after the date he or she assumes the position in question (provided that, in the case of Key Supplier Personnel assigned prior to the Commencement Date, the minimum period shall be the specified period from the Commencement Date). Supplier shall not transfer, reassign or remove any of the Key Supplier Personnel (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, death or approved leave in accordance with Supplier's standard employment policies) or announce its intention to do so during the specified period without ABM's prior approval, which ABM may withhold in its reasonable discretion based on its own self interest. In the event of the voluntary resignation, involuntary termination for cause, illness, disability, death or approved leave in accordance with Supplier's standard employment policies of one of its Key Supplier Personnel during or after the specified period, Supplier shall (i) give ABM as much notice as reasonably possible of such development, and (ii) expeditiously identify and obtain ABM's approval of a suitable replacement. In addition, even after the period specified in **Schedule C**, Supplier shall transfer, reassign or remove one of its Key Supplier Personnel only after (i) giving ABM at least forty five (45) days prior notice of such action, (ii) identifying and obtaining ABM's approval of a suitable replacement at least thirty (30) days prior to the effective date of such transfer, reassignment or removal, (iii) demonstrating to ABM's reasonable satisfaction that such action will not have an adverse impact on Supplier's performance of its obligations under this Agreement, and (iv) completing any and all necessary knowledge transfer between the departing Key Supplier Personnel and his or her ABM-approved replacement. Under no circumstances shall Supplier transfer, reassign or remove more than two (2) Key Supplier Personnel in any twelve (12) month period.
- (c) **Retention Program.** Supplier will implement and maintain a reasonable retention strategy designed to retain Key Supplier Personnel on the ABM account for the prescribed period, which shall be at least as favorable as the retention strategy it implements and maintains for similarly situated Supplier employees. Supplier shall implement various retention strategies to retain Key Supplier Personnel, including but not limited to, granting stock options, awards, salary increases,

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recognition events and other retention and incentive programs offered to similarly situated Supplier employees.

#### **8.5 Supplier Account Executive.**

Supplier shall designate a “**Supplier Account Executive**” for this ABM engagement.. The Supplier Account Executive shall (i) be one of the Key Supplier Personnel; (ii) be a full time employee of Supplier; (iii) devote his or her full time and effort to managing the Services; (iv) remain in this position for a minimum period of two (2) years from initial assignment; (v) serve as the single point of accountability for the Services, and (vi) have day-to-day authority for acting on behalf of Supplier in matters pertaining to this Agreement and for achieving customer satisfaction and attainment of all Service Levels.

#### **8.6 Supplier Personnel Are Not ABM Employees.**

As of the Commencement Date and except as otherwise expressly set forth in this Agreement, the Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making ABM (or the Eligible Recipients) Supplier partners, joint venturers, principals, joint employers, agents or employees of or with the other. As of the Commencement Date no officer, director, employee, agent, Affiliate, contractor or subcontractor retained by Supplier to perform work on ABM’s behalf hereunder shall be deemed to be an officer, director, employee, agent, Affiliate, contractor or subcontractor of ABM for any purpose. Supplier, not ABM, has the right, power, authority and duty to supervise and direct the activities of the Supplier Personnel and to compensate such Supplier Personnel for any work performed by them on ABM’s behalf pursuant to this Agreement. Supplier, and not ABM, shall be responsible and therefore solely liable for all acts and omissions of Supplier Personnel, including acts and omissions constituting gross negligence, willful misconduct and/or fraud.

#### **8.7 Replacement, Qualifications, and Retention of Supplier Personnel.**

- (a) **Sufficiency and Suitability of Personnel.** Supplier shall assign (or cause to be assigned) sufficient Supplier Personnel to provide the Services in accordance with this Agreement and such Supplier Personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform.
- (b) **Requested Replacement.**
  - (i) In the event that ABM determines in good faith that the continued assignment to ABM of any Key Supplier Personnel is not in the best interests of ABM or the Eligible Recipients, then ABM shall give Supplier notice to that effect requesting that such Key Supplier Personnel be replaced. Promptly after its receipt of such a request by ABM, Supplier shall replace (or cause to be replaced) such Key Supplier Personnel with an individual of suitable ability and qualifications. Nothing in this provision shall operate or be construed to limit Supplier’s responsibility for the acts or omission of the Supplier Personnel, or be construed as joint employment.
  - (ii) In the event that ABM determines in good faith that the continued assignment to ABM of any individual Supplier Personnel (other than Key Supplier Personnel) is not in the best interests of ABM or the Eligible Recipients, then ABM shall give Supplier notice to that effect requesting that such Supplier Personnel be replaced. Supplier shall have ten (10) days following ABM’s request for removal of such Supplier Personnel in which to investigate the situation, correct any deficient performance and provide ABM with assurances that such deficient performance shall not recur (provided that, if requested to do so by ABM for actual or suspected violations of ABM Rules, Supplier shall immediately remove (or cause to be removed) the individual in question from all ABM Sites pending completion of Supplier’s investigation and discussions with ABM). If, following such ten (10) day period, ABM is not reasonably satisfied with the results of

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Supplier's efforts to correct the deficient performance and/or to ensure its non-recurrence, Supplier shall, as soon as possible, remove and replace such Supplier Personnel with an individual of suitable ability and qualifications, without cost to ABM.

- (iii) Nothing in **Section 8.7(b)** shall operate or be construed to limit Supplier's responsibility for the acts or omission of the Supplier Personnel, or be construed as joint employment.
- (c) **Turnover Rate and Data.** If ABM reasonably determines that Supplier's turnover rate is unacceptable and so notifies Supplier, Supplier shall within ten (10) business days (i) provide ABM with data concerning Supplier's turnover rate, (ii) meet with ABM to discuss the reasons for the turnover rate, and (iii) submit a proposal for reducing the turnover rate to an acceptable level for ABM's review and reasonable approval. Notwithstanding any transfer or turnover of Supplier Personnel, Supplier shall remain obligated to perform the Services without degradation and in accordance with the Service Levels.
- (d) **Background Check/Drug Screening.** Supplier shall complete (or caused to be completed) a satisfactory background check of each Supplier Personnel (except Transitioned Employees) prior to such Supplier Personnel first entering any ABM Facility or Site; provided that, if a satisfactory background check was completed in connection with the hiring of such Supplier Personnel, it need not be repeated.
- (e) **Restrictions on Performing Services to Competitors.** Neither Supplier nor any Subcontractor shall cause or permit any Key Supplier Personnel engaged in the provision of Services to ABM, to perform services directly or indirectly for a Direct ABM Competitor either while engaged in the provision of Services to ABM or the Eligible Recipients or during the twelve (12) months immediately following the termination of his or her involvement in the provision of such Services without ABM's prior written consent.

## **8.8 Training/Career Opportunities.**

Supplier shall offer training, skills development and career growth opportunities to Transitioned Employees that are at least as favorable as those offered generally to its similarly situated employees.

## **8.9 Conduct of Supplier Personnel.**

- (a) **Conduct and Compliance.** While at ABM Sites, Supplier Personnel shall (i) comply with the ABM Rules and other rules and regulations regarding personal and professional conduct generally applicable to personnel at such ABM Sites (and communicated orally or in writing to Supplier or Supplier Personnel or made available to Supplier or Supplier Personnel by conspicuous posting at an ABM Facility, electronic posting or other means generally used by ABM to disseminate such information to its employees or contractors), (ii) comply with reasonable requests of Affected Employees pertaining to personal and professional conduct, (iii) attend workplace training offered by ABM at ABM's request, and (iv) otherwise conduct themselves in a businesslike manner.
  - (b) **Identification of Supplier Personnel.** All Supplier Personnel shall clearly identify themselves as Supplier Personnel and not as employees of ABM. This shall include any and all communications, whether oral, written or electronic. Each Supplier Personnel shall wear a badge indicating that he or she is not an employee of ABM.
  - (c) **Restriction on Marketing Activity.** Except for the Supplier Project Executive, none of the Supplier Personnel shall conduct any marketing activities at ABM, other than reporting potential marketing opportunities to Supplier's designated marketing representatives.
- In addition, except for the Supplier Personnel occupying the positions designated with an asterisk in **Schedule C**, in no event shall Supplier pay any Supplier Personnel engaged in performing or

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delivering Services under this Agreement (including, for example, business aligned service delivery managers or service delivery executives), any incentive compensation or bonuses based upon revenue from sales to ABM or any other Eligible Recipient. For the avoidance of doubt, nothing in this provision is intended to compromise Supplier's Employee Performance Bonus program or the Supplier executive incentive bonus program which consider total IBM and IBM Global Services revenue.

#### **8.10 Restrictions on Changes in Supplier Staffing/Facilities.**

- (a) Supplier shall not move Services in a Functional Service Area or sub-Functional Service Area provided from an approved Supplier Facility and country to a Supplier Facility and country from which such Services had not previously been provided by Supplier without ABM's prior approval.
- (b) To the extent Services in the same Functional Service Area or sub-Functional Service Area are provided by Supplier Personnel from Supplier Facilities in different countries, Supplier shall not change the extent to which such Services are provided by Supplier Personnel from each such Supplier Facility and country, as specified in Schedule O.2, by more than ten percent (10%), in the aggregate, without ABM's prior approval. In addition, even if such a change in Supplier staffing is less than ten percent (10%) in the aggregate, Supplier shall use commercially reasonable efforts to provide ABM with advance notice of each such change. For avoidance of doubt, the foregoing is measured as the cumulative impact of the movement of FTEs and work between and among Supplier Facilities and countries, not by any single change, and changes attributable solely to changes in service volumes are not subject to the limits described in this Section 8.10(b).

#### **8.11 Substance Abuse.**

To the extent permitted by applicable Laws, Supplier agrees to immediately remove (or cause to be removed) any Supplier Personnel who is known to be or reasonably suspected of engaging in substance abuse while on ABM Sites, in an ABM vehicle or while performing Services. (In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation.) Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia, or alcohol, or the misuse of prescription or non-prescription drugs. Supplier represents and warrants that it has and will maintain a substance abuse policy and that such policy will be applicable to all Supplier Personnel performing Services under this Agreement. Supplier represents and warrants that it shall require its Subcontractors and Affiliates providing Services to have and maintain such policy and practices and to adhere to this provision.

#### **8.12 Collective Bargaining Agreements and WARN Act.**

- (a) Supplier represents that, as of the Effective Date, it does not have collective bargaining agreements with unionized personnel in the United States. Notwithstanding the foregoing, Supplier shall provide ABM not less than ninety (90) days notice of the expiration of any collective bargaining agreement with unionized Supplier Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt the business or operations of ABM or an Eligible Recipient or impact Supplier's ability to timely perform its duties and obligations under this Agreement.
- (b) **WARN Act Commitment.** Unless otherwise agreed by the Parties, Supplier shall not, for a period of sixty (60) days after the Commencement Date, cause any of the Transitioned Employees to suffer "employment loss" as that term is construed under the Worker Adjustment and Retraining Notification Act ("WARN Act"), if such employment loss could create any liability for ABM, the Eligible Recipients, or its or their Affiliates, unless Supplier delivers notices under the WARN Act in a manner and at a time such that ABM, the Eligible Recipients, or its or their Affiliates bear no liability with respect thereto. For purposes of this Section 8.12(b), employee

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terminations by ABM, the Eligible Recipients and/or its or their Affiliates during such period shall not be considered.

## 9. SUPPLIER RESPONSIBILITIES

### 9.1 Policy and Procedures Manual.

- (a) **Delivery and Contents.** As part of the Services, and at no additional cost to ABM, Supplier shall deliver to ABM for its review, comment and approval (i) a preliminary draft of the Policy and Procedures Manual applicable to the performance of the Services during the period preceding the migration to the Supplier data center not later than fifty (50) days after the Commencement Date, and (ii) a final draft of the Policy and Procedures Manual applicable to the performance of such Services not later than one hundred ten (110) days after the Commencement Date.

Thereafter, as part of the Services, and at no additional cost to ABM, Supplier shall deliver to ABM for its review, comment and approval (i) a preliminary draft of a revised Policy and Procedures Manual containing additions and modifications applicable to the performance of the Services following the migration to the Supplier data center not later than thirty (30) days prior to the scheduled migration date, and (ii) a final draft of the revised Policy and Procedures Manual containing such modifications not later than the scheduled migration date.

- (b) At a minimum, each such Policy and Procedures Manual shall include the following:

- (i) a detailed description of the Services and the manner in which each will be performed by Supplier, including (A) the Equipment, Software, and Systems to be procured, operated, supported or used; (B) documentation (including the ITS Systems Life Cycle documentation, operations manuals, user guides, specifications, policies/procedures and disaster recovery plans) providing further details regarding such Services; (C) the specific activities to be undertaken by Supplier in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by Supplier under this Agreement; and (D) the processes, methodologies and controls to be implemented and used by Supplier to ensure compliance with applicable Laws;
- (ii) the procedures for ABM/ Supplier interaction and communication, including (i) call lists; (ii) procedures for and limits on direct communication by Supplier with Affected Employees prior to the Affected Employees becoming employees of Supplier; (iii) Change Management, Problem Management and escalation procedures; (iv) priority and project procedures; (v) Acceptance procedures; (vi) Acceptance testing; and (vii) Quality Assurance procedures, internal controls and checkpoint reviews; and
- (iii) practices and procedures addressing such other issues and matters as ABM shall reasonably require.

Supplier shall incorporate ABM's then current policies and procedures in the Policy and Procedures Manual to the extent it is directed to do so by ABM.

- (c) **Revision and Maintenance.** Supplier shall incorporate any reasonable comments or suggestions of ABM into the Policy and Procedures Manual and shall deliver a final revised version to ABM within fifteen (15) days of its receipt of such final comments and suggestions for ABM's approval. The Policy and Procedures Manual will be delivered and maintained by Supplier in electronic format and will be accessible electronically to ABM IT management and Authorized Users in a manner consistent with ABM's security policies and the confidentiality requirements included in this Agreement. For avoidance of doubt, Supplier shall prepare and maintain a single Policy and

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Procedures Manual for this Master Agreement and all Companion Agreements, rather than a separate Policy and Procedures Manual for each Master Agreement and Companion Agreement.

- (d) **Compliance.** Supplier shall perform the Services in accordance with ABM's then-current policies and procedures, including the ITS Systems Life Cycle documentation, until the Policy and Procedures Manual is finalized and agreed upon by the Parties. Thereafter, Supplier shall perform the Services in accordance with the Policy and Procedures Manual. In the event of a conflict between the provisions of this Agreement and the Policy and Procedures Manual, the provisions of this Agreement shall control unless the Parties expressly agree otherwise and such agreement is set forth in the relevant portion of the Policy and Procedures Manual.
- (e) **Modification and Updating.** Supplier shall promptly modify and update the Policy and Procedures Manual periodically to reflect changes in the operations or procedures described therein and shall provide the proposed changes to ABM for review, comment and approval. To the extent any such change would (i) increase ABM's total costs of receiving the Services; (ii) require material changes to ABM Facilities, systems, software or equipment; (iii) have a material adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; or (iv) violate or be inconsistent with the ABM Standards, ABM may withhold such approval in its sole discretion.

## 9.2 Reports.

- (a) **Reports.** Supplier shall provide ABM with reports pertaining to the performance of the Services and Supplier's other obligations under this Agreement permitting ABM to monitor and manage Supplier's performance ("Reports"). The Reports to be provided by Supplier shall include those described in **Schedule R** in the format and at the frequencies provided therein. In addition, from time to time, ABM may identify additional Reports to be generated by Supplier and delivered to ABM on an ad hoc or periodic basis. All Reports shall be provided to ABM as part of the Services and at no additional charge to ABM. The Reports described in **Schedule R** and, to the extent reasonably applicable, all other Reports shall be provided to ABM by secure on-line connection in an electronic format capable of being accessed by Microsoft Office components, with the information contained therein capable of being displayed graphically and accessible from a web browser.
- (b) **Back-Up Documentation.** As part of the Services, Supplier shall provide ABM with such documentation and other information available to Supplier as may be reasonably requested by ABM from time to time in order to verify the accuracy of the Reports provided by Supplier. In addition, Supplier shall provide ABM with all documentation and other information reasonably requested by ABM from time to time to verify that Supplier's performance of the Services is in compliance with the Service Levels and this Agreement; provided that Supplier shall not be required to provide ABM with any confidential information subject to third party confidentiality agreements.
- (c) **Correction of Errors.** As part of the Services and at no additional charge to ABM, Supplier shall promptly correct any errors or inaccuracies in or with respect to the Reports, the information or data contained in such Reports, or other contract deliverables caused by (i) Supplier, (ii) Subcontractors, (iii) Managed Third Parties (except as otherwise provided in **Section 6.11** or **Schedule K**), or (iv) non-Supplier Personnel, including ABM employees, for whom Supplier is financially or operationally responsible under this Agreement; provided that ABM will provide reasonable assistance in rectifying any problems correcting any errors or inaccuracies with respect to the Reports which may be attributed to Managed Third Parties and/or ABM employees.

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### 9.3 Governance; Meetings.

- (a) **Governance.** The Parties shall manage their relationship under this Agreement using the governance model in **Schedule T**.
- (b) **Meetings.** During the Term, representatives of the Parties shall meet periodically or as requested by ABM to discuss matters arising under this Agreement. Such meetings shall include, at a minimum, the following:
  - (i) a periodic meeting at least monthly to review performance and monthly reports, planned or anticipated activities and changes that might impact performance, and such other matters as appropriate;
  - (ii) a quarterly management meeting to review the monthly reports for the quarter, review Supplier's overall performance under the Agreement, review progress on the resolution of issues, provide a strategic outlook for ABM's information systems requirements, and discuss such other matters as appropriate;
  - (iii) an annual meeting of senior management of both Parties to review relevant contract and performance issues; and
  - (iv) such other meetings of ABM and Supplier Personnel, including senior management of Supplier, as ABM may reasonably request or are otherwise provided for in **Schedule T** or the Policy and Procedures Manual.
- (c) **Agenda and Minutes.** For each such meeting, upon ABM request, Supplier shall prepare and distribute an agenda, which will incorporate the topics designated by ABM. Supplier shall distribute such agenda in advance of each meeting so that the meeting participants may prepare for the meeting. In addition, Supplier shall record and promptly distribute minutes for every meeting for review and approval by ABM.
- (d) **Authorized User and Eligible Recipient Meetings.** Supplier shall notify the ABM Contract Manager in advance of scheduled meetings with Authorized Users or Eligible Recipients (other than meetings pertaining to the provision of specific Services on a day-to-day basis) and shall invite the ABM Contract Manager to attend such meetings or to designate a representative to do so.

### 9.4 Quality Assurance and Internal Controls.

- (a) Supplier shall develop and implement Quality Assurance and internal control processes and procedures to ensure that the Services are performed in an accurate and timely manner, in accordance with (i) the Agreement, including the Service Levels, (ii) generally accepted accounting principles, (iii) the accepted practices of first tier providers in the ITO Services outsourcing industry, (iv) the ISO 9001 standard, (v) the CMMi standard, (vi) ITIL standard, and (vii) subject to **Section 15.10**, the Laws applicable to ABM and the Eligible Recipients. Such procedures shall include verification, checkpoint reviews, testing, acceptance, and other procedures for ABM to assure the quality and timeliness of Supplier's performance.
- (b) Without limiting the foregoing, Supplier shall develop, implement/execute (subject to ABM's approval) and maintain processes, procedures and controls that provide for:
  - (i) a strong control process for day-to-day operations designed to assure that the following fundamental control objectives regarding the Services are met: (A) financial and operational information is valid, complete and accurate; (B) operations are performed efficiently and achieve effective results, consistent with the requirements of this

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Agreement; (C) assets are safeguarded; and (D) actions and decisions of Supplier are, subject to **Section 15.10**, in compliance with applicable Laws;

- (ii) the following basic control activities into Supplier work processes related to the Services: (A) accountability clearly defined and understood; (B) access properly controlled; (C) adequate supervision; (D) transactions properly authorized; (E) transactions accurately recorded; (F) transactions recorded in proper accounting period; (G) policies, procedures, and responsibilities documented; (H) adequate training and education; (I) adequate separation of duties; and (J) recorded assets compared with existing assets;
  - (iii) a process designed to ensure periodic control self-assessments are performed with respect to all Services;
  - (iv) an internal audit function to sufficiently monitor the processes and Systems used to provide the Services (i.e., perform audits, track control measures, communicate status to management, drive corrective action, etc.). As part of such internal audit function, Supplier will:
    - (A) Develop and execute an annual risk assessment process to evaluate risk in the Services. This assessment shall become the basis to create an annual risk-based audit plan of Services. The plan shall be provided to ABM for its review and approval thirty (30) days before the end of each calendar year.
    - (B) If such an audit reveals a significant deficiency in the Services, promptly provide a summary of the audit reports resulting from such audit activity to ABM, and make related work papers available to ABM upon request.
    - (C) Adopt a qualitative methodology (e.g. high, medium, low effectiveness) of reporting the level of controls and internal audit results.
    - (D) Provide a summary of audit activity performed, associated significant findings, and status of follow-up activity, and a summary of control incidents (i.e., frauds, conflict of interest situations, etc.) and related corrective action, at least quarterly, in each case, to the extent related to any significant deficiency in the Services.
- (c) Supplier shall submit such processes and procedures to ABM for its review not later than fifteen (15) days after the Commencement Date. Such processes, procedures and controls shall be included in the Policy and Procedures Manual. Prior to Supplier's delivery of such processes and procedures, Supplier shall adhere strictly to ABM's then current policies, procedures and controls, including the ITS Systems Life Cycle documentation. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Supplier's failure to comply with the Service Levels and other terms of this Agreement.

## 9.5 Architecture, Standards and Information Technology Planning.

- (a) **Supplier Support.** As requested by ABM and subject to **Section 15.10**, Supplier shall assist ABM in defining application management, telecommunication, IT infrastructure, help desk, and information technology policies, processes, procedures, controls, products, systems, architectures and standards on an ongoing basis to be adhered to by Supplier in the performance of the Services and to be provided, operated, managed, supported and used by Supplier in connection therewith (collectively, the "**ABM Standards**") and in preparing long-term Strategic Plans and short-term implementation plans on an annual basis. The assistance to be provided by Supplier shall include (i) active participation with ABM representatives on permanent and ad-hoc committees and working groups addressing such issues; (ii) assessments of the then-current ABM Standards; (iii)

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analyses of the appropriate direction for such ABM Standards in light of business priorities, business strategies, Supplier's technical knowledge/expertise and competitive market forces; and (iv) recommendations regarding application management, telecommunication, IT infrastructure, help desk, and information technology architectures and platforms, software and hardware products, strategies and directions and other enabling technologies and processes. With respect to each recommendation, Supplier shall provide estimates and analysis of the following at a level of detail reasonably sufficient to permit ABM to make an informed business decision: (i) cost projections and cost/benefit analyses; (ii) the changes, if any, in the personnel and other resources required to operate and support the changed environment; (iii) the resulting impact on ABM's application management, telecommunication, IT infrastructure, help desk, and information technology costs; (iv) the expected performance, quality, responsiveness, efficiency, reliability, security risks and other service levels; and (v) general plans and projected time schedules for development and implementation.

- (b) **ABM Authority and Supplier Compliance.** ABM shall have final authority to promulgate ABM Standards and to modify or grant waivers from such ABM Standards. Supplier shall (i) comply with the ABM Standards and work with ABM to enforce such ABM Standards, (ii) modify the Services as and to the extent necessary to conform to such ABM Standards, and (iii) obtain ABM's prior written approval for any deviations from such ABM Standards.
- (c) **Financial, Forecasting and Budgeting Support.** On a monthly basis on the dates and in accordance with the procedures set by ABM and reflected in the Policy and Procedures Manual, Supplier shall provide a twelve (12) month rolling forecast to ABM for ABM's forecasting and budgeting purposes, including: (i) actual and forecasted utilization of Resource Units; and (ii) changes to the environment impacting ABM's costs or utilization. In addition, on an annual basis, Supplier shall provide information to ABM regarding opportunities to modify or improve the Services, and reduce the Charges and/or total cost to ABM of receiving the Services.

## 9.6 Change Control.

- (a) **Compliance with Change Control Procedures.** In making any System Change, the Parties shall comply with the Change Control Procedures specified in the Policy and Procedures Manual. Prior to making any System Change or using any new (e.g., not tested in or for the ABM environment) Software or Equipment to provide the Services, Supplier shall have verified by appropriate testing (with ABM's cooperation and involvement, to the extent reasonably requested), that the change or item has been properly installed, is operating in accordance with its specifications, is performing its intended functions in a reliable manner and is compatible with and capable of operating as part of the ABM environment. This obligation shall be in addition to any unit testing done by Supplier as part of routine deployment or installation of Software or Equipment.
- (b) **System Change Costs.** Unless otherwise specified in Schedule E or approved in accordance with Section 9.6(c) or otherwise, Supplier shall bear all charges, fees and costs associated with any System Change desired by Supplier, including all charges, fees and costs associated with (i) the design, installation, implementation, testing and rollout of such System Change, (ii) any modification or enhancement to, or substitution for, any impacted Software, Equipment, Services, Materials or System, (iii) any increase in the total cost to ABM or the Eligible Recipients of operating, maintaining or supporting any impacted Software, Equipment, Services, Materials or System, and (iv) subject to Section 9.6(h), any increase in resource usage to the extent it results from a System Change.
- (c) **ABM Approval – Cost, Adverse Impact.** Supplier shall make no System Change which may (i) increase ABM's total cost of receiving the Services; (ii) require material changes to or have an adverse impact on ABM's or the Eligible Recipients' business, operations, facilities, systems, software, utilities, tools or equipment; (iii) require Supplier, ABM or the Eligible Recipients to install a new version, release, upgrade of, or replacement for, any Software or Equipment or to

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modify any Software or Equipment, (iv) have a material adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services, (v) have an adverse impact on any Applications run by ABM or Eligible Recipients, or (vi) have an adverse impact on Supplier's ability to adequately deliver the Services, (vii) have an adverse impact on the cost, either actual or planned, to ABM of terminating all or any part of the Services or exercising its right to in-source or use third parties; (viii) have an adverse impact on ABM's or Eligible Recipients' environment (including its flexibility to deal with planned future changes, interoperability and its stability), (ix) introduce new technology to (A) ABM's or an Eligible Recipient's environment or business or (B) Supplier's environment, to the extent that such introduction has or may have an impact on ABM's environment; or (x) violate or be inconsistent with ABM Standards or plans as specified in **Section 9.5** without first obtaining ABM's approval, which approval ABM may withhold in its sole discretion. If Supplier desires to make such a System Change, it shall provide to ABM a written proposal describing in detail the extent to which the desired System Change may affect the functionality, performance, price or resource efficiency of the Services and any benefits, savings or risks to ABM or Eligible Recipients associated with such System Change.

- (d) **ABM Approval – IVR/VRU Solutions.** Except to the extent the following is in use on the Commencement Date, Supplier shall not implement or use in performing the Services an IVR or VRU solution having one or more of the following characteristics without first obtaining the approval of the ABM General Counsel or his or her designee: (i) the entry by callers of distinct customer verification data that is compared to information stored in a database to determine if the caller is qualified to continue using the system; (ii) the IVR system provides the caller with computer generated confirmation numbers; (iii) the use by callers of temporary PINs with the ability to change the PIN; or (iv) the generation of automatic screen pops at the operator terminal based on caller-specific information entered by the caller.
- (e) **ABM Approval – Retained Systems and Business Processes.** Supplier shall make no System Change that may require ABM to install a new version, release or upgrade of, or replacement for, any Software or Equipment or to modify any Software or Equipment or otherwise have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of ABM's Retained Systems and Business Processes without first obtaining ABM's approval, which approval ABM may withhold in its sole discretion.
- (f) **Temporary Emergency Changes.** Notwithstanding the foregoing, Supplier may make temporary System Changes required by an emergency if it has been unable to contact the ABM Contract Manager to obtain approval after making reasonable efforts. Supplier shall document and report such emergency changes to ABM as soon as practicable, but in no event later than two (2) business days after the change is made. Such System Changes shall not be implemented on a permanent basis unless and until approved by ABM.
- (g) **Implementation.** Supplier will schedule and implement all System Changes in accordance Change Management and in all events so as not to (i) disrupt or adversely impact the business or operations of ABM or the Eligible Recipients, (ii) degrade the Services then being received by them, or (iii) interfere with their ability to obtain the benefit of the Services.
- (h) **Planning and Tracking.** On a monthly basis, Supplier will prepare a rolling quarterly "look ahead" schedule for ongoing and planned System Changes for the next three (3) months. The status of System Changes will be monitored and tracked by Supplier against the applicable schedule.
- (i) **Comparisons.** For any System Change, Supplier shall, upon ABM's request, perform a comparison at a reasonable and mutually agreed level of detail, between the amount of resources required by the affected Software or Equipment to perform a representative sample of the processing being performed for ABM and Eligible Recipients immediately prior to the System

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Change and immediately after the System Change. ABM shall not be required to pay for increased resource usage due to a System Change except to the extent that such System Change is requested or approved by ABM with notice of the increased usage or ABM approves such System Change after notice from Supplier of such increased resource usage.

## 9.7 Software Currency.

- (a) **Currency of Software.** Subject to and in accordance with **Sections 6.4, 6.5, 9.5, 9.6, 9.7(c)** and **Schedule J**, Supplier agrees to maintain reasonable currency for Software for which it is financially responsible under this Agreement and provide maintenance and support for new releases and versions of Software for which it is operationally responsible. For purposes of this **Section 9.7(a)**, “**reasonable currency**” shall mean that, unless otherwise directed by ABM, Supplier shall install Major Releases and Minor Releases in accordance with the applicable Service Responsibilities Matrices (SRM’s) set forth in **Schedule E**.
- (b) **Evaluation and Testing.** Prior to installing a new Major Release or Minor Release, Supplier (with ABM’s cooperation and involvement, to the extent reasonably requested), shall evaluate and test such Release to verify that it will perform in accordance with this Agreement and the ABM Standards and that it will not (i) increase ABM’s total cost of receiving the Services; (ii) require material changes to ABM Facilities, systems, software or equipment; or (iii) adversely impact the functionality, interoperability, performance or resource efficiency of the Services. The evaluation and testing performed by Supplier (with ABM’s cooperation and involvement, to the extent reasonably requested), shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by qualified service providers under such circumstances.
- (c) **Approval by ABM.** Notwithstanding **Section 9.7(a)**, Supplier shall confer with ABM prior to installing any Major Release or Minor Release, shall provide ABM with the results of its testing and evaluation of such Release and a detailed implementation plan and shall not install such Release if directed not to do so by ABM. Where specified by ABM, Supplier shall not install new Software releases or make other Software changes until their Acceptance by ABM. Supplier shall not install new Software releases or make other Software changes if doing so would require ABM or the Eligible Recipients to install new releases of, replace, or make other changes to Applications Software or other Software for which ABM is financially responsible unless ABM consents to such change. Supplier shall install, operate and support multiple releases and/or versions of the same Software as and to the extent directed to do so by ABM and, subject to **Sections 9.7(e), (f)** and **15.2(b)**, without any increase in the Monthly Base Charges. To the extent Third Party Software for which Supplier is operationally responsibility under **Schedules E** and **J.1** is no longer supported by the applicable licensor or manufacturer, Supplier shall use commercially reasonable efforts to perform maintenance for such Software as required.
- (d) **Updates by ABM.** ABM and the Eligible Recipients shall have the right, but not the obligation, to install new releases of, replace, or make other changes to Applications Software or other Software for which ABM is financially responsible under this Agreement.
- (e) Notwithstanding the other provisions of **Section 9.7**, Supplier’s failure to meet the Service Levels or its other obligations under this Agreement shall be excused if and to the extent such failure is attributable to ABM’s rejection of Supplier’s proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer, but only if (i) Supplier notifies ABM prior to its final decision that Supplier is not likely to be able, using commercially reasonable efforts, to meet such Service Level or other obligation under such circumstances; (ii) Supplier uses commercially reasonable efforts to identify and consider reasonable alternatives available to address and avoid the impending performance failure; and (iii) Supplier uses commercially reasonable efforts to meet such Service Level or other

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obligation notwithstanding ABM's rejection of or insistence on the Software release or Software change.

- (f) Notwithstanding the other provisions of **Section 9.7**, and subject to **Section 15.2(b)**, if ABM rejects Supplier's proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer and Supplier is thereafter required to incur additional fees and expenses to obtain necessary maintenance for such Software version from such Software manufacturer in order to meet its obligations under this Agreement, ABM shall reimburse Supplier for the reasonable fees and expenses thus incurred, but only if (i) Supplier is unable, using commercially reasonable efforts, to perform such maintenance using Supplier Personnel, (ii) ABM has rejected Supplier's proposed Upgrade or replacement of such Software version after being notified by Supplier that it will not be able to provide certain required maintenance for such Software version using Supplier Personnel, (iii) Supplier notifies ABM of its intent to use such Software manufacturer to perform maintenance and the anticipated fees and expenses associated therewith and obtains ABM's approval prior to incurring such fees and expenses, and (iv) Supplier uses commercially reasonable efforts to minimize the fees and expenses to be reimbursed by ABM.

## 9.8 [RESERVED]

### 9.9 Access to Specialized Supplier Skills and Resources.

Upon ABM's request, Supplier shall use commercially reasonable efforts to provide ABM with access to Supplier's specialized services, personnel and resources on an expedited basis taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Supplier is entitled to additional compensation, but in no event shall Supplier be entitled to any additional compensation for New Services under this subsection unless the ABM Contract Manager and Supplier Account Executive, or their authorized designee, expressly agree upon such additional compensation or Supplier's entitlement to additional compensation is established through the dispute resolution process. If ABM authorizes Supplier to proceed but the Parties disagree as to whether the authorized work constitutes New Services and ABM reasonably believes that such work is material and is required on an urgent basis, Supplier shall proceed with such work if directed to do so by ABM. In such event, the invoiced Charges for such work shall be deemed disputed payments under **Section 12.4**, and the disagreement shall be submitted to dispute resolution pursuant to **Article 19**.

### 9.10 Audit Rights.

- (a) **Contract Records.** Supplier shall maintain complete and accurate records of and supporting documentation for all Charges and all financial and non-financial transactions relevant to the performance of the Services and Supplier's financial and operational obligations under this Agreement, including authorizations, System Changes and other changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Supplier (excluding Supplier's internal costs, except to the extent such costs are the basis on which ABM is charged). In addition, Supplier shall, and/or shall cause its Subcontractors and suppliers to, maintain accurate records of and supporting documentation for non-financial transactions (excluding internal audit reports, but including notice to ABM of any finding of material non-compliance relating to Supplier's provision of the Services) to the extent Supplier is required to maintain such records and documentation under this Agreement or such records and documentation result from or are created in connection with the performance of Supplier's obligations under this Agreement (collectively, "**Contract Records**"). With respect to the amounts chargeable to and payments made by ABM under this Agreement, Contract Records shall be kept in accordance with generally accepted accounting principles applied on a consistent basis. Supplier shall retain Contract Records in accordance with ABM's record retention policy as it may be reasonably adjusted from

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time to time and provided to Supplier in writing during the Term and any Termination Assistance Services period and thereafter through the end of the second (2nd) full calendar year after the calendar year in which Supplier stopped performing Services (the “**Audit Period**”).

- (b) **Operational Audits.** During the Audit Period, Supplier shall, and (upon ABM’s reasonable request) shall cause its Subcontractors to, provide to ABM (and internal and external auditors, inspectors, regulators and other representatives that ABM may designate from time to time, including customers, vendors, licensees and other third parties to the extent ABM or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel, to the facilities at or from which Services are then being provided and to Contract Records and other pertinent information, all to the extent relevant to performance of the Services and Supplier’s obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections, to (i) verify the integrity of ABM Data, in accordance with the terms of this Agreement, (ii) examine the systems that process, store, support and transmit that data, (iii) examine the controls (e.g., organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery and back-up practices and procedures; (iv) examine Supplier’s performance of the Services, in accordance with the terms of this Agreement; (v) verify Supplier’s reported performance against the applicable Service Levels; (vi) examine the accuracy of Supplier’s measurement, monitoring and management tools; and (vii) enable ABM and the Eligible Recipients to meet applicable legal and regulatory and contractual requirements (including those associated with the Sarbanes-Oxley Act of 2002 and the implementing regulations promulgated by the United States Securities and Exchange Commission and Public Company Accounting Oversight Board), in each case to the extent applicable to the Services performed by Supplier and/or the variable charges for such services. Supplier shall (i) provide any assistance reasonably requested by ABM or its designee in conducting any such audit, including installing and operating audit software during the Term and any Termination Assistance Services period, (ii) make requested personnel (to the extent still employed by Supplier or its applicable Affiliate or Subcontractor), records and information available to ABM or its designee, and (iii) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit.
- (c) **Financial Audits.** During the Audit Period, Supplier shall, and shall cause its Subcontractors to, provide to ABM (and internal and external auditors, inspectors, regulators and other representatives that ABM may designate from time to time, including customers, vendors, licensees and other third parties to the extent ABM or the Eligible Recipients are legally or contractually obligated to submit to audits by such entities) access at reasonable hours to Supplier Personnel and to Contract Records and other pertinent information, all to the extent relevant to the performance of Supplier’s financial obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of the Charges and Pass-Through Expenses and Out-of-Pocket Expenses (iii) examine the financial controls, processes and procedures utilized by Supplier in connection with the Services, (iv) examine Supplier’s performance of its other financial obligations to ABM under this Agreement, and (v) enable ABM and the Eligible Recipients to meet applicable legal and regulatory and contractual requirements in each case to the extent applicable to the Services performed by Supplier and/or the charges for such Services. Supplier shall (i) provide any assistance reasonably requested by ABM or its designee in conducting any such audit, (ii) make requested personnel (to the extent still employed by Supplier or its applicable Affiliate or Subcontractor), records and information available to ABM or its designee, and (iii) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Supplier, and Supplier does not successfully dispute the amount questioned by such audit, Supplier shall promptly pay to ABM the amount of such overcharge (subject to **Section 12.1(d)**, net of any undercharges uncovered by the audit), together with interest at the rate of twelve percent (12%) per annum from the date of Supplier’s receipt of such overcharge. In addition, if any such audit reveals an overcharge of more than five percent

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(5%) of the audited Charges in any Charges category, Supplier shall promptly reimburse ABM for the actual cost of such audit (provided that (i) the amount of such reimbursement shall not exceed the amount of the overcharge, and (ii) if ABM retains an auditor or inspector on a contingent fee basis, such contingent fee is reasonable and in accordance with customary industry arrangements). Subject to **Section 12.1(d)** if any such audit reveals an underpayment by ABM and ABM does not successfully dispute the finding, ABM shall promptly pay Supplier the amount of such undercharge.

(d) **Audit Assistance.** ABM and certain Eligible Recipients are subject to regulation and audit by governmental bodies, standards organizations and other regulatory authorities under applicable Laws, rules, regulations, standards and contract provisions. If a governmental body, standards organization or other regulatory authority exercises its right to examine or audit ABM's or an Eligible Recipient's books, records, documents or accounting practices and procedures pursuant to such Laws, rules, regulations, standards or contract provisions, Supplier shall provide all assistance requested by ABM or the Eligible Recipient in responding to such audits or requests for information.

(e) **General Procedures.**

- (i) Supplier shall obtain audit rights equivalent to those specified in this **Section 9.10** from all Subcontractors and will cause such rights to extend to ABM.
- (ii) Notwithstanding the intended breadth of ABM's audit rights, ABM shall not be given access to the proprietary information of other Supplier customers or to Supplier locations that are not related to ABM, Eligible Recipients or the Services.
- (iii) In performing audits, ABM shall endeavor to avoid unnecessary disruption of Supplier's operations and unnecessary interference with Supplier's ability to perform the Services in accordance with the Service Levels. Unless otherwise agreed, such audits will be conducted during Supplier's normal business hours.
- (iv) Following any audit, ABM shall conduct (in the case of an internal audit), or request its external auditors or examiners to conduct, an exit conference with Supplier to obtain factual concurrence with issues identified in the review.
- (v) ABM shall be given reasonable private workspace in which to perform an audit, plus access to photocopiers, telephone, facsimile machines, computer hook-ups and any other facilities or equipment needed for the performance of the audit.
- (vi) ABM shall provide Supplier with notice at least three (3) business days prior to any operational or financial audit by ABM or its authorized agents or representatives; provided that no such notice shall be required with respect to audits conducted by government auditors, inspectors, regulators or representatives. To the extent ABM has advance notice of a governmental audit, it shall provide reasonable notice to Supplier.
- (vii) Prior to receiving access to Supplier Proprietary Information or Supplier Facilities, external auditors and examiners designated by ABM (other than government auditors and examiners) shall execute a non-disclosure agreement substantially in the form attached hereto as **Exhibit 1**. ABM's external auditors and examiners shall not be Direct Supplier Competitors.

(f) **Supplier Internal Audit.** If Supplier determines as a result of its own internal audit that it has overcharged ABM, then Supplier shall promptly pay or credit to ABM the amount of such overcharge, together with interest from the date of Supplier's receipt of such overcharge at the Prime Rate. In the event such an audit results in a determination that Supplier has undercharged

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ABM, then, subject to **Section 12.1(d)** and ABM's right to dispute the amount of such undercharge, Supplier shall immediately report such undercharge to ABM and invoice ABM for such undercharged amounts.

- (g) **Supplier Response.** Supplier and ABM shall meet to review each audit report prepared in connection with this **Section 9.10** promptly after the issuance thereof. Supplier will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is reasonable under the circumstances. Supplier and ABM shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations in such audit report and Supplier, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein.
- (h) **Supplier Response to Government Audits.** If an audit by a governmental body, stock exchange or regulatory authority having jurisdiction over ABM, an Eligible Recipient or Supplier results in a finding that Supplier is not in compliance with any generally accepted accounting principle or other audit requirement or any Law relating to the performance of its obligations under this Agreement, then unless otherwise agreed, Supplier shall address and resolve the deficiency(ies) identified by such governmental body, stock exchange or regulatory authority in accordance with **Section 15.10** and within the time period specified by such auditor. Supplier shall do so at its own expense if and to the extent such audit deficiency or finding of non-compliance results from Supplier's failure to comply with its obligation under this Agreement.
- (i) **SAS70 Audit.** In addition to its other obligations under this **Section 9.10**, Supplier shall cause a Statement of Auditing Standards ("SAS") 70 Type II audit (or equivalent audit) to be conducted by an independent public accounting firm on a quarterly basis (e.g., February 28, May 31, August 31 and November 30) for Supplier Facilities in North America at or from which outsourcing services are provided, including the Supplier Facilities at or from which Services are provided under this Agreement. Each quarterly SAS 70 Type II audit shall focus in general on Supplier's policies, procedures and internal controls during the preceding twelve (12) months, and in particular on those applicable to a random sample of Supplier's customers selected by the independent public accounting firm. Supplier shall promptly provide ABM and its independent auditors with a copy of the resulting audit report (and in all events shall provide such report within sixty (60) days after the end of the defined quarterly period). Such report shall be provided at no additional charge to ABM. Supplier shall respond to the portions of such report that are relevant to ABM or the Eligible Recipients in accordance with **Section 9.10(g)**.
- (j) **Audit Costs.**
- (i) Except as provided in **Section 9.10(j)(ii)** below, Supplier and its Subcontractors shall provide the Services described in this **Section 9.10** as part of the Monthly Base Charges and at no additional Charge to ABM.
  - (ii) As part of the Monthly Base Charges, Supplier shall provide, at ABM's request, up to 1,000 FTE hours of audit assistance for audits initiated by ABM in any Contract Year ("Baseline Audit FTEs"). The ABM Contract Manager or his or her designee shall request, define and set the priority for such audit assistance. Supplier shall report monthly on the level of effort expended by Supplier in the performance of such audit assistance and shall not exceed the Baseline Audit FTEs without ABM's prior approval. Subject to **Sections 9.10(j)(iii), (iv) and (v)**, if ABM authorizes Supplier to exceed the Baseline Audit FTEs in any Contract Year, ABM shall either pay Supplier for such additional FTE hours at the rates specified in **Schedule J** or apply such additional FTE hours against the Baseline Project FTEs described in **Section 11.8(a)**.
  - (iii) Notwithstanding **Section 9.10(j)(ii)**, to the extent the level of audit assistance requested by ABM and provided by Supplier Personnel in connection with any audit initiated by

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ABM is, in the aggregate, eight (8) FTE hours or less, there shall be no additional Charge to ABM for such assistance and such FTE hours shall not be counted against the Baseline Audit FTE pool described in **Section 9.10(j)(ii)** above.

- (iv) Notwithstanding **Section 9.10(j)(ii)**, to the extent the audit assistance requested by ABM can be provided by Supplier using personnel already assigned to ABM hereunder without impacting Service Levels, there will be no additional charge to ABM for such audit assistance. If the audit assistance requested by ABM cannot be provided by Supplier using such personnel then assigned to ABM without impacting Service Levels, ABM, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance of such audit assistance using personnel already assigned to perform the Services.
- (v) Notwithstanding **Section 9.10(j)(ii)**, there will be no additional charge to ABM for audit assistance if, in performing such an audit, ABM uncovers evidence that Supplier has breached any material obligation(s) under this Agreement.

#### **9.11 Agency and Disbursements.**

- (a) **Disbursements.** Beginning on the Commencement Date, Supplier shall make payments to certain lessors, licensors and suppliers as paying agent of ABM or the Eligible Recipients, or shall reimburse ABM for payments made by ABM or the Eligible Recipients to such lessors, licensors and suppliers, if and to the extent such payments relate to Third Party Contracts, Equipment leases or Third Party Software licenses for periods on or after the Commencement Date as to which Supplier is financially responsible, but which have not been formally transferred to Supplier.
- (b) **Limited Agency.** ABM hereby appoints Supplier as its limited agent during the Term solely for the purposes of the administration of and payment of Pass-Through Expenses, amounts under Managed Third Party agreements and amounts under Third Party Contracts, Equipment leases and Third Party Software licenses for which Supplier is financially responsible under **Schedules E** or **J.1**. ABM shall provide, on a timely basis, such affirmation of Supplier's authority to such lessors, licensors, suppliers and other third parties as Supplier may reasonably request.
- (c) **Reimbursement for Substitute Payment.** If either Party in error pays to a third party an amount for which the other Party is responsible under this Agreement, the Party that is responsible for such payment shall promptly reimburse the paying Party for such amount.
- (d) **Notice of Decommissioning.** Supplier agrees to notify ABM promptly if and to the extent any ABM or Eligible Recipient owned Equipment or ABM or Eligible Recipient leased Equipment will no longer be used to provide the Services. The notification will include the identification of the Equipment and location, and the date it will no longer be needed by Supplier, along with the reason for decommissioning. Upon receipt of any such notice, ABM may (or may cause the applicable Eligible Recipient to), in its sole discretion, terminate the Equipment lease for such leased Equipment as of the date specified in such notice and sell or otherwise dispose of or redeploy such ABM or Eligible Recipient owned Equipment that is the subject of such a notice as of the date specified in such notice. Upon Supplier ceasing to use any Equipment (or, in the case of leased Equipment, upon the last day ABM or Eligible Recipient is obligated to make such leased Equipment available to Supplier, if earlier), Supplier shall return the same to ABM in condition at least as good as the condition thereof on the Commencement Date, ordinary wear and tear excepted. Supplier shall pack and prepare such Equipment for shipping and shall arrange for the shipping of such Equipment to the location designated by ABM. For Equipment located at a Supplier Facility, Supplier shall pay to ship such Equipment to the designated location; for Equipment located at an ABM Facility, ABM shall pay for any such shipping.

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## 9.12 Subcontractors.

- (a) **Use of Subcontractors.** Except as provided in **Section 9.12(b)**, Supplier shall not subcontract any of its responsibilities without ABM's prior written approval, which may be withheld in ABM's sole discretion. Prior to entering into a subcontract with a third party for the Services, Supplier shall (i) give ABM reasonable prior notice specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor, the extent to which ABM will have the right to hire employees of the proposed Subcontractor, the additional Service Taxes, if any, associated with the use of the proposed Subcontractor, and the reasons for subcontracting the work in question; and (ii) obtain ABM's prior written approval of such Subcontractor. ABM shall have the right to revoke its prior approval of a Subcontractor for reasonable cause and direct Supplier to replace such Subcontractor as soon as possible. Subcontractors listed on **Schedule D** as of the Effective Date are deemed to be approved by ABM.
- (b) **Shared Subcontractors.** Supplier may, in the ordinary course of business, subcontract (i) for third party services or products that are not exclusively dedicated to ABM and that do not include regular direct contact with ABM or Eligible Recipient personnel or the performance of services at ABM Sites, or (ii) with temporary personnel firms for the provision of temporary contract labor (collectively, "**Shared Subcontractors**"); provided, that such Shared Subcontractors possess the training and experience, competence and skill to perform the work in a skilled, workmanlike manner. ABM shall have no approval right with respect to such Shared Subcontractors. If, however, ABM expresses dissatisfaction with the services or products of a Shared Subcontractor, Supplier shall work in good faith to resolve ABM's concerns on a mutually acceptable basis and, at ABM request, replace such Shared Subcontractor.
- (c) **Supplier Responsibility.** Supplier shall be responsible for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Supplier under this Agreement to the same extent as if such failure to perform or comply was committed by Supplier or Supplier employees. Supplier shall be responsible for the performance of all such Subcontractors and Subcontractor personnel providing any of the Services hereunder. Supplier shall be ABM's sole point of contact regarding the Services, including with respect to payment.

## 9.13 Telecommunications Matters

- (a) Supplier or a Supplier Subcontractor will, at no additional charge to ABM, perform the functions of a Responsible Organization ("RespOrg") with respect to all "called party pays" toll free numbers (e.g., those in the 800, 888 and similar service access code) (collectively "Toll Free Numbers") for which ABM requests such RespOrg services, and will fully and promptly perform all RespOrg functions under applicable tariffs (including the Bell Operating Company Tariffs) or rules, regulations and procedures of the FCC and the North American Number Coordinator pertaining to 800 Service Management System functions with respect to such Toll Free Numbers ("800 Service Management Systems SMS/800 Functions"); provided that Supplier and/or its Subcontractor shall not hold in reserve or otherwise refuse to release such Toll Free Numbers upon written request of ABM to release or transfer some or all Toll Free Numbers.
- (b) To the extent technologically and operationally compatible and permitted by applicable Laws, the Services may be connected/interconnected by ABM to other services provided by Supplier or to services provided by ABM itself or any other vendor.
- (c) To the extent Supplier elects to change one or more of its underlying providers of interexchange facilities, such change shall not, unless otherwise agreed, result in any interruption, diminution in service quality, or increase in the Charges.
- (d) Orders for the installation or relocation of elements of the Services must be submitted in writing by an authorized ABM representative and evidenced by an ABM service order number. ABM shall only be responsible for orders placed, and information directions and commitments relevant to such

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orders delivered to Supplier by such authorized ABM representatives. Supplier will accept service orders only from authorized ABM representatives identified on such list and will not solicit the placement of orders by unauthorized employees of ABM or Eligible Recipients. Supplier shall send ABM written confirmation of service orders not initiated by an authorized ABM or an Eligible Recipient representative and submitted in writing to Supplier within one (1) business day of Supplier's receipt of each such order. Supplier shall implement such service order(s) only upon receipt of ABM's written ratification of such order(s). Unless otherwise agreed by ABM in its sole discretion, in the event Supplier implements a service order placed by an individual without authorization without first receiving ratification of the order by an authorized representative, the order shall be deemed null and void ab initio, Supplier will promptly discontinue the affected Services, and Supplier will not charge ABM any deinstall or other charge that would otherwise apply.

- (e) With respect to the compatibility of the Services provided by Supplier with Equipment for which ABM is financially and operationally responsible, Supplier agrees to consult with ABM on request concerning the compatibility of Services with such Equipment including, in the case of Equipment and related software that ABM proposes to acquire, informing ABM of the likely effects (if any) of the use of such Equipment and related software on the quality, operating characteristics and efficiency of the Services and the effects (if any) of the Services on the operating characteristics and efficiency of such Equipment and related software. Supplier further agrees to provide all interface specifications requested by ABM with respect to any Service.

#### 9.14 FCC Actions

- (a) If Supplier and/or its Subcontractors are required to file a tariff or other regulatory submission pursuant to Section 9.14(b), below, and the initial tariff option or submission that Supplier or its Subcontractors file to implement this Agreement is not permitted to become effective by the Federal Communications Commission or if any ruling, order or determination shall materially and adversely affect Supplier's or its Subcontractors' ability to offer the Services under the terms and conditions set forth herein, Supplier shall develop a proposal the purpose of which will be to provide comparable service to ABM on terms and conditions substantially equivalent to those contained in this Agreement, to the extent permissible under applicable legal and regulatory requirements. ABM shall cooperate with Supplier in the development of such a proposal. Such service may be provided under (i) other existing Supplier or Subcontractor tariffs (if that can be done at such tariffs' then-effective rates without further revision), (ii) newly-filed tariffs or regulatory submissions, or (iii) public postings by Supplier or its Subcontractors of rates and other terms of service. If Supplier is unwilling or unable to develop such proposal within thirty (30) days of any such event, such proposal is not reasonably acceptable to ABM, or such proposal fails to take effect within thirty (30) days of the Parties' agreement to such proposal, ABM shall have the right to terminate any affected portions of this Agreement without payment of Termination Charges or other liability. A proposal shall be deemed not reasonably acceptable to ABM if it fails to comply with applicable legal or regulatory requirements, increases ABM's total costs of receiving the Services, requires material changes to ABM facilities, systems, software or equipment, or has a material adverse impact on the functionality, interoperability, performance or resource efficiency of the Services.

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- (b) To the extent required by Law, and within thirty (30) days after the Effective Date of this Agreement, Supplier and/or its Subcontractors will file any tariff, tariff option or other regulatory submission applicable to Supplier and/or its Subcontractors and required to implement the Agreement. Such filing shall be consistent in all material respect with all applicable provisions of this Agreement and shall not be less favorable to ABM and the Eligible Recipients than the rates and other terms and conditions of this Agreement. Supplier will make a copy of any applicable filings available to ABM for ABM's review and inspection and will provide ABM with a copy of all amendments to such tariffs or other filings having a bearing on the Agreement when such amendments are filed with the appropriate governmental agencies. In addition, Supplier will provide a draft of any revisions that may substantively affect ABM's rights and obligations under this Agreement at least ten (10) days before such revisions are filed with the FCC, where feasible. If Supplier makes revisions to a tariff, tariff option or other submission that materially and adversely affect ABM's rights hereunder without obtaining ABM's written consent, ABM shall have the right to terminate any affected portions of this Agreement without payment of Termination Charges or other liability.
- (c) Supplier and ABM shall not (and Supplier shall cause its Subcontractors not to) interpose as a defense in any action to enforce the other Party's rights under this Agreement that such terms and conditions are invalid or unenforceable because of inconsistency with applicable Law or regulation or with Supplier's or its Subcontractors' tariffs, tariff options or other regulatory submissions, if any, and will not make such a claim in any tribunal in a dispute with the other Party.
- (d) If, at any time during the Term, the Federal Communications Commission or any other regulatory body with jurisdiction over a material portion of the Services, pursuant to a final order that is not subject to further appeal, alters the rules or regulations applicable to Supplier, its Subcontractors or the Services in a manner that requires or permits Supplier or its Subcontractors to detariff all or any material portion of the Services, Supplier and/or its Subcontractors shall promptly detariff (and withdraw any tariff, tariff option or other regulatory submission specifically relating to) such Services or the affected portions thereof and thereafter perform such Services solely in accordance with the terms and conditions of this Agreement.
- (e) If, at any time during the Term, the Federal Communications Commission or any other applicable regulatory authority with jurisdiction over a material portion of the Services determines that it is unlawful for Supplier or its Subcontractors to provide both regulated and non-regulated Services under a single agreement, the Parties agree to execute a separate agreement under which the non-regulated services will be provided and, except as otherwise agreed by the Parties or required by applicable Laws, the terms and conditions applicable to such non-regulated Services shall be identical in all non-ministerial respects to those provided herein.
- (f) If, at any time during the Term, the Federal Communications Commission or any other applicable regulatory authority with jurisdiction over a material portion of the Services promulgates or passes a law, statute, rule, regulation or order that adversely affects Supplier's or its Subcontractors' ability to offer the Services under the terms and conditions set forth herein, Supplier shall provide service to ABM under other arrangements with rates, terms and conditions no less favorable to ABM than those set forth in this Agreement. If any such law, statute, rule, regulation, or order shall require the enhancement or improvement of a Service provided under this Agreement, Supplier shall not, and shall cause its Subcontractors not to, resist same and shall improve or enhance such Service as required.

#### **9.15 Retained Systems and Business Processes.**

- (a) **No Adverse Effect.** Supplier shall not, by any act or omission, adversely affect or alter the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of the Retained Systems and Business Processes without the prior consent of ABM. Nor shall Supplier, by any act or omission, require changes to the Retained Systems and

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Business Processes, including associated business processes, applications, systems, software, utilities, tools or equipment, without the prior consent of ABM.

- (b) **Interface.** Supplier shall cause the processes, Systems, Software and Equipment used to provide the Services to interface and integrate with the Retained Systems and Business Processes.
- (c) **Keep Informed.** Supplier shall use commercially reasonable efforts to inform itself and maintain up to date knowledge about all aspects of the existing and future Retained Systems and Business Processes.
- (d) **Assistance.** As part of the Services, Supplier shall provide ABM (upon ABM's request) with Services in relation to Retained Systems and Business Processes, including: (i) liaising with ABM or third parties regarding the impact of any alterations to the Retained Systems and Business Processes and vice versa; and (ii) identifying favorable vendors, and acting as ABM's agent, in relation to the acquisition, support and development of Retained Systems and Business Processes.

#### **9.16 Network Configuration Data.**

Supplier (i) shall provide ABM (and its third party vendors) with network configuration data in relation to the network Supplier provides for ABM and/or the Eligible Recipients; and (ii) hereby grants to ABM (and its third party vendors) the right to use such data in connection with businesses of ABM and the Eligible Recipients.

### **10. ABM RESPONSIBILITIES**

#### **10.1 Responsibilities.**

In addition to ABM's responsibilities as expressly set forth elsewhere in this Agreement, ABM shall be responsible for the following:

- (a) **ABM Contract Manager.** ABM shall designate one (1) individual (the "**ABM Contract Manager**") to whom all Supplier communications concerning this Agreement may be addressed (except as otherwise expressly provided in this Agreement), who shall have the authority to act on behalf of ABM and the Eligible Recipients in all day-to-day matters pertaining to this Agreement. ABM may change the designated ABM Contract Manager from time to time by providing notice to Supplier. Additionally, ABM will have the option, but will not be obligated, to designate additional representatives who will be authorized to make certain decisions (e.g., regarding emergency maintenance) if the ABM Contract Manager is not available.
- (b) **Cooperation.** ABM, through the ABM Contract Manager (or his or her designee), shall cooperate with Supplier by, among other things, making available, as reasonably requested by Supplier, management decisions, information, approvals and acceptances so that Supplier may accomplish its obligations and responsibilities hereunder.
- (c) **Requirement of Writing.** To the extent Supplier is required under this Agreement to obtain ABM's approval, consent or agreement, such approval, consent or agreement must be in writing and must be signed by the ABM Contract Manager or an authorized ABM representative. Notwithstanding the preceding sentence, the ABM Contract Manager may agree in advance in writing that as to certain specific matters oral approval, consent or agreement will be sufficient.
- (d) **ABM Personnel.** ABM, and not Supplier, shall be responsible and therefore solely liable for all acts and omissions of ABM Personnel, including acts and omissions constituting gross negligence, willful misconduct and/or fraud.

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## **10.2 Savings Clause.**

Supplier's failure to perform its responsibilities under this Agreement or to meet the Service Levels shall be excused if and to the extent such Supplier non-performance is caused by (i) the wrongful or tortious actions of ABM, an Eligible Recipient or an ABM Third Party Contractor performing obligations on behalf of ABM under this Agreement, or (ii) the failure of ABM, an Eligible Recipient or an ABM Third Party Contractor to perform ABM's obligations under this Agreement (unless and to the extent, as to ABM Third Party Contractors, such failure is attributable to Supplier's failure to properly manage such ABM Third Party Contractor in accordance with **Section 6.11** and **Schedule K**), but only if (A) Supplier expeditiously notifies ABM of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances, (B) Supplier provides ABM with a reasonable opportunity to correct such failure to perform and thereby avoid such Supplier non-performance, (C) Supplier uses commercially reasonable efforts to avoid or mitigate the impact of such failure to perform, (D) Supplier uses commercially reasonable efforts to perform notwithstanding such failure to perform, and (E) if there are questions as to causation, Supplier conducts a Root Cause Analysis and thereby demonstrates that such failure to perform is the cause of Supplier's non-performance.

## **11. CHARGES**

### **11.1 General.**

- (a) **Payment of Charges.** In consideration of Supplier's performance of the Services, ABM agrees to pay Supplier the applicable Charges set forth in **Schedule J**.
- (b) **No Additional Charges.** ABM shall not pay any Charges for the Services in addition to those set forth in this **Article 11**, or **Schedule J**. Any costs incurred by Supplier prior to the Effective Date are included in the Charges set forth in **Schedule J** and are not to be separately paid or reimbursed by ABM.
- (c) **No Charge for Reperformance.** At no additional expense to ABM, Supplier shall reperform (including, subject to **Section 13.2(c)**, any required backup or restoration of data) any Services that result in incorrect outputs to the extent due to an error or breach by Supplier, and the resources required for such performance shall not be counted in calculating the Charges payable or resources utilized by ABM hereunder.
- (d) **Charges for Contract Changes.** Unless otherwise agreed, System Changes, changes in the Services (including changes in the ABM Standards) and changes in the rights or obligations of the Parties under this Agreement (collectively, "**Contract Changes**") will result in changes in the applicable Charges only if and to the extent (i) the Agreement expressly provides for a change in the Supplier Charges in such circumstances; (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances (for example, **Schedule J** specifies the number of FTEs or hours of coverage to be provided for the quoted price, or defines a Resource Baseline for the Resource Unit in question with ARCs and RRCs for increased or decreased usage); or (iii) the Contract Change meets the definition of New Services and additional Charges are applicable in accordance therewith.
- (e) **Eligible Recipient Services.**
  - (i) **Eligible Recipients.** Supplier shall provide the Services to Eligible Recipients designated by ABM. To the extent a designated Eligible Recipient will receive less than all of the Services, ABM shall identify the categories of Services to be provided by Supplier to such Eligible Recipient.

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- (ii) **New Eligible Recipients.** From time to time ABM may request, pursuant to the Change Control Process, that Supplier provide Services to Eligible Recipients not previously receiving such Services. Except as provided in Section 11.5 or otherwise agreed by the Parties, such Services shall be performed in accordance with the terms, conditions and prices (excluding any non-recurring transition or start-up activities specific to such Eligible Recipients for which Supplier is not otherwise financially responsible under this Agreement) then applicable to the provisions of the same Services to existing Eligible Recipients.
- (iii) **Eligible Recipients Described in Section 2.1(44)(h) and (i).** Unless otherwise agreed by the Parties, to the extent ABM designates as an Eligible Recipient a person or Entity engaged in the provision of products or services to ABM and/or the Eligible Recipients described in Sections 2.1(44)(a)-(g), the Services provided by Supplier to such Eligible Recipient shall be limited to and in support of the provision of such products or services to ABM and/or the Eligible Recipients. Unless otherwise agreed by the Parties, to the extent ABM designates as an Eligible Recipient a customer of an Eligible Recipient described in Sections 2.1(44)(a)-(g) or a subcontractor to such an Eligible Recipient, the Services provided by Supplier shall be limited to and in support of the provision of products or services to such customer or subcontractor.
- (iv) **Election Procedure.** Within ninety (90) days after the consummation of a transaction described in Section 2.1(44)(c) or (d), ABM shall elect, on behalf of the Eligible Recipient in question, either (i) that such Eligible Recipient shall continue to obtain Services in some or all Functional Service Areas subject to and in accordance with the terms and conditions of this Agreement for the remainder of the Term, or (ii) that the Term shall be terminated as to such Eligible Recipient with respect to some or all Functional Service Areas as of a specified date, subject to its receipt of Termination Assistance Services pursuant to Section 4.3. If there shall be no election within such ninety (90) day period, the Term shall be terminated as to such Eligible Recipient with respect to all Services, subject to its receipt of Termination Assistance Services pursuant to Section 4.3.

## **11.2 Pass-Through Expenses.**

- (a) **Procedures and Payment.** Unless otherwise agreed by the Parties, ABM shall pay all Pass-Through Expenses directly to the applicable suppliers following review, validation and approval of such Pass-Through Expenses by Supplier. Before transmitting an invoice to ABM for any Pass-Through Expense, Supplier shall (i) confirm that ABM, rather than Supplier, is financially responsible for the invoiced charges under Schedule J, (ii) review and validate the invoiced charges, (iii) identify any errors or omissions on such invoice, (iv) communicate with the applicable supplier to correct any errors or omissions, resolve any questions or issues and obtain any applicable credits for ABM, and (v) code the applicable invoice to the proper ABM's cost center or account. Supplier shall transmit to ABM the supplier invoice, together with any documentation supporting such invoice and a statement that Supplier has reviewed and validated the invoiced charges, within ten (10) days after Supplier's receipt of notice of such invoice, or, if earlier, within five (5) days prior to the date on which payment is due if such invoice was electronically received by Supplier at least five (5) days prior to such due date. In addition, if the supplier offers a discount for payment prior to a specified date, Supplier shall use commercially reasonable efforts to transmit such invoice and associated documentation to ABM at least ten (10) days prior to such date. To the extent either Party fails to comply with its obligations hereunder, it shall be financially responsible for any discounts lost or any late fees or interest charges incurred. Supplier shall deliver a monthly Pass-Through Expense Report to ABM as specified in Schedule R.

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- (b) **Efforts to Minimize.** Supplier will use commercially reasonable efforts to identify methods of reducing and minimizing ABM's retained and Pass-Through Expenses and will notify ABM of such methods and the estimated potential savings associated with each such method.

#### **11.3 Incidental Expenses.**

Supplier acknowledges that, except as expressly provided otherwise in the Agreement, expenses that Supplier incurs in performing the Services are included in Supplier's charges and rates set forth in this Agreement. Accordingly, such Supplier expenses are not separately reimbursable by ABM unless ABM has agreed in advance to reimburse Supplier for the expense.

#### **11.4 Taxes.**

The Parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

- (a) **Income Taxes.** Each Party shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Each Party shall be responsible for any sales, lease, use, personal property, stamp duty or other such taxes on Equipment, Software or property it owns or leases from a third party, including any lease assigned pursuant to this Agreement, and/or for which it is financially responsible under this Agreement.
- (c) **Taxes on Goods or Services Used by Supplier.** Supplier shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Supplier on any goods or services used or consumed by Supplier in providing the Services where the tax is imposed on Supplier's acquisition or use of such goods or services and the amount of tax is measured by Supplier's costs in acquiring such goods or services and not by ABM's cost of acquiring such goods or services from Supplier.
- (d) **Service Taxes.**
  - (i) Subject to Sections 11.4(d)(ii) and (iii), ABM shall be financially responsible for all Service Taxes enacted prior to the Effective Date and assessed against Supplier, ABM or the Eligible Recipients by Tax Authorities in jurisdictions in which the Services are delivered to ABM or the Eligible Recipients by Supplier ("ABM Service Taxes")
  - (ii) If, following the Effective Date, new or higher ABM Service Taxes become applicable to the Services as a result of either Party moving all or part of its operations to a different jurisdiction (e.g., ABM or an Eligible Recipient opening a new facility, Supplier relocating the performance of the Services to a new service location or Supplier using an Affiliate or Subcontractor to perform all or part of the Services) and such move was not contemplated as of the Effective Date, the Party initiating such move shall be financially responsible for such new or higher ABM Service Taxes.
  - (iii) Notwithstanding Section 11.4(d)(i) and (ii), if new or higher ABM Service Taxes are enacted on or after the Effective Date (or, in the case of Section 11.4(d)(ii), the move date), the Parties shall identify and diligently seek to agree upon legally permissible means of avoiding or minimizing such new or higher Service Taxes and/or sharing financial responsibility for such Service Taxes. If the Parties are unable to agree upon such measures within thirty (30) days and the financial impact of all such new or higher Service Taxes exceeds one percent (1%) of the then-current Annual Service Charge, ABM may elect to terminate this Agreement in its entirety or to terminate any portions impacted by such new or higher Service Taxes (unless Supplier agrees to assume financial responsibility for all new or higher Service Taxes exceeding the one percent

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threshold). If ABM elects to terminate on this basis, ABM shall not be obligated to pay any Termination Fee, but shall pay Wind Down Charges in accordance with **Schedule N**.

- (iv) Supplier shall be financially responsible for any Service Taxes assessed against either Party by Tax Authorities in the jurisdictions from which the Services are provided by Supplier or any Service Taxes otherwise attributable to the provision of Services by Supplier from such jurisdictions ("Supplier Service Taxes"). Notwithstanding the foregoing, to the extent Supplier provides the Services from the same jurisdiction in which such Services are delivered to ABM or the applicable Eligible Recipient, then such Service Taxes shall be treated in accordance with **Section 11.4(e)(i)** above.
  - (v) If required under applicable Laws, Supplier shall invoice ABM for the full amount of any such Supplier Service Taxes and then credit or reimburse ABM for that portion of such Service Taxes for which Supplier is financially responsible under this provision.
  - (vi) With respect to Service Taxes for which Supplier is financially responsible under this Agreement, Supplier shall include on each invoice delivered to ABM pursuant to **Section 12.1(a)** the identity and amount of each such Service Tax and a representation that Supplier has paid such tax.
- (e) **Withholding.** Any withholding tax or other tax of any kind that ABM is required by applicable Law to withhold and pay on behalf of Supplier with respect to amounts payable to Supplier under this Agreement will be deducted from such amount prior to remittance to Supplier. ABM will provide to Supplier reasonable assistance, which shall include the provision of reasonable documentation as required by revenue authorities, to enable Supplier to claim exemption from or obtain a repayment of such withheld taxes and will, upon request, provide Supplier with a copy of the withholding tax certificate.
- (f) **Telecommunication Surcharges or User Fees.** To the extent ABM is responsible under **Schedule J** for telecommunication surcharges or user fees imposed by government authorities and associated with the Services and the allocation of such fees or surcharges is within Supplier's or its Subcontractors' discretion, Supplier and its Subcontractors shall act fairly and equitably in allocating such fees and surcharges to ABM, and ABM and the Eligible Recipients shall not receive an unfair or inequitable share of such fees and surcharges. In addition, in the event any such fee or surcharge for which ABM or an Eligible Recipient is responsible is subsequently reduced or vacated by the appropriate regulatory authority or court of competent jurisdiction, Supplier shall seek on behalf of ABM a refund of any overpayment of such fee or surcharge by ABM or the Eligible Recipient.
- (g) **Notice of New Taxes and Charges.** Supplier shall promptly notify ABM when it becomes aware of any new taxes or other charges (including changes to existing taxes or charges) to be passed through and/or collected by Supplier under this Section. Such notification (which may be separate from the first invoice reflecting such taxes or other charges) shall contain a detailed explanation of such taxes or charges, including the effective date of each new tax or charge.
- (h) **Efforts to Minimize Taxes.** The Parties agree to cooperate fully with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the extent legally permissible. Supplier's invoices shall separately state the Charges that are subject to taxation and the amount of taxes included therein. Each Party will provide and make available to the other any resale certificates, information regarding out-of-state sales or use of equipment, materials, or services, and other exemption certificates or information reasonably requested by either Party. At ABM's reasonable request, Supplier shall provide ABM with written evidence of Supplier's filing of all required tax forms and returns required in connection with any Service Taxes collected from ABM, and its collection and remittance of all applicable Service Taxes.

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(i) **Tax Audits or Proceedings.**

- (i) The provisions of this **Section 11.4(i)(i)** shall apply with respect to any audit, proceeding or claim by any Tax Authority that relates to taxes assessed by such Tax Authority for which the other Party is financially responsible under this Agreement and that relates solely to such other Party and, with respect to Supplier, does not involve claims for taxes assessed in connection with any other customer of Supplier. Each Party shall promptly notify the other Party of, and coordinate with the other Party the response to and settlement of, any claim for taxes asserted by applicable Tax Authorities for which the other Party is financially responsible hereunder. Each Party also shall have the right to challenge the imposition of any tax liability for which it is financially responsible under this Agreement or, if necessary, to direct the other Party to challenge the imposition of such tax liability. If either Party requests the other to challenge the imposition of any tax liability, such other Party ultimately imposed by the Tax Authority in connection therewith, except to the extent, that the fines, penalties, interest, additions to taxes or similar liabilities resulted from the other Party's failure to properly and timely execute its filing and remittance obligations (unless such failure resulted from the requesting Party's failure to provide reasonable cooperation, information and assistance), plus (ii) the reasonable legal, accounting and other professional fees and expenses the other Party incurs provided that the requesting Party has approved the selection of the legal, accounting and other professional service providers, which approval shall not be unreasonably withheld. Each Party shall be entitled to any tax refunds or rebates obtained with respect to taxes for which such Party has borne financial responsibility under this Agreement.
- (ii) The provisions of this **Section 11.4(i)(ii)** shall apply to any audit, proceeding or claim by any Tax Authority that relates to taxes assessed by such Tax Authority to one Party for which the other Party is financially responsible under this Agreement and for which Supplier or other Supplier customers are also financially responsible in other similar transactions. Each Party shall promptly notify the other of any claim for taxes assessed by applicable Tax Authorities for which the other Party is responsible hereunder. Each Party shall provide any reasonable information related to such claim reasonably requested by the other Party. If either Party has a reasonable basis for a challenge and requests the other to so challenge the imposition of any tax liability, such other Party shall do so (unless and to the extent it assumes financial responsibility for the tax liability in question), and the requesting Party shall reimburse the other for all (i) any fines, penalties, interest, additions to taxes or similar liabilities ultimately imposed by the Tax Authority in connection therewith, except to the extent that the fines, penalties, interest, additions to taxes or similar liabilities resulted from the other Party's failure to properly and timely execute its filing and remittance obligations(unless such failure resulted from the requesting Party's failure to provide reasonable cooperation, information and assistance), plus (ii) reasonable legal, accounting or other professional fees and expenses the other Party incurs in such challenge provided that the requesting Party has approved the selection of the legal, accounting and other professional service providers, which approval shall not be unreasonably withheld. In addition, neither Party shall enter into a settlement of any tax liability that creates a binding financial obligation for the other Party without the other Party's approval, which shall not be unreasonably withheld; provided that the other Party assumes financial liability for any interest, penalties or fines which accrue on the claimed amount, and provided further that this subsection (ii) shall not limit Supplier's right or ability to settle similar claims related to other customers or amounts for which Supplier has financial responsibility. Each Party shall be entitled to any tax refunds or rebates obtained with respect to taxes for which such Party has borne financial responsibility under this Agreement.
- (j) **Tax Filings.** Each Party represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in

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applicable jurisdictions. Supplier represents, warrants and covenants that it is registered to and will collect and remit Service Taxes in all applicable jurisdictions.

## 11.5 New Services.

- (a) **Procedures.** If ABM requests that Supplier perform any New Services, Supplier shall promptly prepare a New Services proposal for ABM's consideration. Unless otherwise agreed by the Parties, Supplier shall prepare such New Services proposal at no additional charge to ABM and shall deliver such proposal to ABM within the time frames set forth in Section 4.2 of **Schedule G.6** (Governance SLA Definitions); provided, that Supplier shall use commercially reasonable efforts to respond more quickly in the case of a pressing business need or an emergency situation. ABM shall provide such information as Supplier reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail reasonably sufficient to permit ABM to make an informed business decision: (i) a project plan and fixed price or price estimate for the New Service; (ii) a breakdown of such price or estimate, including any applicable Service Charges, (iii) a description of the service levels to be associated with such New Service (if applicable), (iv) a schedule for commencing and completing the New Service, (v) a description of the new hardware or software to be provided by Supplier in connection with the New Service, (vi) a description of the software, hardware and other resources, including Resource Unit utilization, necessary to provide the New Service, (vii) any new or different ownership terms in connection with such New Services or any Developed Materials to be created in connection therewith, and (viii) any additional facilities or labor resources to be provided by ABM in connection with the proposed New Service. ABM may accept or reject any New Services proposal in its sole discretion and Supplier shall not be obligated to perform any New Services if the applicable proposal is rejected. Unless the Parties otherwise agree, if ABM accepts Supplier's proposal, Supplier will perform the New Services and be paid in accordance with the proposal submitted by Supplier and the provisions of this Agreement. Upon ABM's acceptance of a Supplier proposal for New Services, the scope of the Services will be expanded and this Agreement will be modified to include such New Services. Supplier shall not be obligated to perform any New Service unless and until such New Service is reflected in a written amendment to this Agreement. Notwithstanding any provision to the contrary, (i) Supplier shall act reasonably and in good faith in formulating such pricing proposal, (ii) Supplier shall use commercially reasonable efforts to identify potential means of reducing the cost to ABM, including utilizing Subcontractors as and to the extent appropriate, (iii) such pricing proposal shall be no less favorable to ABM than the pricing and labor rates set forth herein for comparable Services (if any), and (iv) such pricing proposal shall take into account the existing and future volume of business between ABM and Supplier.
- (b) **Use of Third Parties.** ABM may elect to solicit and receive bids from third parties to perform any New Services. If ABM elects to use third parties to perform New Services, (i) such New Services shall not be deemed "Services" under the provisions of this Agreement and (ii) Supplier shall reasonably cooperate with such third parties as provided in **Section 4.4**.
- (c) **Services Evolution and Modification.** The Parties anticipate that, as provided in **Section 4.1(a)**, the Services will evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering services and changes in the business of ABM and the Eligible Recipients. The Parties acknowledge and agree that this evolution will modify the "Services" and will not be deemed to result in New Services unless the changed services meet the definition of New Services.
- (d) **Authorized User and Eligible Recipient Requests.** Supplier will promptly inform the ABM Contract Manager of requests for New Services from Authorized Users or Eligible Recipients, and shall submit any proposals for New Services to the ABM Contract Manager or his or her designee. Supplier shall not agree to provide New Services to any Authorized Users or Eligible Recipients without the prior written approval of the ABM Contract Manager or his or her designee. If

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Supplier fails to obtain ABM's approval in accordance with this **Section 11.5(d)**, it shall receive no compensation for any services rendered to any person or entity in violation of such provision.

- (e) **Efforts to Reduce Costs and Charges.** From time to time, ABM may request that the Parties work together to identify ways to achieve reductions in the cost of service delivery and corresponding reductions in the Charges to be paid by ABM by modifying or reducing the nature or scope of the Services to be performed by Supplier, the applicable Service Levels or other contract requirements. If requested by ABM, Supplier shall promptly prepare a proposal identifying viable means of achieving the desired reductions without adversely impacting business objectives or requirements identified by ABM. In preparing such a proposal, Supplier shall give due consideration to any means of achieving such reductions proposed by ABM. Supplier shall negotiate in good faith with ABM and, without disclosing the actual cost of providing the Services, shall identify for ABM if and to what extent the price of service delivery may be reduced by implementing various changes in the contract requirements. ABM shall not be obligated to accept or implement any proposal; and Supplier shall not be obligated to implement any change that affects the terms of this Agreement unless and until such change is reflected in a written amendment to this Agreement.

## **11.6 Extraordinary Events.**

- (a) **Definition.** As used in this Agreement, an "**Extraordinary Event**" shall mean a circumstance in which an event or discrete set of events has occurred or is planned with respect to the business of ABM or the Eligible Recipients or their receipt of the Services that results or will result in a sustained change in the scope, nature or volume of the Services that ABM and the Eligible Recipients will require from Supplier, and which is expected to cause the estimated average monthly amount of chargeable resource usage in any category used to provide the Services to increase or decrease by twenty-five percent (25%) or more. Examples of the kinds of events that might cause such substantial increases or decreases include the following:
- (i) changes in locations where ABM or the Eligible Recipients operate;
  - (ii) changes in products of, or in markets served by, ABM or the Eligible Recipients;
  - (iii) mergers, acquisitions, divestitures or reorganizations of ABM or the Eligible Recipients;
  - (iv) changes in the method of service delivery;
  - (v) changes in the applicable regulatory environment;
  - (vi) changes in market priorities; or
  - (vii) changes in the business units being serviced by Supplier.
- (b) **Consequence.** If an Extraordinary Event occurs, ABM may, at its option, request more favorable pricing with respect to some or all of the Charges categories specified in **Schedule J** in accordance with the following:
- (1) Supplier and ABM shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization changes capable of being achieved in connection with an Extraordinary Event. Supplier shall then develop a plan to modify the Services to implement such efficiencies, economies, savings and resource utilization changes as quickly as practicable and shall submit such plan to ABM for its review and approval. Upon ABM's approval, Supplier shall implement the plan in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization change are realized, the Charges specified on Schedule J and any affected Resource

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Baselines shall be promptly and equitably adjusted to pass through to ABM the full benefit of such efficiencies, economies, savings and resource changes; provided, that ABM shall reimburse Supplier for any net costs incurred to realize such efficiencies, economies, savings or resource utilization reductions if and to the extent (i) such costs are identified in the implementation plan and approved in advance by ABM, (ii) Supplier uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other practical way to obtain such savings without incurring such costs, and (iii) Supplier uses commercially reasonable efforts to minimize the additional costs to be reimbursed by ABM. ABM may, at its option and expense, employ an accredited and independent auditor, subject to the confidentiality obligations set forth in this Agreement, to verify Supplier's methodology for calculating the efficiencies, economies, savings and resource changes, if any, from such Extraordinary Event.

- (2) An Extraordinary Event shall not result in Charges to ABM being higher than such Charges would have been if the RRCs, ARCs and other terms specified in **Schedule J** had been applied unless and to the extent such Extraordinary Event results in New Services (e.g., ABM requires that Supplier create a new infrastructure to support an acquired Entity). ABM may, at its sole option, elect at any time to forego its rights under this **Section 11.6** and instead, apply RRCs, ARCs and other rates and charges specified in **Schedule J** to adjust the Charges.

## 11.7 Technology.

- (a) **Currency.** Subject to **Section 9.5**, Supplier shall use commercially reasonable efforts to provide the Services using current technologies that will enable ABM to take advantage of technological advancements in the ITO Services industry and support ABM's efforts to maintain competitiveness in the markets in which it competes. To the extent necessary and appropriate, the Parties shall equitably modify and adjust the Resource Units to be measured and the Resource Baselines associated with such Resource Units to be consistent with such technological advancements.
- (b) **Unanticipated Change.** In the event of a significant and unanticipated change that would materially reduce Supplier's costs in providing the Services, ABM may, at its option, request more favorable pricing with respect to some or all of the Charges categories specified in **Schedule J**. If ABM makes such a request, the Parties shall use the procedures in **Section 11.6** to equitably adjust such Charges, recognizing that Supplier expects the entire benefit of the price performance evidenced in its pricing.
- (c) **Supplier Developed Advances.** If Supplier develops technological advances or changes Supplier's systems used to provide the same or substantially similar services to other Supplier customers or Supplier develops new or enhanced processes, services, software, tools, products or methodologies that are or will be commercially offered to such customers (collectively, "**New Advances**"), Supplier shall, subject to **Section 11.5**, consider ABM for (i) the opportunity to serve as a pilot customer in connection with the implementation of such New Advances; and (ii) if ABM declines such opportunity, the opportunity to be among the first of the Supplier customer base to implement and receive the benefits of any New Advances.
- (d) **Supplier Briefings.** Supplier shall meet with ABM at least semi-annually to brief ABM regarding technological developments and advances as well as new or enhanced services, software, tools, products or methodologies in application management, telecommunication, IT infrastructure, help desk, and information technology of possible interest or applicability to ABM, including opportunities to serve as a pilot customer or early adopter of technological advances. Such briefing shall include Supplier's assessment of the business impact, performance improvements and cost savings associated with each.

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## **11.8 Project Resources.**

- (a) **Performance of Projects.** As part of the Monthly Base Charges, Supplier shall provide the number of FTE Project Hours per Contract Year specified in **Schedule J** to perform AMS-type Projects (the “**Baseline AMS FTE Project Hours**”) and the annual dollar pool specified in **Schedule J** to perform other Projects (including AMS-type Projects (“**Baseline FTE Project Dollars**”). The Baseline FTE Project Hours and Baseline FTE Project Dollars shall be known collectively as the “**Project Pool**.” A “**Project**” is a discrete unit of non-recurring work (i) that is not an inherent, necessary or customary part of the day to day Services, (ii) that is not required to be performed by Supplier to meet the existing Service Levels (other than any Service Levels related to Project performance), (iii) that imposes unique requirements, accelerated deadlines and/or other extraordinary demands on ABM generally and the IT/IS organizations in particular, and (iv) that, due to the magnitude, complexity and urgency of the work to be performed, ABM has historically used external resources to perform. By way of example, the information technology support of a substantial corporate acquisition (such as the recent acquisition of ) or the accelerated deployment of complex new business systems (such as Active Directory) would be considered a Project. A Project may consist of or include work that would otherwise be treated as New Services. The Supplier Personnel assigned to perform such Projects shall possess the training, education, experience, competence and skill to perform such work. Supplier shall maintain appropriate continuity of Supplier Personnel assigned to perform Projects.
- (b) **Project Priority and Process.** The ABM Contract Manager or his or her designee shall request, define and set the priority for Projects. The process to be followed with respect to Projects requested by ABM is described in **Schedule E** and in the Policy and Procedure Manual. Supplier may not decline to perform a Project requested by ABM. Supplier shall report monthly on Projects in accordance with **Schedule R**. Such reports shall specify, among other things, the Supplier Charges, FTEs, resources and expenses for each Project for the applicable month and Contract Year and any other pertinent information requested by ABM
- (c) **Projects/Pricing.** The FTE Project rates for project personnel performing Projects are specified in **Schedule J**. If and to the extent ABM authorizes Supplier to exceed the Baseline FTE Project Hours or Baseline FTE Project Dollars in any Contract Year, ABM shall pay Supplier for such additional FTE Project Hours at the rates specified in **Schedule J**; provided, however, to the extent the level of effort requested by ABM and provided by Supplier Personnel in connection with a Project is, in the aggregate, eight (8) hours or less, there shall be no additional Charge to ABM for such assistance and such hours shall not be counted against the Project Pools. At ABM’s request, Supplier shall provide fixed pricing for new Projects. In such instances, the fixed price proposed by Supplier shall be no less favorable to ABM than the price obtained by multiplying the FTE rates specified in **Schedule J** by the projected level of effort. ABM also may use such FTE Project rates for ad hoc time and materials projects from time to time that utilize resources having skills similar to the Supplier Personnel then delivering the Services.
- (d) **Project Requirements.** Supplier shall scope, price and perform each Project in accordance with the Project formation process and Project implementation methodology developed by Supplier and included in the Policy and Procedures Manual, as agreed to by ABM. Before beginning work on any Project, Supplier shall obtain ABM’s approval and must follow the Project formation process. Projects performed without such approval shall be at Supplier’s sole expense. If, after initially approving a Project, ABM makes material changes in the scope or requirements of the Project, the Parties shall confer and agree upon any resulting change in the Project pricing in accordance with the Project management procedures specified in the Policy and Procedures Manual.
- (e) **Project Proposals/Reporting.** The hours expended by Supplier in preparing proposals or plans or reporting on the status of Projects shall not be counted as FTE Project Hours or counted against the Project Pools and shall not be charged incrementally.

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- (f) **Additional Work or Reprioritization.** In addition to the foregoing, the ABM Contract Manager or his or her designee may identify new or additional work activities to be performed by Supplier Personnel (including work activities that would otherwise be treated as Projects or New Services) or reprioritize or reset the schedule for existing work activities to be performed by Supplier Personnel on ABM's behalf. Unless otherwise agreed, ABM shall incur no additional charges for the performance of such work activities by Supplier Personnel then assigned to ABM. Supplier shall use commercially reasonable efforts to perform such work activities without impacting the established schedule for other tasks or the performance of the Services in accordance with the Service Levels. If it is not possible to avoid such an impact, Supplier shall notify ABM of the anticipated impact and obtain its consent prior to proceeding with such work activities. ABM, in its sole discretion, may forego or delay such work activities or temporarily adjust the work to be performed by Supplier, the schedules associated therewith or the Service Levels to permit the performance by Supplier of such work activities.
- (g) **Current Projects.** Notwithstanding Section 11.8(a) and (c), the performance of the Projects identified in Schedule L shall be included in the Monthly Base Charges. Supplier shall perform the listed Projects at no additional Charge to ABM and the FTE hours expended in the performance of such Projects shall not be counted against the Project Pools.
- (h) **J.D. Edwards Upgrade Project.** As part of the Services, Supplier shall perform the J.D. Edwards Upgrade Project described in Attachment L.1. Such Project shall be performed in accordance with the terms, conditions and pricing in Attachment L.1, which may in certain circumstances be in addition to or different from the terms, conditions and pricing in the remainder of this Agreement. IBM shall manage and coordinate the Project Services to be provided under Attachment L.1 with the other Services to be provided under this Agreement. Such management and coordination shall be provided as part of the Monthly Base Charges and shall not be separately chargeable or included in the time and material efforts under Attachment L.1.

#### **11.9 Proration.**

Periodic charges under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month on a calendar day basis.

#### **11.10 Refundable Items.**

- (a) **Prepaid Amounts.** Where ABM and/or the Eligible Recipients have prepaid for a service or function for which Supplier is assuming financial responsibility under this Agreement, Supplier shall credit to ABM, upon either Party identifying the prepayment, that portion of such prepaid expense which is attributable to periods on and after the Commencement Date. If approved by ABM in advance or assumed by ABM pursuant to Section 4.3(b)(g), ABM shall reimburse Supplier for that portion of any amount prepaid by Supplier that is attributable to the period on or after the expiration of the Term or (if such item is being used in the performance of Termination Assistance Services) the completion of Termination Assistance Services.
- (b) **Refunds and Credits.** If Supplier should receive a refund, credit, discount or other rebate for goods or services paid for by ABM and/or the Eligible Recipients on a Pass-Through Expense, ABM retained expense, cost-plus or cost-reimbursement basis, then Supplier shall (i) notify ABM of such refund, credit, discount or rebate and (ii) pay or credit the full amount of such refund, credit, discount or rebate to ABM.

#### **11.11 ABM Benchmarking Reviews.**

- (a) **Benchmarking Review.** Beginning in the third Contract Year and from time to time thereafter during the Term, ABM may, subject to this Section 11.11, engage the services of an independent third party (a "Benchmarking") to compare the quality and price of the Services against the quality

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and price of well managed ITO Services providers performing similar outsourcing services to ensure that ABM is obtaining pricing and levels of service that are competitive with market rates, prices and service levels, given the nature, volume and type of Services provided by Supplier hereunder (“**Benchmarking**”). The Benchmarker shall perform a price-based and a service-based benchmark, comparing the total charges, in aggregate, applicable to the Services or any Functional Service Area (the “**Benchmark Price**”), against the total charges applicable to similar services and transactions. In making this comparison, the Benchmarker shall consider the following factors and other similar variables and shall normalize or adjust the prices as and to the extent appropriate: (i) whether supplier transition charges are paid by the customer as incurred or amortized over the term of the agreement; (ii) the extent to which supplier pricing includes the purchase of the customer’s existing assets; (iii) the extent to which supplier pricing includes the cost of acquiring future assets; (iv) the extent to which this Agreement calls for supplier to provide and comply with unique ABM requirements; and (v) whether Service Taxes are included in such pricing or stated separately in supplier invoices. ABM shall not initiate more than one Benchmarking in any Contract Year, provided that such Benchmarking may include all or any number of Functional Service Areas. Notwithstanding the foregoing, if a Benchmarking of any Functional Service Area reveals an unfavorable pricing variance of greater than five percent (5%), ABM may, at its option, initiate a second Benchmarking of some or all of the remaining Functional Service Areas in the same Contract Year.

- (b) **General.** Any Benchmarker engaged by ABM shall agree in writing to be (i) bound by the confidentiality and security provisions specified in this Agreement. ABM shall not engage such a Benchmarker on a contingent fee basis (i.e., where the Benchmarker’s compensation is based on a percentage of the reported pricing variance). Supplier and ABM shall cooperate fully with each other and the Benchmarker and will provide reasonable access to the Benchmarker during such effort, all at each Party’s respective cost and expense, provided that Supplier shall not be obligated to provide the Benchmarker with: (i) proprietary and confidential information of Supplier not related to ABM, the Eligible Recipients or the Services; (ii) any internal cost data; or (iii) proprietary information of other Supplier customers. The Benchmarking shall be conducted so as not to unreasonably disrupt Supplier’s operations under this Agreement.
- (c) **Benchmarker and Methodology Selection.** The Parties shall use commercially reasonable efforts to agree on the selection of the Benchmarker to perform any Benchmarking, provided that, if the Parties fail to reach agreement, ABM may select (i) any Benchmarker listed on Schedule S (as reasonably modified by ABM from time to time), or (ii) any other Benchmarker subject to Supplier’s reasonable approval, provided that the Benchmarker shall not be a Direct Supplier Competitor. ABM shall confer with Supplier in good faith regarding the methodology to be used to perform any Benchmarking, provided that if the Parties fail to agree on the appropriate methodology, ABM may select such methodology in its reasonable discretion.
- (d) **Result of Benchmarking.** If the Benchmarker finds that the Charges paid by ABM, in the aggregate, for the benchmarked Services or any benchmarked Functional Service Area are greater than the lowest twenty-fifth percentile (25%) of the prices charged by other well managed ITO Services providers for work of a similar nature, type or volume, (the “**Benchmark Standard**”), the Benchmarker shall submit a written report setting forth such findings and conclusions. The Parties shall then meet and negotiate in good faith as to reductions in the Charges to eliminate any unfavorable variance. If the Parties are unable to agree upon the amount and timing of such reductions, ABM may, at its option, terminate the Services in whole or in part. If ABM elects to terminate on this basis, ABM shall not be obligated to pay any Termination Fee, but shall pay Wind Down Charges in accordance with Schedule N. If the Services are terminated in part, Supplier’s Charges shall be equitably adjusted in accordance with Schedule J.
- (e) **Supplier Review and Dispute.** The Benchmarker shall provide the Parties with a copy of the Benchmarker’s report and each Party shall have thirty (30) days to review such report and contest the Benchmarker’s findings. Such report shall describe the methodology used by the Benchmarker in performing the Benchmarking. If the Parties are unable to agree upon the validity

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of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in [Article 19](#). Reductions in Supplier's Charges shall be implemented effective thirty (30) days after the Benchmarker's report was first provided to Supplier.

#### **11.12 Transport Rate Review**

- (a) If Supplier and AT&T (or any other Subcontractor utilized by Supplier to provide transport services) conduct a benchmarking or other review of the competitiveness of the pricing provided to Supplier under the applicable Subcontract based on the then prevailing market rates and pricing for such services (a "**Subcontract Pricing Review**") and, as a result of such Subcontract Pricing Review, the actual voice and/or data charges under such Subcontract (each, a "**Subcontract Transport Rate**") are reduced, then Supplier shall promptly notify ABM of such reduction and shall reduce the corresponding voice and/or data Charges under this Agreement (each, a "**Transport Rate**") by an equal amount. ABM shall not be entitled to a price reduction if and to the extent Supplier's pricing under the applicable Subcontract is reduced for reasons not related to a benchmarking or other market based review of the competitiveness of the Subcontract pricing. Any reduction of a Transport Rate under this Agreement shall be effective as of the date on which the corresponding reduction in the Subcontract Transport Rate is effective.
- (b) Notwithstanding the foregoing, Supplier shall not be obligated to disclose to ABM, and ABM shall not be entitled to audit or review, the terms of Supplier's contract with AT&T (or any other Subcontractor utilized by Supplier to provide transport services), including pricing terms. However, at ABM's request, Supplier shall cause the independent auditing firm that certifies Supplier's annual financial statements, or another independent auditing firm of national standing agreed upon by the Parties, to review the pertinent information and methodology to verify Supplier's compliance with this provision. ABM shall reimburse Supplier for any fees or expenses of such independent auditor(s) reasonably incurred by Supplier in connection with any requested review, provided (i) Supplier notifies ABM of such fees and expenses and obtains ABM's approval prior to incurring them; and (ii) Supplier uses commercially reasonable efforts to minimize the amounts to be paid or reimbursed by ABM.

#### **11.13 Procurement**

Supplier shall procure certain products and services for which ABM will be financially responsible on an Out-of Pocket Expense basis, as further described in [Schedule J](#), and, at ABM's request, shall participate with ABM in the procurement of certain products and services from Managed Third Parties for which ABM will be financially responsible on a Pass-Through Expense basis, as further described in [Schedule J](#) and [Attachment K](#).

In procuring such products and services, Supplier shall comply with the following:

- (a) In procuring such products and services basis, Supplier shall: (i) give ABM and the Eligible Recipients the benefit of Supplier's most favorable vendor arrangements where permitted by such vendors; (ii) use commercially reasonable efforts to obtain the most favorable pricing and terms and conditions then available from any source for such products and services; (iii) to the extent practicable, use the aggregate volume of Supplier's procurements on behalf of itself, ABM, the Eligible Recipients and other customers as leverage in negotiating such pricing or other terms and conditions; and (iv) adhere to the procurement procedures specified in the Policy and Procedures Manual, as such procedures may be modified from time to time by the Parties. Supplier shall adhere to ABM's product and services standards as specified by ABM or set forth in the Policies and Procedures Manual and as applicable to Supplier's obligations under this [Section 11.12](#) and shall not deviate from such standards without ABM's prior approval. To the extent an authorized ABM representative specifies the vendor, pricing and/or terms and conditions for a procurement, Supplier shall not deviate from such instructions without ABM's prior approval. Unless otherwise

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agreed by the Parties, the procurement price of such products and services shall be treated as an Out-of-Pocket Expense and shall be passed through to ABM without Supplier markup.

- (b) Supplier may, with ABM's prior approval, use master agreements existing as of the Commencement Date between ABM and various third party vendors to procure products and services requested by ABM. Supplier's use of such ABM master agreements shall be conditioned on and subject to the following ABM obtaining any Required Consents to the use of such master agreements; (ii) Supplier complying with the terms and conditions of such master agreements; and (iii) Supplier accepting responsibility for curing any breaches by Supplier of such master agreements.
- (c) Supplier also may use existing agreements between Supplier and third party vendors if permitted by such agreement or enter into new agreements with third party vendors to procure such products and services. Supplier's use of such agreements shall be conditioned on and subject to the following: (i) ABM approving in advance the terms, conditions and pricing of such agreements and any financial or other commitments made therein by or on behalf of ABM or the Eligible Recipients; (ii) Supplier complying with the terms and conditions of such agreements and accepting responsibility for meeting any minimum volumes; (iii) Supplier passing through to ABM any refunds, credits, discounts or other rebates to the extent such amounts are directly allocable to ABM or the Eligible Recipients; (iv) Supplier retaining responsibility for curing any breaches of such agreements; and (v) such agreements offering more favorable pricing and equivalent or better terms and conditions for the requested product or service than the master agreements existing as of the Commencement Date between ABM and third party vendors.
- (d) If, at any time, ABM determines that the pricing and terms and conditions available through Supplier are not as favorable as those ABM could obtain on its own, ABM reserves the right to select and negotiate with the provider of such third party products and services and Supplier shall comply with ABM's decision with respect thereto.
- (e) With respect to all products and services procured by Supplier for ABM and/or the Eligible Recipients pursuant to this **Section 11.12**, Supplier shall pass through, or otherwise provide, to ABM and/or the applicable Eligible Recipient(s) all benefits offered by the manufacturers and/or vendors of such products and services(including all warranties, refunds, credits, rebates, discounts, training, technical support and other consideration offered by such manufacturers and vendors) except to the extent otherwise agreed by ABM. If Supplier is unable to pass through any such benefit to ABM and/or the applicable Eligible Recipient(s), it shall notify ABM in advance and shall not procure such product or service without ABM's prior approval.

## 12. INVOICING AND PAYMENT

### 12.1 Invoicing.

- (a) **Invoice.** No later than the first day of each month, Supplier shall deliver to ABM one invoice setting forth: (i) the Monthly Base Charges for the then current calendar month, (ii) the Charges for Transition Services, if any, for the then current calendar month, (iii) the variable Charges (other than the ARCs and RRCs) due for the month preceding the most recent month, and (iv) any Service Level Credits or Deliverable Credits due for the month preceding the most recent month (the "Monthly Invoice"). For example, the Monthly Invoice delivered to ABM on December 1, 2006 shall include (i) the Monthly Base Charges for December 2006, (ii) the Transition Charges for December 2006, (iii) the variable Charges (other than the ARCs and RRCs), e.g., Project charges, due for October 2006, and (iv) any Service Level Credits or Deliverable Credits due for October 2006. In addition, within ten (10) days after the end of each calendar quarter, Supplier shall present ABM with an invoice for any ARCs and RRCs due and owing for the preceding three months for any Resource Unit category (the "Quarterly Invoice").

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- (b) **Format and Data.** Each invoice shall be delivered electronically and shall be in the form specified in **Exhibit 2**. Each invoice shall include all details necessary to meet ABM's reasonable requirements, including compliance with applicable legal, accounting and other rules and regulations, validation of volumes and fees, and satisfaction of ABM's internal accounting, chargeback and Eligible Recipient billing requirements to the extent communicated to Supplier by ABM. Supplier shall include the pricing calculations and related data utilized to establish the Charges. Each invoice shall be accompanied by the certain Reports, as specified in **Schedule R**.
- (c) **Credits.** To the extent a Service Level Credit or Deliverable Credit may be due to ABM pursuant to this Agreement, Supplier shall provide ABM with an appropriate credit as described in **Section 12.1(a)** against amounts then due and owing. If no further payments are due to Supplier, Supplier shall pay such credit amounts to ABM within thirty (30) days.
- (d) **Time Limitation.** If Supplier fails to invoice ABM for any amount within one hundred twenty (120) days after the date on which the invoice for the Services or expenses in question could first properly have been rendered, Supplier shall waive any right it may otherwise have to invoice for and collect such amount.

## 12.2 Payment Due.

- (a) Subject to the other provisions of this **Article 12**, payment for each Monthly Invoice shall be due on or before the last day of the applicable month, unless the amount in question is disputed in accordance with **Section 12.4** (and provided that, if the Monthly Invoice is received by ABM after the first day of the month, the payment due date shall be extended one day for each day the invoice is late). Subject to the other provisions of this **Article 12**, each Quarterly Invoice shall be due thirty (30) days after the date such invoice is received by ABM, unless the amount in question is disputed in accordance with **Section 12.4**. Any undisputed amount due under this Agreement for which a time for payment is not otherwise specified also shall be due and payable within thirty (30) days.
- (b) ABM shall pay each invoice by check, wire transfer or other electronic means acceptable to Supplier to an account specified by Supplier.
- (c) If ABM fails to pay undisputed invoiced amounts within ten (10) days after the payment due date, as specified in **Section 12.2(a)** above, Supplier may thereafter assess interest on the unpaid balance to and until the date of payment at the lesser of twelve percent (12%) per annum or the maximum rate allowed by applicable Law.

## 12.3 Set Off.

Subject to **Section 12.4**, with respect to any amount to be paid or reimbursed by ABM hereunder, ABM may set off against such amount any undisputed amount that Supplier is obligated to pay ABM hereunder, provided that ABM notifies Supplier in writing of the amount of, and the basis for, such set off.

## 12.4 Disputed Charges.

ABM may withhold payment of any Charges that ABM reasonably disputes in good faith subject to the following:

- (a) **Notice of Dispute.** If Supplier's invoice includes sufficient detail and supporting documentation to enable ABM to reasonably determine whether Supplier's Charges are in accordance with this Agreement, ABM shall notify Supplier on or before the payment due date of such invoice if it disputes any of the Charges in such invoice.

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- (b) **Notice of Insufficient Detail, Documentation and Dispute.** If Supplier's invoice does not include sufficient detail and supporting documentation to enable ABM to reasonably determine whether Supplier's Charges are in accordance with this Agreement, ABM shall so notify Supplier within ten (10) days of ABM's receipt of such invoice. Supplier shall promptly provide such reasonable detail and supporting documentation, and ABM shall notify Supplier within ten (10) business days after receipt thereof by the ABM Contract Manager whether it disputes any of the Charges in Supplier's invoice.
- (c) **Description and Explanation.** If ABM disputes any Supplier Charges, ABM's notice to Supplier shall include a description of the particular charges in dispute and an explanation of the reason why ABM disputes such Charges.
- (d) **Continued Performance.** Each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.
- (e) **Escrow.** To the extent the disputed Charges exceed, in the aggregate, an amount equal to the average total monthly Charges for the preceding six (6) months (i.e., the total Charges for the preceding six (6) months, divided by six), the excess disputed Charges shall be paid or deposited by ABM in an interest bearing escrow account for the benefit of both Parties at a financial institution reasonably acceptable to Supplier until such dispute has been resolved. Upon resolution of such dispute, the prevailing party shall be entitled to such escrowed amounts and interest earned on such escrowed amounts.
- (f) **Service Level Credits.** If ABM is obligated to pay disputed Charges into escrow under **Section 12.4(e)** and fails to comply with such obligation, then, in addition to any other right expressly provided in this Agreement, Supplier shall have no obligation to pay or credit to ABM any Service Level Credits until ABM either pays such disputed amounts into escrow or pays them to Supplier under protest.
- (g) **Limited Arbitration Right**
- (i) If ABM is obligated to pay disputed Charges into escrow under **Section 12.4(e)** and fails to either pay such disputed amounts into escrow or pay them to Supplier under protest, Supplier may pursue expedited arbitration solely to resolve the dispute(s) which is the basis of ABM withholding payments hereunder.
  - (ii) If Supplier elects to arbitrate in accordance with this **Section 12.4(g)** the arbitration shall be conducted in accordance with the expedited, commercial arbitration rules of the American Arbitration Association and the Supplementary Procedures for Large, Complex Disputes, except as the AAA Rules are modified below: (a) the arbitration decision shall be binding, except the decision and/or award shall be subject to review in a court of competent jurisdiction with respect to the arbitrators' issuance of an award or decision that exceeds or violates their limited powers described herein; (b) the findings of fact and conclusions of law shall be detailed and in writing; (c) the arbitration decision shall be supported by law and substantial evidence; (d) the fees and expenses associated with the arbitration shall be borne by the Parties in inverse proportion of the arbitration decision (e.g., if the decision is that 80% of the amounts that Supplier asked be paid from escrow to Supplier as disputed amounts will be so paid, Supplier will only pay 20% of the arbitration costs); (e) the arbitration shall take place in San Francisco, California; (f) there shall be three arbitrators; one selected by Supplier in its notice of intent to arbitrate, one selected by ABM within five (5) business days after receipt of notice from Supplier and one selected by the first two arbitrators within fourteen (14) days after ABM's receipt of the notice from Supplier; and (g) the arbitration process shall be completed and a decision rendered within sixty (60) days after Supplier's notice is received by ABM. Moreover,

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the powers and authority of the arbitrators are subject to the following limitations: (a) the arbitrators will have no power to amend or disregard contract provisions including the limitation of liability provisions; (b) the arbitrators will have no power or authority to award any damages or attorneys' fees, or any awards based on third party claims, nor shall the arbitrators have any power or authority to grant any award or permit any other recourse that would be precluded by the terms of the Agreement (for example, by way of illustration but not limitation, the arbitrators shall not award damages that would be in excess of any limitation of liability in the Agreement, nor shall the arbitrators permit a claim to proceed that would otherwise be time barred by the terms of the Agreement as construed under the law applicable to the Agreement); and (c) the arbitrators may only require the production of relevant documentary and testimonial evidence not protected by the attorney-client, attorney work-product, or other recognized legal privileges and otherwise in accordance with the Federal Rules of Evidence.

- (h) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right ABM may otherwise have to dispute any Charge or amount or recover any amount previously paid.

## 13. ABM DATA AND OTHER PROPRIETARY INFORMATION

### 13.1 ABM Ownership of ABM Data.

ABM Data are and shall remain the property of ABM (and/or the applicable Eligible Recipient). Supplier shall promptly deliver ABM Data to ABM in the format and on the media reasonably prescribed by ABM (i) at any time at ABM's request, (ii) at the end of the Term and the completion of all requested Termination Assistance Services (except Contract Records, which Supplier shall retain for the Audit Period specified in **Section 9.10(a)**, unless and to the extent Supplier is directed by ABM to deliver such Contract Records to ABM prior to the expiration of such Audit Period), or (iii) with respect to particular ABM Data, at such earlier date that such data are no longer required by Supplier to perform the Services. Thereafter, Supplier shall return or destroy, as directed by ABM, all copies of the ABM Data in Supplier's possession or under Supplier's control within ten (10) business days and deliver to ABM written notification of such return or destruction signed by an authorized representative of Supplier. Subject to **Section 14.5(b)**, ABM Data shall not be utilized by Supplier for any purpose other than the performance of Services under this Agreement and the resolution of disputes (consistent with **Section 13.3(b)(iii)**), but in no event shall Supplier withhold any ABM Data as a means of resolving any dispute. Nor, subject to **Section 14.5(b)**, shall ABM Data be sold, assigned, leased, or commercially exploited by or on behalf of Supplier or ABM. Supplier shall not possess or assert any lien or other right against or to ABM Data. Supplier shall promptly notify ABM if it believes that any use of ABM Data by Supplier contemplated under this Agreement or to be undertaken as part of the Services is inconsistent with the foregoing.

### 13.2 Safeguarding ABM Data.

- (a) **Safeguarding Procedures.** Supplier shall establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, loss, unauthorized access or alteration of ABM Data in the possession of Supplier which are (i) no less rigorous than those maintained by ABM as of the Commencement Date (or implemented by ABM in the future to the extent deemed necessary by ABM and disclosed in writing to Supplier), and (ii) subject to **Section 15.10**, adequate to meet the requirements of ABM's privacy, security and record retention policies and applicable Laws. ABM shall have the right to establish backup security for ABM Data and to keep backup copies of the ABM Data in ABM possession at ABM expense if ABM so chooses. Supplier shall remove all ABM Data from any media taken out of service and shall destroy or securely erase such media in accordance with the Policy and Procedures Manual. No media on which ABM Data is stored may be used or re-used to store data

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of any other customer of Supplier or to deliver data to, or store data of another Supplier customer, unless securely erased in accordance with the Policy and Procedures Manual.

- (b) **Response to Security Breach.** In the event Supplier discovers or is notified of a breach or potential breach of security relating to ABM Data, Supplier shall (i) expeditiously notify ABM of such breach or potential breach, (ii) investigate such breach or potential breach and perform a Root Cause Analysis thereon, (iii) remediate the effects of such breach or potential breach of security in areas of Supplier responsibility, (iv) assist ABM in remediating the effects of such breach or potential breach of security in areas beyond Supplier responsibility and (v) provide ABM with such assurances as ABM shall request that such breach or potential breach will not recur.
- (c) **Data Backup, Storage, Retention and Restoration Requirements.** Supplier shall comply with the data backup, storage, retention and restoration requirements set forth in the Policy and Procedures Manual as such requirements may be modified by ABM in its reasonable discretion.
- (d) **Reconstruction Procedures.** As part of the Services, Supplier shall be responsible for developing and maintaining procedures for the reconstruction of lost ABM Data which are (i) no less rigorous than those maintained by ABM as of the Commencement Date (or implemented by ABM in the future to the extent reasonably deemed necessary by ABM and communicated in writing to Supplier), and (ii) no less rigorous than those maintained by Supplier for its own information of a similar nature.
- (e) **Corrections.** Supplier shall at all times adhere to the procedures and safeguards specified in **Section 13.2(a)** and **(b)**, and shall (i) restore, at no charge to ABM, any destruction, loss or alteration of ABM Data using generally accepted data restoration techniques, and (ii) correct, at no charge to ABM, any destruction, loss or alteration of any ABM Data caused by the failure of Supplier or Supplier Personnel to comply with Supplier's obligations under this Agreement.

### 13.3 Confidentiality.

- (a) **Proprietary Information.** Supplier and ABM each acknowledge that the other possesses and will continue to possess information that has been developed or received by it, has commercial value in its or its customer's business and is not in the public domain. Except as otherwise specifically agreed in writing by the Parties, "**Proprietary Information**" shall mean (i) this Agreement and the terms thereof; (ii) all information marked confidential, restricted or proprietary by either Party; or (iii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked. In the case of ABM and Eligible Recipients, Proprietary Information also shall include Software provided to Supplier by or through ABM or the Eligible Recipients, Developed Materials, ABM Data, attorney-client privileged materials, attorney work product, customer lists, customer data, information and pricing, strategic plans, account information, rate case strategies, research information, chemical formulae, information that ABM notifies Supplier contains trade secrets, financial/accounting information, human resources and personnel information, marketing/sales information, information or data regarding businesses, plans, operations, assets, billings, collections, revenues, expenditures, finances, regulatory compliance, competitors, consumer markets, third party contracts, internal or external audits, rate cases, law suits or other information or data of ABM or the Eligible Recipients obtained, received, transmitted, processed, stored, archived or maintained by Supplier under this Agreement. By way of example, ABM Proprietary Information shall include plans for changes in ABM or Eligible Recipient facilities, business units and product lines, plans for business mergers, acquisitions or divestitures, rate information, plans for the development and marketing of new products, financial forecasts and budgets, technical proprietary information, employee lists and company telephone or e-mail directories. In the case of Supplier, Proprietary Information shall include financial information, account information, information regarding Supplier's business plans and operations, and proprietary software, tools and methodologies owned by Supplier and used in the performance of the Services.

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(b) **Obligations.**

- (i) During the term of this Agreement and for the period specified in Section 13.3(f), at all times thereafter, Supplier and ABM shall not disclose, and shall maintain the confidentiality of, all Proprietary Information of the other Party (and in the case of Supplier, the Eligible Recipients). ABM and Supplier shall each use at least the same degree of care to safeguard and to prevent disclosing to third parties the Proprietary Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own like information (or information of its customers) of a similar nature, but not less than reasonable care. Supplier shall require all Supplier Personnel having access to ABM Proprietary Information to have executed a written agreement consistent with the terms of Article 13. Supplier shall provide authorized Supplier Personnel with access to ABM Proprietary Information only to the extent permitted under the Agreement and only as necessary for such person to perform his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility.
- (ii) The Parties may disclose Proprietary Information to their Affiliates, auditors, attorneys, accountants, consultants, contractors and subcontractors, where (A) use by such person or entity is authorized under this Agreement, (B) such disclosure is necessary for the performance of such person's or entity's obligations under or with respect to this Agreement or otherwise naturally occurs in such person's or entity's scope of responsibility, (C) the person or entity (and its applicable officers and employees) agree in writing to assume obligations consistent with those obligations described in this Section 13.3, (D) the disclosing Party remains responsible for any breach of this section even if the acts or omissions are those of such person or entity, and (E) the disclosing Party causes such person or entity to take reasonable measures to ensure that the Proprietary Information is not disclosed or used in contravention of this Agreement. Any disclosure to such person or entity shall be under the terms and conditions as provided herein. Each Party's Proprietary Information shall remain the property of such Party.
- (iii) Neither Party shall (A) make any use or copies of the Proprietary Information of the other Party except as contemplated by this Agreement, (B) acquire any right in or assert any lien against the Proprietary Information of the other Party, (C) sell, assign, transfer, lease, or otherwise dispose of Proprietary Information to third parties or commercially exploit such information, including through Derivative Works, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Proprietary Information (including copies thereof) to the other Party if requested to do so. Notwithstanding the foregoing, ABM may disclose Proprietary Information to a Benchmark in accordance with Section 11.11 or in connection with the solicitation of proposals for or the procurement of the same or similar services from ABM Third Party Contractors. Upon expiration or any termination of this Agreement and completion of each Party's obligations under this Agreement, each Party shall return or destroy, as the other Party may direct, all documentation in any medium that contains the other Party's Proprietary Information within ten (10) business days (except Contract Records, which Supplier shall retain for the Audit Period specified in Section 9.10(a) unless and to the extent Supplier is directed by ABM to deliver such Contract Records to ABM prior to the expiration of such Audit Period). Each Party shall deliver to the other Party written certification of its compliance with the preceding sentence signed by an authorized representative of such Party, provided, that each Party may retain one (1) copy of the other Party's Proprietary Information to the extent necessary to comply with applicable Laws or to enforce its rights under this Agreement. In addition, each Party shall take all necessary steps to ensure that its employees comply with these confidentiality provisions.

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- (c) **Exclusions.** **Section 13.3(b)** shall not apply to any particular information which the receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain other than through a breach of the receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, is published by the disclosing Party or otherwise becomes part of the public domain other than through a breach of the receiving Party's or a third party's confidentiality obligations; (iii) is lawfully in the possession of the receiving Party at the time of disclosure to it; (iv) is received from a third party that the receiving Party reasonably believes to have a lawful right to disclose such information; or (v) is independently developed by the receiving Party without reference to Proprietary Information of the furnishing Party, provided however, that the exclusions in the foregoing subsections (i) and (ii) shall not operate to alter either Party's obligations to the extent such information is subject to applicable Privacy Laws as further described in **Section 15.10(g)**. In addition, the receiving Party shall not be considered to have breached its obligations under this **Section 13.3** for disclosing Proprietary Information of the other Party as required, in the opinion of legal counsel, to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request, such Party advises the other Party of the Proprietary Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Proprietary Information, or take such other action as it deems appropriate to protect the Proprietary Information. The receiving Party shall use commercially reasonable efforts to cooperate with the disclosing Party in its efforts to seek a protective order or other appropriate remedy or in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment will be accorded such Proprietary Information.
- (d) **Loss of Proprietary Information.** Each Party shall: (i) promptly notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Proprietary Information in contravention of this Agreement; (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss; (iii) cooperate with the other Party in any third party investigation or litigation deemed necessary by such other Party to protect its rights; and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Proprietary Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this **Section 13.3(d)**.
- (e) **No Implied Rights.** Nothing contained in this **Section 13.3** shall be construed as obligating a Party to disclose its Proprietary Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Proprietary Information of the other Party.
- (f) **Survival.** The Parties' obligations of non-disclosure and confidentiality shall survive the expiration or termination of this Agreement for a period of five (5) years, unless and to the extent, subject to **Section 11.5**. Supplier receives notice that a longer or perpetual period is specified in an agreement between ABM or any of the Eligible Recipients and a third party, in which case such longer period shall apply; provided, however, that the passage of this five (5) year period shall not absolve either Party of responsibility for any breach of this **Article 13** occurring prior to the expiration of such five (5) year period.

#### 13.4 File Access.

ABM will have unrestricted access to, and the right to review and retain the entirety of, all computer or other files containing ABM Data, as well as all systems and network logs. At no time will any of such files be stored or held in a form or manner not immediately accessible to ABM. Supplier shall provide to the ABM Contract Manager all passwords, codes, comments, keys, documentation and the locations of any such files promptly upon the request of ABM, including Equipment and Software keys and such information as to format, encryption (if any) and any other specifications or information necessary for

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ABM to retrieve, read, revise and/or maintain such files. Upon the request of the ABM Contract Manager, Supplier will confirm that, to the best of its knowledge, all such files provided to ABM are complete and that no material element, amount, or other fraction of such files to which ABM may request access or review has been deleted, withheld, disguised or encoded in a manner inconsistent with the purpose and intent of providing full and complete access to ABM as contemplated by this Agreement.

## 14. OWNERSHIP OF MATERIALS

### 14.1 ABM Owned Materials.

- (a) **ABM Owned Materials.** ABM shall be the sole and exclusive owner of all ABM Owned Materials, including ABM Owned Software, and all enhancements and Derivative Works of such ABM Owned Materials, including United States and foreign intellectual property rights in such Materials ("ABM Owned Materials"). As between ABM and Supplier, ABM Owned Materials shall include (i) all intellectual property, Software and Materials (A) owned by Eligible Recipients, and/or (B) pertaining to ABM products or services created by or obtained from sellers, distributors, purchasers or users of such products or service (that are not Supplier Owned Materials or Derivative Works of Supplier Owned Materials or other intellectual property owned by Supplier), and (ii) all enhancements or Derivative Works of such intellectual property, Software and Materials.
- (b) **License to ABM Owned Materials.** As of the Commencement Date, ABM hereby grants Supplier (and, to the extent necessary for Supplier to provide the Services, to Subcontractors designated by Supplier that sign a written agreement to be bound by terms consistent with the terms contained herein including, to the extent applicable, the terms specified in this Section as well as those pertaining to the ownership of such ABM Owned Materials and any Derivative Works developed by the Parties, the scope and term of the license, the restrictions on the use of such ABM Owned Materials, and the obligations of confidentiality) a non-exclusive, non-transferable, royalty-free right and license during the Term (and thereafter during the performance of any Termination Assistance Services requested by ABM) to access, use, execute, reproduce, display, perform, modify, distribute and create Derivative Works of the ABM Owned Materials for the express and sole purpose of providing the Services. Supplier and its Subcontractors shall have no right to the source code to ABM Owned Software unless and to the extent approved in advance by ABM. ABM Owned Materials shall remain the property of ABM. Supplier and its Subcontractors shall not (i) use any ABM Owned Materials for the benefit of any person or Entity other than ABM or the Eligible Recipients, (ii) separate or uncouple any portions of the ABM Owned Software, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, file formats or programming interfaces of the ABM Owned Software by any means whatsoever, without the prior approval of ABM, which may be withheld at ABM's sole discretion. Except as otherwise requested or approved by ABM, Supplier and its Subcontractors shall cease all use of ABM Owned Materials upon the end of the Term and the completion of any Termination Assistance Services requested by ABM pursuant to Section 4.3(b)(8) and shall certify such cessation to ABM in a notice signed by an officer of Supplier and each applicable Subcontractor. ABM may agree, on a case by case basis, to grant Supplier the right to use certain ABM Owned Materials (including ABM Owned Software and ABM owned Developed Materials) for the benefit of other customers of Supplier or for any other purpose subject to mutually beneficial terms and conditions to be agreed to by the Parties. THE ABM OWNED MATERIALS ARE PROVIDED BY ABM TO SUPPLIER AND ITS SUBCONTRACTORS ON AN AS-IS, WHERE-IS BASIS. ABM EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH ABM OWNED MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER OR ITS SUBCONTRACTORS TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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## **14.2 Developed Materials.**

- (a) **ABM Ownership of Derivative Works of ABM Owned Materials.** Unless the Parties agree otherwise, ABM shall be the sole and exclusive owner of all Developed Materials that are Derivative Works of ABM Owned Materials, including all United States and foreign patent, copyright and other intellectual property rights in such Materials. Such Developed Materials shall be considered works made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) owned by ABM. If any such Developed Materials may not be considered a work made for hire under applicable Law, Supplier hereby irrevocably assigns, and shall assign, to ABM in perpetuity without further consideration, all of Supplier's worldwide rights, title and interest in and to such Developed Materials, including United States and foreign patent, copyright and other intellectual property rights. Supplier acknowledges that ABM and the successors and assigns of ABM shall have the right to obtain and hold in their own name any patent, copyright and other intellectual property rights in and to such Developed Materials. Supplier agrees to execute any documents and take any other actions reasonably requested by ABM to effectuate the purposes of this Section 14.2(a). ABM hereby grants Supplier certain license and other rights with respect to such Developed Materials, as described in Section 14.1(b). In addition, ABM hereby grants Supplier a perpetual, irrevocable, non-exclusive, fully paid-up license for the internal use of such Developed Material by Supplier and not for use by or on behalf of any other person or Entity, including any Supplier customer (AND PROVIDED THAT SUCH DEVELOPED MATERIALS ARE PROVIDED TO SUPPLIER ON AN AS-IS, WHERE-IS BASIS AND THAT ABM EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO SUCH DEVELOPED MATERIALS, OR THE CONDITION OR SUITABILITY OF SUCH MATERIALS FOR USE BY SUPPLIER, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). ABM may, in its sole discretion and upon such terms and such financial arrangement as ABM and Supplier may agree, grant Supplier a license to use such Developed Materials for other purposes and to sublicense such Developed Materials.
- (b) **ABM Ownership of Original Developed Materials.** Unless the Parties otherwise agree, ABM shall be the sole and exclusive owner of the United States and foreign copyrights in all Developed Materials that are not Derivative Works of ABM Owned Materials or Supplier Owned Materials and that are provided to ABM as a Deliverable under this Agreement. Such Developed Materials shall be considered works made for hire (as that term is used in Section 101 of the United States Copyright Act, 17 U.S.C. § 101, or in analogous provisions of other applicable Laws) owned by ABM. If any such Developed Materials may not be considered a work made for hire under applicable Law, Supplier hereby irrevocably assigns, and shall assign, to ABM in perpetuity without further consideration, all of Supplier's worldwide rights, title and interest in and to the copyrights in such Developed Materials. Supplier acknowledges that ABM and the successors and assigns of ABM shall have the right to obtain and hold in their own name any copyrights in and to such Developed Materials. Supplier agrees to execute any documents and take any other actions reasonably requested by ABM to effectuate the purposes of this Section 14.2(b). ABM hereby grants Supplier certain license and other rights with respect to such Developed Materials, as described in Section 14.1(b). ABM may, in its sole discretion and upon such terms and such financial arrangement as ABM and Supplier may agree, grant Supplier a license to use such Developed Materials for other purposes and to sublicense such Developed Materials. Notwithstanding the foregoing, the Parties acknowledge and agree that any idea, design, concept, technique, invention, discovery or improvement constituting patentable subject matter and first conceived of and reduced to practice in the course of creating Developed Materials pursuant to this Section 14.2(b) may be freely used by either Party, and that any patent rights in such Developed Materials shall be jointly owned by ABM and Supplier, in all cases without the requirement of either Party to account to the other Party.

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- (c) **Source Code and Documentation.** Supplier shall, promptly as it is developed by Supplier, provide ABM with the source code and object code and documentation for all ABM owned Developed Materials, as described in **Sections 14.2(a) and (b)**. Such source code shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials and the user documentation for such Materials shall accurately describe in terms understandable by a typical end user the functions and features of such Materials and the procedures for exercising such functions and features.
- (d) **Supplier Ownership of Derivative Works of Supplier Owned Materials.** Unless the Parties agree otherwise, Supplier shall be the sole and exclusive owner of all Developed Materials that are Derivative Works of Supplier Owned Materials (as defined in **Section 14.3(a)**), including all United States and foreign patent, copyright and other intellectual property rights in such Materials. In addition, except as provided in **Sections 14.2(b) and (e)** or otherwise agreed by the Parties, Supplier shall be the sole and exclusive owner of all other Developed Materials that are not Derivative Works of ABM Owned Materials and do not constitute Deliverables under this Agreement, including all United States and foreign patent, copyright and other intellectual property rights in such Materials. ABM acknowledges that Supplier and the successors and assigns of Supplier shall have the right to obtain and hold in their own name any intellectual property rights in and to such Supplier owned Developed Materials. ABM agrees to execute any documents and take any other actions reasonably requested by Supplier to effectuate the purposes of this **Section 14.2(d)**. Supplier hereby grants ABM and the Eligible Recipients certain license and other rights with respect to such Developed Materials, as described in **Sections 14.3(b) and 14.6**.
- (e) **Third Party Materials.** The ownership of Derivative Works of Third Party Materials created by Supplier in connection with the Services shall, as between Supplier and ABM, be considered Developed Materials owned by the Party designated as the owner thereof pursuant to Sections **14.2(a) and (d)**. Each Party acknowledges and agrees that its ownership of such Derivative Works may be subject to or limited by the terms of the underlying agreement with the owner of the underlying Third Party Materials; provided, that Supplier shall notify ABM in advance if the terms of any such agreement will preclude or limit ABM's ownership of such Derivative Work and shall obtain ABM's consent prior to proceeding with such Derivative Work.
- (f) **Waiver of Moral Rights.** To the extent permitted by law, Supplier hereby waives any moral rights in the ABM owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise.

#### 14.3 Supplier Owned Materials.

- (a) **General.** Supplier shall be the sole and exclusive owner of the (i) Materials it lawfully owned prior to the Commencement Date, (ii) Materials acquired by Supplier on or after the Commencement Date (including any such Materials purchased from ABM pursuant to this Agreement) other than acquisitions for ABM or an Eligible Recipient in connection with the performance of the Services, (iii) Derivative Works of Supplier owned Software created by Supplier in accordance with **Section 14.2(c)**, and (iv) Materials developed by Supplier other than in the course of the performance of its obligations under this Agreement or in connection with the use of any ABM Data or ABM Owned Software or under this Agreement but not as a Deliverable to ABM ("Supplier Owned Materials"), including United States and foreign intellectual property rights in such Supplier Owned Materials.
- (b) **License to Supplier Owned Software and Materials.** As of the Commencement Date, Supplier hereby grants to ABM and the Eligible Recipients, at no additional charge, a non-exclusive, royalty-free right and license to access, use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of the Supplier Owned Software and other

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Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Services period, for the purposes described below. In addition, at no additional Charge, Supplier hereby grants to ABM Third Party Contractor(s) a non-exclusive, royalty-free right and license to access, use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier Owned Software and other Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto), during the Term and any Termination Assistance Services period, for the purposes described below. Such license and other rights shall be granted to ABM, the Eligible Recipients, and ABM Third Party Contractors for the following purposes:

- (i) The receipt by ABM and the Eligible Recipients of the full benefit of the Services provided by Supplier;
- (ii) The performance by ABM, the Eligible Recipients or ABM Third Party Contractors for ABM and/or the Eligible Recipients of services or functions that are ancillary to, but not part of, the Services provided by Supplier, including related application management, telecommunication, IT infrastructure, help desk, and information technology services and functions; and
- (iii) The performance by ABM, the Eligible Recipients or ABM Third Party Contractors of services or functions previously performed by Supplier in circumstances in which the services or functions in question have not been terminated or taken completely away from Supplier.

The rights and obligations of ABM, the Eligible Recipients and ABM Third Party Contractors with respect to such Supplier Owned Materials following the expiration or termination of the Agreement or termination of any Service are set forth in **Section 14.6**.

- (c) **Embedded Materials.** To the extent that Supplier Owned Materials are embedded in any Developed Materials owned by ABM pursuant to **Section 14.2(a)**, Supplier shall not be deemed to have assigned its intellectual property rights in such Supplier Owned Materials to ABM, but Supplier hereby grants to ABM a worldwide, perpetual, irrevocable, non-exclusive, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create Derivative Works of such Supplier Owned Materials (including all modifications, replacements, Upgrades, enhancements, methodologies, tools, documentation, materials and media related thereto related thereto) for the benefit and use of ABM, ABM Affiliates and the Eligible Recipients for so long as such Supplier Owned Materials remain embedded in such Developed Materials and are not separately commercially exploited. Following the expiration or termination of the Term and the termination of the Service(s) for which such Materials were used, Supplier shall, at ABM's request, provide Upgrades, maintenance, support and other services for such embedded Supplier Owned Materials in accordance with **Section 14.6(b) or (c)**, as applicable.

#### **14.4 Other Materials.**

This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this **Article 14**) unless otherwise so provided elsewhere in this Agreement.

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#### **14.5 General Rights.**

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **Residuals.** Nothing in this Agreement shall restrict any employee or representative of a Party from using ideas, concepts or know-how relating to the provision of application management, telecommunication, IT infrastructure, help desk, and information products and services that are retained in the unaided memory of such employee or representative after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or trademark right of a Party or its Affiliates (or, in the case of Supplier, any Eligible Recipient); provided, however, that this **Section 14.5(b)** shall not operate or be construed as permitting an employee or representative of Supplier to disclose, publish, disseminate or use (a) the source of any Proprietary Information of ABM or an Eligible Recipient, (b) any financial, statistical or personnel information of ABM or an Eligible Recipient, or (c) any business plans of ABM or the Eligible Recipients. In addition, this **Section 14.5(b)** shall not operate or be construed as permitting an employee or representative of Supplier to disclose, publish, disseminate or use proprietary applications or systems of ABM or the Eligible Recipients relating to supply chain management, shelf space management, inventory management, retail floor space management, and/or order management (including ABM Owned Materials and customized configurations and uses of ABM licensed Third Party Materials), as such applications and systems may change from time to time. . An individual's memory is unaided if the individual has not intentionally memorized the Proprietary Information for the purpose of retaining and subsequently using or disclosing it in contravention of Supplier's obligations under this Agreement and does not identify the information as Proprietary Information upon recollection.
- (c) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party or any Affiliate of the other Party (or, in the case of Supplier, any Eligible Recipient).
- (d) **Incorporated Materials.** Should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.
- (e) **Derivative Works.** Any rights granted herein with respect to any Developed Material that is a derivative work of any existing Material shall not limit or expand the rights, if any, of either Party in the underlying Material.

#### **14.6 ABM Rights Upon Expiration or Termination of Agreement.**

As part of the Termination Assistance Services, Supplier shall provide the following to ABM and the Eligible Recipients with respect to Materials and Software:

- (a) **ABM Owned Materials and Developed Materials.** With respect to ABM Owned Materials and Developed Materials, Supplier shall, at no cost to ABM:
  - (i) deliver to ABM all ABM Owned Materials and Developed Materials and all copies thereof in the format and medium in use by Supplier in connection with the Services as of the date of such expiration or termination; and

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- (ii) following confirmation by ABM that the copies of the ABM Owned Materials and Developed Materials delivered by Supplier are acceptable and the completion by Supplier of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Supplier's possession and cease using such Materials and any information contained for any purpose.
- (b) **Commercially Available Supplier Owned Materials.** With respect to those Materials owned by Supplier or Supplier Affiliates or, subject to **Section 6.4(c)**, Subcontractors that are generally commercially available and used by them to provide the Services (and any modifications, enhancements, methodologies, tools, documentation, materials and media related thereto used to provide the Services):
  - (i) Supplier hereby grants to ABM (or, at ABM's direction, its designee) a license on standard terms and conditions no less favorable than those offered generally by Supplier to other commercial customers to use such Materials following the expiration or termination of the Term or termination of the Service(s) for which such Materials were used; provided that, in all events, such terms and conditions must be at least broad enough to permit ABM (or, at ABM's direction, its designee) to use such Materials to provide for ABM and the Eligible Recipients, or have provided for them by third party contractors, services similar to the Services, and for ABM and the Eligible Recipients to receive such services;
  - (ii) Supplier shall (A) deliver a copy of such Materials, and related documentation to ABM and the Eligible Recipients, and (B) shall deliver source code and/or object code to the extent such Supplier Owned Materials include source code or object code and such code is customarily provided to commercial customers licensing such Materials, and
  - (iii) Supplier shall offer to provide to ABM (or, at ABM's direction, its designee) Upgrades, maintenance, support and other services for commercial off-the-shelf Materials on Supplier's then-current standard terms and conditions for such services to the extent generally available to other commercial customers.
- (c) **Non-Commercially Available Supplier Owned Materials.** With respect to those Materials owned by Supplier or Supplier Affiliates or Subcontractors and used by them to provide the Services that are not generally commercially available, unless otherwise agreed prior to the first use of such Materials, Supplier hereby grants to ABM (or, at ABM's direction, its designee) a worldwide, perpetual, irrevocable, non-exclusive, non-transferable (except to the extent this Agreement is assigned in accordance with **Section 21.1(b)**) fully paid-up license, to use, execute, reproduce, display, perform, and distribute such Materials following the expiration or termination of the Term or termination of the Service(s) for which such Materials were used. Such license shall be limited to the use of such non-commercially available Supplier Owned Materials by ABM (or, at ABM's direction, its designee) to provide for ABM and the Eligible Recipients or have provided for them by Third Party Contractors, services similar to the Services and for ABM and the Eligible Recipients to receive such services. Unless ABM has otherwise consented prior to the first use of such Materials, ABM (or, at ABM's direction, its designee) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights specified above; provided that, if an ABM Third Party Contractor uses such Materials for such

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purpose for more than one (1) year after the expiration or termination of the Term or termination of the Service(s) for which such Materials were used, ABM or such ABM Third Party Contractor shall thereafter pay Supplier a commercially reasonable license fee to be agreed upon by the Parties.

If Supplier is unwilling or unable to grant ABM or its designee the license and other rights described in the preceding paragraph, Supplier shall so notify ABM and shall not use such non-commercially available Supplier Owned Materials to provide the Services without ABM's prior written approval. In seeking ABM's approval, Supplier may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials by ABM Third Party Contractors, a limitation on the license period and/or the substitution of a functionally equivalent product.

At ABM's request, Supplier shall provide Upgrades, maintenance, support and other services for such non-commercially available Supplier Owned Materials on reasonable commercial terms and conditions, which shall include pricing no less favorable than the pricing customarily charged to other commercial customers receiving equivalent services. If Supplier fails to offer or provide Upgrades, maintenance, support or other services, Supplier shall deliver source code and object code for such Supplier Owned Materials to the extent such Materials include source code, together with the right to modify, enhance and create derivative works of such Materials (provided that, in such event, the licensed Supplier Owned Materials shall thereafter be provided on an "as is" basis).

Notwithstanding the foregoing, during the Termination Assistance Services period, Supplier may substitute a license for Third Party Software or Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of the non-commercially available Supplier Owned Materials. If it proposes to do so, Supplier shall notify ABM and describe in detail the features, functionality and cost of the substitute product. ABM may, in its sole discretion, elect to use a different product for such purpose. In such case, Supplier shall direct the amount it would have expended in procuring the proposed substitute product toward the procurement of the product selected by ABM.

(d) **Third Party Software and Materials.** Subject to Section 6.4(c), with respect to Third Party Software and Materials licensed by Supplier or Supplier Affiliates or Subcontractors or owned by Subcontractors and used by them to provide the Services, Supplier hereby grants to ABM (or, at ABM's election, to ABM's designee) a sublicense (with the right to grant sublicenses) offering the same rights and warranties with respect to such Third Party Software and Materials available to Supplier (or Supplier Affiliates or Subcontractors), on the same terms and conditions, for the benefit and use of ABM, ABM Affiliates and the Eligible Recipients upon the expiration or termination of the Term with respect to the Services for which such Third Party Software or Materials were used; provided that, during the Termination Assistance Services period, Supplier may, with ABM's approval, substitute one of the following for such sublicense:

- (i) the assignment to ABM (or, at ABM's election, to ABM's designee) of the underlying license for such Third Party Software or Materials; or
- (ii) the procurement for ABM (or, at ABM's election, its designee) of a new license (with terms comparable to those in the license held by Supplier or its Affiliates or Subcontractors and with the right to grant sublicenses) to such Third Party Software and Materials for the benefit or use of ABM, ABM Affiliates and the Eligible Recipients; or
- (iii) the procurement for ABM (or, at ABM's election, its designee) of a substitute license for Third Party Software or Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of the Third Party Software and Materials necessary to enable ABM or its designee to provide the Services after the expiration or termination of the Term.

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In addition, Supplier shall deliver to ABM (or at ABM's election, to its designee) a copy of such Third Party Software and Materials (including source code, to the extent it has been available to Supplier) and related documentation and shall cause maintenance, support and other services to continue to be available to ABM and the Eligible Recipients (or, at ABM's election, to its designee) to the extent it has been available to Supplier. Unless ABM has otherwise agreed in advance in accordance with **Section 6.4(c)**, ABM and the Eligible Recipients (or, at ABM's election, to its designee) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses, sublicenses and other rights specified in this **Section 14.6(d)**. Supplier shall not use any Third Party Software and Materials for which it is unable to offer such license, sublicense or other rights without ABM's prior approval (and absent such approval, Supplier's use of any such Third Party Software and Materials shall obligate Supplier to provide, at no additional cost to ABM, such licenses, sublicenses and other rights). ABM, however, shall be obligated to make monthly or annual payments attributable to periods after the expiration or termination of the Term with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Supplier would have been obligated to make such payments if it had continued to hold the licenses in question or ABM has agreed in advance to make such payments.

To the extent ABM has agreed in advance to pay any fees in connection with its receipt of such licenses, sublicenses or other rights, Supplier shall, at ABM's request, identify the licensing and sublicensing options available to ABM and the Eligible Recipients and the license or transfer fees associated with each. Supplier shall use commercially reasonable efforts to obtain the most favorable options and the lowest possible transfer, license, relicense, assignment or termination fees for Third Party Software and Materials. Supplier shall not commit ABM or the Eligible Recipients to paying any such fees or expenses without ABM's prior approval. If the licensor offers more than one form of license, ABM (not Supplier) shall select the form of license to be received by ABM, the Eligible Recipients or designee.

## **15. REPRESENTATIONS AND WARRANTIES**

### **15.1 Work Standards.**

Supplier represents and warrants that the Services shall be rendered with promptness, due care, skill and diligence and shall be executed in a workmanlike manner, in accordance with the accepted practices of first tier providers of ITO Services and the Service Levels. Supplier represents and warrants that it shall use adequate numbers of qualified individuals with suitable training, education, experience, competence and skill to perform the Services. Supplier shall provide such individuals with training as to new products and services prior to the implementation of such products and services in the ABM/ Eligible Recipients environment.

### **15.2 Maintenance.**

- (a) **Supplier Responsibility.** Supplier represents and warrants that, unless otherwise agreed, it shall maintain the Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements, and (iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.
- (b) **Out of Support Third Party Equipment and Software.** For Third Party Equipment and Software no longer supported by the licensor or manufacturer for which Supplier has operational responsibility under **Schedules E** and **J.1**, Supplier shall use commercially reasonable efforts to perform maintenance for such Equipment or Software as required.

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- (c) **Refresh.** To the extent Supplier has financial responsibility under **Schedules E** and **J.1** for Equipment or Software, Supplier shall, at no additional cost to ABM and subject to **Section 9.7**, Upgrade or replace such Equipment or Software in accordance with the agreed upon refresh schedule set forth in **Schedule J.1** or as necessary to as necessary to satisfy its obligations under this Agreement. Notwithstanding the foregoing, if ABM requires Supplier to refresh Equipment or Software more frequently than the foregoing, the Parties will negotiate in good faith and agree upon adjustments to the Charges in connection with such additional refresh.

### 15.3 Efficiency and Cost Effectiveness.

Supplier represents and warrants that it shall use commercially reasonable efforts to provide the Services in a cost-effective manner consistent with the required level of quality and performance. Without limiting the generality of the foregoing, such actions shall include:

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with ABM priorities and schedules for the Services and Supplier's obligation to meet the Service Levels).
- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to ABM.
- (c) **Systems Optimization.** Tuning or optimizing the Systems (including memory) and/or Applications Software to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the System and/or the ABM Data network by scheduling usage, where possible, to low utilization periods.
- (e) **Alternative Technologies.** Subject to **Section 9.5**, using alternative technologies to perform the Services.
- (f) **Efficiency.** Efficiently using resources for which ABM is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

### 15.4 Software.

- (a) **Ownership and Use.** Supplier represents, warrants and covenants that it is either the owner of, or authorized to use, any and all Software provided and used by Supplier in providing the Services. As to any such Software that Supplier does not own but is authorized to use, Supplier shall advise ABM as to the ownership and extent of Supplier's rights with regard to such Software to the extent any limitation in such rights would materially impair Supplier's performance of its obligations under this Agreement.
- (b) **Performance.** Supplier represents, warrants and covenants that any Supplier Owned Software will perform in all material respects in conformance with its Specifications and will provide the functions and features and operate in all material respects in the manner described therein.
- (c) **Developed Materials Compliance.** Supplier warrants and covenants that Developed Materials shall be free from material errors in operation and performance, shall Comply in all material respects with the Specifications and other criteria set forth in this Agreement, and shall provide the functions and features and operate in the manner described in **Schedule E** or otherwise agreed by the Parties. Supplier shall correct any Noncompliance and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Supplier fails or is unable to repair or replace such any Noncompliance, ABM shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Supplier a copy of the source code to such Developed Material, provided that with respect to source code for Supplier owned Developed

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Materials, ABM (or its designee) may utilize such source code only for the repair or maintenance of such Supplier owned Developed Material, and/or to facilitate the Termination Assistance Services to be provided by Supplier during the Termination Assistance period (to the extent reasonably necessary for ABM to continue to have Services performed for it pursuant to the terms of this Agreement). The foregoing will not extend to any Noncompliance attributable to (i) any change or modification to the Developed Material not contemplated by this Agreement or recommended, performed or approved by Supplier or (ii) ABM operating such Developed Material other than (x) in accordance with the applicable documentation and Specifications, (y) for the purpose contemplated by this Agreement, or (z) on types of hardware contemplated by this Agreement or recommended, supplied or approved by Supplier.

- (d) **Nonconformity.** In addition to the foregoing, in the event that the Supplier Owned Software do not Comply with the Specifications and criteria set forth in this Agreement (as applicable), and/or materially and adversely affect the Services provided hereunder, Supplier shall expeditiously repair or replace such Software or Material with conforming Software or Material.

#### 15.5 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents and warrants that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other proprietary rights of any third party; provided, however, that the performing Party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by the other Party or its contractors or subcontractors, without the approval of the performing Party, (ii) the other Party's combination of the performing Party's work product or Materials with items not furnished or specified by the performing Party or contemplated by this Agreement, (iii) a breach of this Agreement by the other Party, (iv) the failure of the other Party to use corrections or modifications provided by the performing Party offering equivalent features and functionality, (v) adherence to detailed specifications provided by the other Party that the performing Party is required to comply with (provided the performing Party notifies the other Party of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (vi) Third Party Software, except to the extent that such infringement or misappropriation arises from the failure of the performing Party to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Software licenses.
- (b) **Third Party Software Indemnification.** In addition, unless otherwise agreed, with respect to Third Party Software provided by Supplier pursuant to this Agreement, Supplier covenants that it shall obtain and provide intellectual property indemnification for ABM and its Affiliates (or obtain intellectual property indemnification for itself and enforce such indemnification on behalf of ABM and its Affiliates) from the suppliers of such Software. Unless otherwise approved in advance by ABM, such indemnification shall be (i) comparable to the intellectual property indemnification provided by Supplier to ABM and the Eligible Recipients under this Agreement, or (ii) the standard indemnification offered in the industry for the same or substantially similar types of software products. In addition to the foregoing, Supplier shall use commercially reasonable efforts to obtain the indemnification protection described above for Eligible Recipients that are not Affiliates of ABM.

#### 15.6 Authorization.

Each Party represents and warrants to the other that:

- (a) **Corporate Existence.** It is a corporation duly incorporated, validly existing and in good standing under the Laws of its state of incorporation;

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- (b) **Corporate Power and Authority.** It has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) **Legal Authority.** Except as otherwise provided in Article 5, it has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state or local laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, except to the extent the failure to obtain any such license, authorizations, approvals, consents or permits is, in the aggregate, immaterial;
- (d) **Due Authorization.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party; and
- (e) **No Violation or Conflict.** The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

#### **15.7 Inducements.**

Supplier represents and warrants that it has not given and will not give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of ABM in connection with this contract. Supplier also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Supplier has given any such payments, gifts, entertainment or other thing of value to any employee or agent of ABM in connection with this Agreement. Supplier also acknowledges that the giving of any such payments, gifts, entertainment, or other thing of value is strictly in violation of ABM policy on conflicts of interest, and may result in the cancellation of this Agreement and all other existing and future contracts between the Parties.

#### **15.8 Malicious Code.**

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with Schedule E to prevent the introduction and proliferation of Malicious Code into ABM's or an Eligible Recipient's environment or any System used by Supplier to provide the Services. Without limiting Supplier's other obligations under this Agreement, in the event Malicious Code is found in Equipment, Software or Systems managed or supported by Supplier or used by Supplier to provide the Services, Supplier shall, at no additional charge to ABM, (i) eliminate or quarantine such Malicious Code, (ii) restore the Equipment, Software and/or Systems to an operational level sufficient to perform the Services in accordance with the Service Levels, and (iii) if the Malicious Code causes a loss of operational efficiency or loss of data, mitigate such losses and restore such data with generally accepted data restoration techniques.

#### **15.9 Disabling Code.**

Supplier represents and warrants that, without the prior consent of ABM, Supplier shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Services. Supplier further represents and warrants that, with respect to any disabling code that may be part of the Software, Supplier shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without ABM's prior consent. Supplier also represents and warrants that it shall use commercially reasonable efforts to not use Third Party Software with disabling code without the prior approval of ABM.

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## **15.10 Compliance with Laws.**

- (a) **Compliance by Supplier.** Subject to Section 15.10(b), (d)(ii) and (e), Supplier agrees that it is and shall be in compliance in all material respects with all Laws applicable to its provision of the Services and the performance of its other legal and contractual obligations hereunder on the Commencement Date and shall remain in compliance in all material respects with such Laws for the entire Term, including identifying and procuring applicable permits, certificates, approvals and inspections required under such Laws. If a written charge of non-compliance by Supplier with any such Laws occurs and such non-compliance has or potentially could have a material adverse impact on the receipt or use of the Services by ABM or the Eligible Recipients, then, Supplier shall promptly notify ABM of such charge.
- (b) **Compliance by ABM.** Subject to Section 15.10(d)(i), ABM agrees that it is and shall be in compliance in all material respects with all Laws applicable to ABM, including those processes and functions specific to ABM's business that are supported by Supplier under this Agreement ("ABM Laws") for the entire Term of the Agreement. If a written charge of non-compliance by ABM with any such ABM Laws occurs in connection with this Agreement, ABM shall promptly notify Supplier of such charge.
- (c) **Compliance Data and Reports.** At no additional charge, Supplier shall provide ABM with data and reports in Supplier's possession necessary for ABM to comply with all ABM Laws.
- (d) **Notice of Laws.**
  - (i) Supplier shall notify ABM (expeditiously under the circumstances) of any Laws and changes in Laws applicable to providers of application management, telecommunication, IT infrastructure, help desk, and other information technology services (whether as a service unit within the receiving organization or as an external contractor) (collectively, "Supplier Laws").
  - (ii) ABM shall notify Supplier of any other Laws and any changes in such other Laws.
  - (iii) Supplier shall, through the Supplier Personnel, use commercially reasonable efforts to maintain general familiarity with ABM Laws by, among other things, attending any ABM sponsored training, and shall bring additional or changed requirements of which it becomes aware to ABM's attention. Each Party shall use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in the other Party's area of responsibility, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder.
- (e) **Interpretation of Laws or Changes in Laws.** ABM shall be responsible, for interpreting ABM Laws or changes in ABM Laws and, with Supplier's cooperation and assistance, for identifying the impact of such ABM Laws or changes in ABM Laws on Supplier's performance and ABM's and/or the Eligible Recipients' receipt and use of the Services. Supplier shall be responsible, for interpreting Supplier Laws or changes in Supplier Laws and, with ABM's cooperation and assistance, for identifying the impact of such Supplier Laws or changes in Supplier Laws on Supplier's performance and ABM's and/or the Eligible Recipients' receipt and use of the Services. To the extent the impact of any Supplier Law or change in Supplier Law cannot be readily identified by Supplier, the Parties shall cooperate in interpreting such Law or change in Law and shall seek in good faith to identify and agree upon the impact on Supplier's performance and ABM's and/or the Eligible Recipients' receipt and use of the Services. In such event, Supplier shall inform ABM about such Supplier Law or change in Supplier Law and propose approaches as to changes in the performance or receipt of the Services to be made in response thereto. If the Parties are unable to agree upon such impact, ABM shall retain the right, in its sole discretion, to

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interpret such Supplier Law or change in Supplier Law and determine its impact. In addition, if Supplier reasonably concludes, after due inquiry, that the compliance obligations associated with any Supplier Law or change in Supplier Law are unclear or that there is more than one reasonable approach to achieving compliance, Supplier may escalate the issue to ABM for a final decision. In all events, to the extent ABM makes the final decision as to the interpretation of a Law or change in Law or its impact on Supplier's performance and ABM's and/or the Eligible Recipients' receipt and use of the Services and Supplier complies with such decision, Supplier shall be relieved of responsibility for any resulting non-compliance with such Law if and to the extent such decision is ultimately determined to be in error. Supplier shall notify ABM expeditiously of such non-compliance upon learning thereof and shall work expeditiously to remedy such non-compliance upon receipt of ABM's approval.

- (f) **Implementation of Changes in Laws.** In the event of any changes in Laws (including ABM Laws to the extent Supplier receives prompt notice of such ABM Laws from ABM or as otherwise provided in Section 15.10(d)(iii)), Supplier shall implement any necessary modifications to the Services prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Supplier shall bear the costs associated with compliance with changes in Laws applicable to the Services unless such change meets the definition of New Service, in which case it shall be treated as a Project. At ABM's request, Supplier Personnel shall participate in ABM provided regulatory compliance training programs.
- (g) **Compliance with Data Privacy Laws** Without limiting the foregoing, with respect to any ABM Personal Data, Supplier shall, with ABM's prior approval, comply with any obligations imposed on Supplier under any applicable Data Privacy Laws in connection with Supplier's performance of Services and shall provide ABM with such assistance as ABM may reasonably require to fulfill the responsibilities of ABM and the Eligible Recipients under such Data Privacy Laws. Supplier shall also comply with the ABM data privacy policy, as such policy may be modified by ABM and communicated to Supplier in accordance with the Agreement, as well as the reasonable global data privacy policies of any self-regulatory organizations to which ABM or Eligible Recipients belong; provided that, in the case of self-regulatory organizations, Supplier has received notice of such self-regulatory organization from ABM and a reasonable period, not to exceed thirty (30) days, to implement any changes deemed necessary by ABM to achieve compliance with such organization's policies. Supplier will act in the capacity of a processor of ABM Personal Data, and ABM will be the controller of such ABM Personal Data, under applicable Data Privacy Laws.
- (h) **Assistance to ABM.** As part of the Services and on an ongoing basis, Supplier shall assist ABM and the Eligible Recipients as they may reasonably require in their efforts to determine how to change the Services to comply with applicable Laws (including any changes to Laws) not applicable to Supplier or related to the Services. Without limiting Supplier's obligations under this Agreement, this Agreement shall not be construed as requiring either Party to provide legal, audit or attest advice to the other Party.
- (i) **No Liability for ABM Obligations.** Supplier shall not be financially responsible for amounts that ABM or the Eligible Recipients were otherwise legally or contractually obligated to pay, but that were not paid because of Supplier's failure to comply with applicable Laws or its other responsibilities under this Agreement. However, the foregoing shall not operate or be construed as relieving Supplier of responsibility for fines, penalties, interest, or other remedies for which Supplier is otherwise responsible under Section 17.1(f).
- (j) **Termination.** In the event that any change in Laws results in an increase of ten percent (10%) or more in the estimated average monthly Charges in any Functional Service Area or otherwise has a material adverse impact on Supplier's ability to perform the Services and ABM would not have incurred such additional cost or impact if it had not outsourced the Services in question, then ABM may, at its option, terminate the Agreement by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective. If ABM

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terminates on this basis, ABM shall pay Termination Charges calculated in accordance with **Schedule N**.

#### **15.11 Interoperability.**

Supplier represents, warrants and covenants that, upon completion of the Transition Services, the Software, Equipment and Systems provided through, and used to provide, the Services will be fully interoperable with the software, equipment and systems used by ABM or the Eligible Recipients to provide the same or similar services and/or to deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems to receive the Services. Supplier further represents, warrants and covenants that, upon the transition of any Service to a Supplier Facility, the Software, Equipment and Systems provided through, and used to provide, such Service will be fully interoperable with the software, equipment and systems used by ABM or the Eligible Recipients to provide the same or similar services and/or to deliver records to, receive records from, or otherwise interact with the Software, Equipment and Systems to receive such Service.

#### **15.12 Disclaimer.**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES TO THE OTHER PARTY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Subject to Supplier's obligations under this Agreement, including Service Levels, Supplier does not assure uninterrupted or error-free operation of the Equipment, Software or Services.

### **16. INSURANCE AND RISK OF LOSS**

#### **16.1 Insurance.**

- (a) **Requirements.** Supplier agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance during the term of this Agreement:
- (i) Workers' Compensation and Employer's Liability Insurance in full compliance with the applicable Laws of the state in which the work is to be performed:
    - Statutory Worker's Compensation including occupational disease in accordance with the law.
    - Employer's Liability Insurance with minimum limits of \$1,000,000 per employee by accident/\$1,000,000 per employee by disease/\$1,000,000 policy limit by disease.
    - Policy shall include an Alternate Employer Endorsement listing ABM and the Eligible Recipients as the Alternate Employer.
  - (ii) Commercial General Liability Insurance (including contractual liability coverage for liability assumed by Supplier under this Agreement, Premises-Operations, Completed Operations—Products and Independent Contractors) providing coverage for bodily injury, personal and advertising injury and property damage with combined single limits of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate (or, if higher, the limits required by applicable Law).
  - (iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property

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damage liability with combined single limits of not less than \$5,000,000 per occurrence, except as may otherwise be required by Law.

- (iv) Umbrella / Excess Liability Insurance all on an occurrence basis with an occurrence and aggregate minimum limit of \$50,000,000, all to be following form over the underlying insurance provided in **Section 16.1(a)(i), (ii) and (iii)**.
  - (v) Professional Liability (also known as Errors and Omissions Liability Insurance) covering acts, errors and omissions arising out of Supplier's operations or Services in an amount not less than \$5,000,000 per claim and \$10,000,000 in the aggregate. Should this coverage be provided on a claims made basis, a minimum extended reporting period of two (2) years will be provided for ABM upon termination or expiration of the Term.
  - (vi) Comprehensive Crime Insurance, including, Employee Dishonesty and Computer Fraud Insurance, covering losses arising out of or in connection with any fraudulent or dishonest acts committed by Supplier employees, acting alone or with others, in an amount not less than \$5,000,000 per occurrence.
  - (vii) All risk property insurance covering loss or damage to ABM Equipment and other assets in Supplier's possession and/or control in an amount not less than the full replacement cost of such Equipment and assets.
- (b) **Approved Companies.** All such insurance shall be procured with reputable insurance companies and in such form as shall be acceptable to ABM. Such insurance companies shall maintain a rating at least "A-" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide, except for **Section 16.1(a)(vii)** (all risk property insurance) for which Supplier uses a single owner captive company to evidence coverage.
- (c) **Endorsements.** Supplier's insurance policies as required herein under **Sections 16.1(a)(ii) and (iii)** shall name ABM, ABM Affiliates and Eligible Recipients, and their respective officers, directors, agents, servants and employees as Additional Insureds as their interests may appear with respect to Supplier's performance under this Agreement. The Supplier insurance policies required under **Section 16.1(a)(vi)** shall name ABM, ABM Affiliates and Eligible Recipients and their respective officers, directors and employees as loss payees as their interests may appear with respect to Supplier's performance under this Agreement. Subject to **Section 16.2(a)**, with respect to matters pertaining to the Services or Supplier's obligations under this Agreement, all insurance afforded to ABM under this **Section 16.1** shall be primary insurance and any other valid insurance existing for ABM's benefit shall be excess of such primary insurance and non-contributory with respect to any insurance or self-insurance maintained by ABM or the Eligible Recipients. Supplier shall obtain such endorsements to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements stated herein.
- (d) **Certificates.** Supplier shall provide ABM with certificates of insurance evidencing compliance with this **Article 16** upon execution of this Agreement. Each certificate of insurance, except for **Section 16.1(a)(v)** (professional liability) and **Section 16.1(a)(vi)** (comprehensive crime), shall include a statement that the issuing company shall not cancel, nonrenew, reduce, or otherwise change the insurance afforded under the above policies unless thirty (30) days' notice of such cancellation, nonrenewal, reduction or change has been provided to:

ABM Industries Inc.  
160 Pacific Avenue, Suite 222  
San Francisco, CA 94111

Attention: General Counsel

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With respect to the insurance provided under **Sections 16.1(a)(v)** (professional liability) and **Section 16.1(a)(vi)** (comprehensive crime), Supplier shall provide notice to ABM at least thirty (30) days prior to Supplier or the issuing company canceling, nonrenewing, reducing, or otherwise changing the insurance afforded under such policies.

- (e) **No Implied Limitation.** The obligation of Supplier to provide the insurance specified herein shall not limit or expand in any way any obligation or liability of Supplier provided elsewhere in this Agreement, nor shall the insurance coverage provided herein override ABM's indemnification obligations.
- (f) **Insurance Subrogation.** With respect to insurance coverage to be provided by Supplier pursuant to **Sections 16.1** (except **Section 16.1(a)(v)** (professional liability) and **Section 16.1(a)(vi)** (comprehensive crime), which will follow these words but for which certificates cannot be provided), the applicable insurance policies shall provide that the insurance companies waive all rights of subrogation against Supplier, ABM, the Eligible Recipients and their respective subsidiaries, Affiliates, officers, directors, and employees.

## 16.2 Risk of Loss.

- (a) **General.** Except as otherwise provided in **Section 17.3(b)**, each Party shall be responsible for risk of loss of, and damage to, any Equipment, Software or other materials in its possession or under its control. Supplier shall be deemed to possess and control all Equipment, Software and other materials located in Supplier Facilities or in ABM Facilities used by Supplier to provide the Services. Each Party shall promptly notify the other of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of any item of Equipment, Software or other Materials in the possession or under the control of such Party ("Event of Loss"). Such Party shall be responsible for the cost of any necessary repair or replacement of such Equipment, Software or other Materials due to an Event of Loss. In the event of an Event of Loss by ABM, such repair or replacement shall not be considered part of Supplier's maintenance obligations, but Supplier shall coordinate and oversee repair or replacement performed by a third-party on a Pass-Through Expenses basis, or by Supplier at agreed-upon prices.
- (b) **Waiver.** Subject to **Section 17.3(b)**, Supplier and ABM each waive all rights to recover against the other Party for damage, destruction, loss, theft, or governmental taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Supplier and ABM will cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies maintained by each Party, including the policy referenced in **Section 16.1(a)(vii)**.

## 17. INDEMNITIES

### 17.1 Indemnity by Supplier.

Supplier agrees to indemnify, defend and hold harmless ABM and its Affiliates and the Eligible Recipients and their respective officers, directors, employees, agents, representatives, successors, and assigns (collectively, the "**ABM Indemnitees**") from any and all Losses and threatened Losses to the extent due to third party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Supplier's breach of any of the representations, warranties and covenants set forth in **Sections 15.6, 15.7, 15.9 and 15.10(a)**;
- (b) **Assumed Contracts.** Supplier's decision to terminate or failure to observe or perform any duties or obligations to be observed or performed by Supplier under any of the Third Party Software

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licenses, Equipment leases or Third Party Contracts assigned to Supplier by ABM or the Eligible Recipients or for which Supplier has assumed financial or operational responsibility pursuant to this Agreement for so long as Supplier retains financial or operational responsibility for such licenses, leases or contracts;

- (c) **Licenses, Leases and Contracts.** Supplier's failure to observe or perform any duties or obligations to be observed or performed by Supplier under Third Party Software licenses, Equipment leases or Third Party Contracts used by Supplier to provide the Services;
- (d) **ABM Data or Proprietary Information.** Supplier's breach of any of the restrictions in Sections 13.1 and 13.3 on the disclosure or use of ABM Data or ABM Proprietary Information.
- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of Supplier's representations, warranties and covenants in Sections 15.4 and 15.5;
- (f) **Government Claims.** Claims by government regulators or agencies or standards organizations for fines, penalties, sanctions, underpayments or other remedies to the extent such fines, penalties, sanctions, underpayments or other remedies are attributable to Supplier's failure to comply with its obligations under Section 15.10(a);
- (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Supplier under Section 11.4;
- (h) **Shared Facility Services.** Services, products or systems provided by Supplier to a third party from any shared Supplier facility or using any shared Supplier resources and not constituting Services provided to an Eligible Recipient pursuant to this Agreement;
- (i) **Affiliate or Subcontractor Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by a Supplier Affiliate or Subcontractor asserting rights under this Agreement or any entity to which Supplier assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from ABM under this Agreement;
- (j) **Employment Claims.** Any claim (including claims by Transitioned Employees) to the extent resulting from any (i) violation by Supplier, Supplier Affiliates or Subcontractors, or their respective officers, directors, employees, representatives or agents, of Federal, state, provincial, local, international or other Laws or regulations or any common law protecting persons or members of protected classes or categories, including laws or regulations prohibiting discrimination or harassment on the basis of a protected characteristic, (ii) liability arising or resulting from the employment of Supplier Personnel (including Transitioned Employees) by Supplier, Supplier Affiliates or Subcontractors (including liability for any social security or other employment taxes, workers' compensation claims and premium payments, and contributions applicable to the wages and salaries of such Supplier Personnel), (iii) payment or failure to pay any salary, wages or other cash compensation due and owing to any Supplier Personnel (including Transitioned Employees from and after their Employment Effective Dates), (iv) Supplier's failure to pay employee pension or other benefits of any Supplier Personnel (including Transitioned Employees for benefits due and owed to any Supplier Personnel and accruing from and after their Employment Effective Dates), (v) other acts or omissions of Supplier, Supplier Affiliates or Subcontractors in their capacity as an employer of Supplier Personnel (including Transitioned Employees) or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of joint employment, and/or (vi) liability resulting from representations (oral or written) to the employees identified on Schedule M by Supplier, Supplier Affiliates or Subcontractors (or their respective officers, directors, employees, representatives or agents), or other acts or omissions with respect to the employees identified on Schedule M by such persons or entities, including any act, omission or

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representation made in connection with the interview, selection, hiring and/or transition process, the offers of employment made to such employees, the failure to make offers to any such employees, the rescission of such offers of employment, or the terms and conditions of such offers (including compensation and employee benefits), except, in each case, to the extent resulting from the wrongful actions of ABM, the Eligible Recipients, or ABM Third Party Contractors (or their respective officers, directors, employees, representatives or agents, other than the employees identified on **Schedule M**), errors or inaccuracies in the information provided by ABM and faithfully communicated by Supplier or the failure of ABM, the Eligible Recipients, or ABM Third Party Contractors (or their respective officers, directors, employees, representatives or agents, other than the employees identified on **Schedule M**) to comply with ABM's responsibilities under this Agreement.

- (k) **WARN Act.** Supplier's breach of its obligations under **Section 8.11(b)** to the extent such breach results in ABM or an Eligible Recipient being in violation of the WARN Act or the regulations promulgated thereunder.
- (l) **Transitioned Employees Claims.** Any labor or employment-related liability, action, judgment, costs, expense or violation of any applicable Law, rule, regulation, ordinance or governmental order relating to or brought by any Transitioned Employee which the ABM indemnitees may be subject to incur by reason of any act, omission or matter arising on or after the Employment Effective Date.

## 17.2 Indemnity by ABM.

ABM agrees to indemnify, defend and hold harmless Supplier and its officers, directors, employees, agents, representatives, successors, and assigns (collectively, the "**Supplier Indemnitees**"), from any Losses and threatened Losses to the extent due to third party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** ABM's breach of any of the representations, warranties and covenants set forth in **Sections 15.6, 15.7 and 15.10(b)**;
- (b) **Licenses, Leases or Contracts.** ABM's failure to observe or perform any duties or obligations to be observed or performed by ABM under any of the applicable Third Party Software licenses, Equipment leases or Third Party Contracts to the extent ABM is financially or operationally responsible under this Agreement;
- (c) **Pre-Commencement Date Matters.** ABM's failure to observe or perform any duties or obligations to be observed or performed prior to the Commencement Date by ABM under any of the Third Party Software licenses, Equipment Leases or Third Party Contracts assigned to Supplier by ABM pursuant to this Agreement;
- (d) **Supplier's Proprietary Information.** ABM's breach of any of the restrictions in **Section 13.3** on the disclosure or use of Supplier Proprietary Information;
- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other proprietary rights in contravention of ABM's representations, warranties and covenants in **Section 15.5**;
- (f) **Government Claims.** Claims by government regulators or agencies for fines, penalties, sanctions, underpayments or other remedies to the extent such fines, penalties, sanctions, underpayments or other remedies attributable to ABM's comply with its obligations under **Section 15.10(b)**;

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- (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of ABM under **Section 11.4**;
- (h) **ABM Affiliate, Eligible Recipient or Subcontractor Claims.** Any claim, other than an indemnification claim or insurance claim under this Agreement, initiated by an ABM Affiliate, an Eligible Recipient (other than ABM) or an ABM Third Party Contractor asserting rights under this Agreement; and
- (i) **Employment Claims.** Any claim to the extent resulting from any (i) violation by ABM or its respective officers, directors, employees, representatives or agents, of Federal, state, provincial, local, international or other Laws or regulations or any common law protecting persons or members of protected classes or categories, including laws or regulations prohibiting discrimination or harassment on the basis of a protected characteristic, (ii) payment or failure to pay any salary, wages or other cash compensation owed by ABM to any Transitioned Employee and relating to the period of his or her employment with ABM, (iii) ABM's failure to pay any accrued employee pension or other benefits owed by ABM to any Transitioned Employee and accruing during the period of his or her employment with ABM, (iv) other acts or omissions of ABM in its capacity as an employer of the Transitioned Employees, but excluding claims covered by **Section 17.1(j)** (and provided, in no event will ABM be liable for any claim related to a Transitioned Employee's employment relationship arising after such Transitioned Employee's Employment Effective Date regardless of a finding by any court or authoritative body that ABM is or was an employer of such Transitioned Employee on or after his or her Employment Effective Date), and/or (v) liability resulting from representations (oral or written) to the Affected Employees identified on **Schedule M** by ABM (or its officers, directors, employees, representatives or agents), except, in each case, to the extent resulting from the wrongful actions of Supplier, Supplier Affiliates or Subcontractors (or their respective officers, directors, employees, representatives or agents), errors or inaccuracies in the information provided by Supplier and faithfully communicated by ABM, or the failure of Supplier, Supplier Affiliates or Subcontractors (or their respective officers, directors, employees, representatives or agents) to comply with Supplier's responsibilities under this Agreement.

#### **17.3 Additional Indemnities.**

Supplier and ABM each agree to indemnify, defend and hold harmless the other, and the Eligible Recipients and their respective Affiliates, officers, directors, employees, agents, representatives, successors, and assigns, from any and all Losses and threatened Losses to the extent they arise from or in connection with any of the following: (a) the death or bodily injury of any agent, employee, customer, business invitee, business visitor or other person caused by the negligence or other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement; and (b) the damage, loss or destruction of any real or tangible personal property caused by the negligence or other tortious conduct of the indemnitor or the failure of the indemnitor to comply with its obligations under this Agreement.

#### **17.4 Infringement.**

In the event that (1) any Materials, Equipment or Software provided by Supplier or its Affiliates or Subcontractors pursuant to this Agreement or for which Supplier is financially responsible under this Agreement are found or, are reasonably likely to be found to infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement or (2) the continued provision of such Services or use of such Materials, Equipment or Software is enjoined, Supplier shall, in addition to defending, indemnifying and holding harmless ABM as provided in **Section 17.1(e)** and to the other rights ABM may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to ABM's and the Eligible Recipients' business activities do one of the following:

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- (a) **Obtain Rights.** Obtain for ABM and the Eligible Recipients the right to continue using such Materials, Equipment or Software.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect ABM's and the Eligible Recipients' intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to ABM.
- (d) If, despite Supplier using commercially reasonable efforts, the Parties determine that alternatives (a) – (c) above are not feasible, Supplier may discontinue its use of such infringing or potentially infringing Materials, Equipment or Software. However, this shall not limit or expand ABM's rights or Supplier's obligations under the Agreement. Nor shall this excuse any breach by Supplier of its obligation to provide the Services and to do so in a non-infringing manner.

#### 17.5 Indemnification Procedures.

With respect to third party claims (other than those covered by **Section 17.1(f)** and **17.2(f)** and except as provided in **Section 17.6**), the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any entity entitled to indemnification (under **Sections 17.1 through 17.4** or any other provisions of this Agreement) of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to any such Section, the indemnitee shall notify the indemnitor of such claim. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
- (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor shall keep the indemnitee reasonably apprised at all times as to the status of the defense, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim. In addition to defense costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties), the indemnitor shall pay any amounts which a court finally awards to a third party or which are included in a settlement agreed to by the indemnitor. The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (i) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (ii) the indemnitor shall pay the reasonable fees and expenses associated with such counsel if there is a conflict of interest under applicable rules or with respect to such claim or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (x) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (y) the indemnitee has not provided the indemnitor with notice of such claim and a

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reasonable opportunity to respond thereto, or (z) the time period within which to deliver a Notice of Election has not yet expired.

- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim for which it is obligated to indemnify the other Party hereunder within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such costs and expenses incurred by the indemnitee, including attorneys' fees.

## 17.6 Indemnification Procedures — Governmental Claims.

With respect to claims covered by Sections 17.1(f) and 17.2(f), the following procedures may apply at the sole discretion of the indemnitee:

- (a) **Notice.** Promptly after receipt by either Party of notice of the commencement or threatened commencement of any action or proceeding involving a claim in respect of which the indemnitee will seek indemnification pursuant to Section 17.1(f) or 17.2(f), the Party receiving such notice shall notify the other Party of such claim. No delay or failure to so notify the other Party shall relieve such other Party of its obligations under this Agreement except to the extent that such other Party has suffered actual prejudice by such delay or failure.
- (b) **Procedure for Defense.** Each Party shall be entitled to have sole control over the defense and settlement of such claim brought against it; provided that such Party shall consult with the other Party on a regular basis regarding claim processing (including actual and anticipated costs and expenses) and litigation strategy and shall obtain the prior written approval of such other Party before entering into any settlement of such claim involving the payment of moneys for which such other Party will ultimately be financially responsible under Section 17.1(f).

## 17.7 Subrogation.

Except as otherwise provided in Sections 16.1 or 16.2 in the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to Sections 17.1 through 17.4 or any other provision of this Agreement, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

# 18. LIABILITY

## 18.1 General Intent.

Subject to the specific provisions of this Article 18, it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred by the non-breaching Party as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

## 18.2 Force Majeure.

- (a) **General.** Subject to Section 18.2(d), no Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God; wars, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of such Party, except to the extent such default or delay is caused by such Party's failure to perform its obligations under this Agreement, and provided that such default or delay can not reasonably be circumvented by the non-performing Party through the use of commercially reasonable alternate sources, workaround plans or other commercially reasonable means. A strike, lockout or labor dispute involving Supplier or a Subcontractor and its own personnel shall not excuse Supplier from its obligations hereunder. In addition, the refusal of a Supplier Personnel to

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enter a facility that is the subject of a labor dispute shall excuse Supplier from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of harm.

- (b) **Duration and Notification.** In such event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. To the extent possible, any Party so prevented, hindered or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
- (c) **Substitute Services; Termination.** If any event described in Section 18.2(a) has substantially prevented, hindered or delayed or is reasonably expected to prevent, hinder or delay the performance by Supplier or one of its Subcontractors of Services necessary for the performance of critical ABM or Eligible Recipient functions for longer than the recovery period specified in the applicable disaster recovery plan, ABM may procure such Services from an alternative source, and Supplier shall be liable for payment for such services from the alternate source for so long as the delay in performance shall continue up to 180 days; provided that, ABM continues to pay the applicable Charges for all Services that it continues to receive from Supplier or an alternate source at Supplier's expense. In addition, if any event described in Section 18.2(a) substantially prevents, hinders or delays the performance by Supplier, its Subcontractors or an alternate source paid by Supplier of Services necessary for the performance of critical ABM or Eligible Recipient functions (i) for more than five (5) days, ABM, at its option, may terminate any portion of this Agreement so affected (provided that, to the extent ABM terminates on this basis, it shall pay the Wind Down Charges specified in Sections 2(a) and (b) of Schedule N) and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) for more than ten (10) days, ABM, at its option, may terminate this Agreement in its entirety (provided that, to the extent ABM terminates on this basis, it shall pay the Wind Down Charges specified in Sections 2(a) and (b) of Schedule N for the impacted Functional Service Areas and the Wind Down Charges specified in Sections 2(a), (b) and (c) of Schedule N for all other Functional Service Areas). Supplier shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Supplier's ability to perform.
- (d) **Disaster Recovery.** Upon the occurrence of a force majeure event that constitutes a disaster under the applicable disaster recovery plan, Supplier shall implement promptly, as appropriate, its disaster recovery plan and provide disaster recovery services as described in Schedule E. The occurrence of a force majeure event shall not relieve Supplier of its obligation to implement its disaster recovery plan and provide disaster recovery services except to the extent a force majeure event impacts Supplier's ability to implement such plan and provide such services.
- (e) **Payment Obligation.** If Supplier fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Supplier hereunder shall be equitably adjusted in a manner such that ABM is not required to pay any amounts for Services that it is not receiving whether from Supplier or from an alternate source at Supplier's expense pursuant to Section 18.2(c).
- (f) **Allocation of Resources.** Without limiting Supplier's obligations under this Agreement, whenever a force majeure event or disaster causes Supplier to allocate limited resources between or among Supplier's customers and Affiliates, ABM and the Eligible Recipients shall receive at least the same treatment with respect to such allocation as comparable Supplier customers.

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### **18.3 Limitation of Liability.**

- (a) **Limitations.** EXCEPT AS PROVIDED IN THIS **SECTION 18.3**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) **Liability Cap.** Additionally, except as provided below, the total aggregate liability of either Party, for claims asserted by the other Party under or in connection with this Agreement (excluding claims covered by **Section 18.3(c)** and **18(g)** that are subject to a separate liability cap), regardless of the form or the action or the theory of recovery, shall be limited to the total Charges for the twelve (12) months immediately preceding the last act or omission giving rise to such liability; provided that, for the period ending on the last day of the first Contract Year, such liability cap shall be not less than the amount specified in **Schedule J** as the “**Annual Service Charge**” for the first Contract Year. For avoidance of doubt, this liability cap is an aggregate liability cap for the Master Agreement and all Companion Agreements.
- (c) **Separate Liability Cap for Supplier Refusal to Perform.** If, following its receipt of a termination notice and prior to its completion of all Termination Assistance Services requested by ABM under **Section 4.3**, Supplier refuses to provide all or a material portion of the Services then required to be provided by Supplier under this Agreement, the limitations of liability set forth in **Section 18.3(a)** and **(b)** shall not apply to the liability, damages and losses suffered by ABM and/or the Eligible Recipients as a result of such refusal. The total aggregate liability of Supplier for such liability, damages and losses shall be limited to the total Charges payable to Supplier during the eight (8) month period immediately preceding the last act or omission giving rise to such liability; provided that, for the period beginning on the Effective Date and ending eight (8) months after the Commencement Date, the total aggregate liability of Supplier for such liability, damages and losses shall be limited to the greater of the total anticipated Charges specified in **Schedule J** for such period or the total actual Charges for the preceding eight (8) months. For purposes of this provision, “refusal” means the intentional cessation by Supplier, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Services then required to be provided by Supplier under this Agreement.
- (d) **Cap within Liability Cap for Government Fines, Penalties, Interest and other Remedies.** The limitations of liability set forth in **Section 18.3(a)** shall not apply to fines, penalties, sanctions, underpayments or other remedies for which Supplier is liable under **Section 17.1(f)**. Supplier’s liability for such fines, penalties, sanctions, underpayments or other remedies shall be applied against the liability cap set forth in **Section 18.3(b)**; however, the total aggregate liability of Supplier for all such fines, penalties, sanctions, underpayments and other remedies shall be limited to the greater of \$12,000,000 or the total Charges payable to Supplier during the six (6) month period immediately preceding the last act or omission giving rise to such liability (provided that, for the period beginning on the Effective Date and ending six (6) months after the Commencement Date, the total aggregate liability of Supplier for all such fines, penalties, sanctions, underpayments and other remedies shall be limited to the greater of the total anticipated Charges specified in **Schedule J** for such period or the total actual Charges for the preceding six (6) months).
- (e) **Cap within Liability Cap for Government Fines, Penalties, Interest and other Remedies.** The limitations of liability set forth in **Section 18.3(a)** shall not apply to fines, penalties, sanctions, underpayments or other remedies for which ABM is liable under **Section 17.2(f)**. ABM’s liability for such fines, penalties, sanctions, underpayments or other remedies shall be applied against the liability cap set forth in **Section 18.3(b)**; however, the total aggregate liability of ABM for all such fines, penalties, sanctions, underpayments and other remedies shall be limited to the greater of \$12,000,000 or the total Charges payable to Supplier during the six (6) month period immediately

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preceding the last act or omission giving rise to such liability (provided that, for the period beginning on the Effective Date and ending six (6) months after the Commencement Date, the total aggregate liability of ABM for all such fines, penalties, sanctions, underpayments and other remedies shall be limited to the greater of the total anticipated Charges specified in Schedule J for such period or the total actual Charges for the preceding six (6) months).

- (f) **Limitations on Supplier's Liability for Damages Suffered by Eligible Recipients Described in Sections 2.1(44)(h) and (i).** Supplier shall be liable for damages suffered by an Eligible Recipient described in Sections 2.1(44)(h) and (i) only if and to the extent (i) ABM or an Eligible Recipient described in Sections 2.1(44)(a)-(g) reimburses such Eligible Recipient for such damages, (ii) such damages would have been recoverable from Supplier under the Agreement if ABM had suffered such damages, and (iii) subject to Section 18.3(l), ABM and/or such Eligible Recipient endeavor to mitigate such damages. Supplier's liability for damages suffered by Eligible Recipients described in Sections 2.1(44)(h) and (i) shall be applied against the liability cap set forth in Section 18.3(b); however, the total aggregate liability of Supplier for all such damages shall be limited to the greater of \$12,000,000 or the total Charges payable to Supplier during the six (6) month period immediately preceding the last act or omission giving rise to such liability (provided that, for the period beginning on the Effective Date and ending six (6) months after the Commencement Date, the total aggregate liability of Supplier for all such damages shall be limited to the greater of the total anticipated Charges specified in Schedule J for such period or the total actual Charges for the preceding six (6) months).
- (g) **Separate Liability Cap for J.D. Edwards Project.** The total aggregate liability of either Party, for claims asserted by the other Party under or in connection with the J.D. Edwards Project described in Attachment L.1, regardless of the form or the action or the theory of recovery, shall be limited to the greater of the total Charges for such Project or \$7,000,000. This separate liability cap shall be subject to the exceptions described in Sections 18.3(h), (i) and (j) below. For avoidance of doubt, to the extent the alleged act(s) and/or omission(s) represent not only a breach of Attachment L.1, but also a breach of the remainder of the Agreement, the liability of the breaching Party shall not exceed the aggregate total of the liability cap specified in Section 18.3(b) and this separate liability cap.
- (h) **Exceptions to Limitations of Liability.** The limitations of liability set forth in Section 18.3(a) shall not apply with respect to:
- (i) Losses paid pursuant to the indemnification obligations under this Agreement;
  - (ii) Liability occasioned by any breach of the restrictions in Sections 13.1 and 13.3 on the disclosure or use of ABM Data, ABM Proprietary Information, or Supplier Confidential Information;
  - (iii) Liability occasioned by any breach of a Party's obligations under Article 13, other than those covered in Section 18.3(h)(ii) (provided that, unless such breach results from gross negligence, recklessness or intentional tortious conduct, such liability shall be subject to the liability caps set forth above; and provided further that, to the extent the breach involves Personal Data, the total aggregate liability of the breaching Party for consequential, incidental or special damages shall be limited to the greater of \$6,000,000 or the total Charges payable to Supplier during the three (3) month period immediately preceding the last act or omission giving rise to such liability); ; or
  - (iv) Termination Charges assessed under this Agreement.
- (i) **Exceptions to Liability Cap.** The limitations of liability set forth in Section 18.3(b) shall not apply with respect to:

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- (i) Losses paid pursuant to the indemnification obligations under this Agreement;
  - (ii) Liability occasioned by a breach of a Party's representations, warranties or covenants set forth in Sections 15.6, 15.7, 15.9, 15.10(a) (in the case of Supplier) and 15.10(b) (in the case of ABM); or
  - (iii) Liability occasioned by any breach of the restrictions in Sections 13.1 and 13.3 on the disclosure or use of ABM Data, ABM Proprietary Information, or Supplier Confidential Information; or
  - (iv) Liability occasioned by any breach of a Party's obligations under Article 13 (other than those covered in Section 18.3(h)(ii)) resulting from gross negligence, recklessness or intentional tortious conduct.
- (j) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be subject to the limitations specified in, Section 18.3(a) and shall not be counted toward the liability cap specified in, Section 18.3(b):
- (i) Service Level Credits and Deliverable Credits assessed against Supplier pursuant to this Agreement;
  - (ii) invoiced Charges that ABM is not obligated to pay under this Agreement because such Charges are attributable to billing errors or Services not provided by Supplier; and
  - (iii) invoiced Charges and other amounts that are due and owing to Supplier for Services under this Agreement.
- (k) **Waiver of Liability Cap.** In the event (i) either Party incurs liability to the other Party which equals or exceeds eighty (80%) of one or more of the liability caps specified in Sections 18.3(b), (c), (d), (e) or (f) and does not fall within an exception to such liability caps, and (ii) such incurring Party does not waive such liability cap and/or agree to increase it by a mutually agreeable amount within thirty (30) days of its receipt of written notice from the other Party, then the other Party may elect to terminate the Term for convenience. If ABM elects to terminate on this basis, ABM shall not be obligated to pay any Termination Charges, including any Wind Down Charges. If Supplier elects to terminate on this basis, ABM shall pay Wind Down Charges calculated in accordance with Schedule N, but shall not be obligated to pay any Termination Fee.
- (l) **Acknowledged Direct Damages.** The following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result directly from either Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of restoring any lost, stolen or damaged ABM Data using generally accepted data restoration techniques;
  - (ii) Costs and expenses of implementing a work-around in respect of a failure by Supplier provide the Services or any part thereof in accordance with this Agreement;
  - (iii) Costs and expenses of replacing lost, stolen or damaged Equipment, Software, and Materials;
  - (iv) Costs and expenses incurred to procure the Services or corrected Services from an alternate source, to the extent in excess of Supplier's Charges under this Agreement;

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- (v) Straight time, overtime or related expenses incurred by either Party, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges, due to failure of Supplier to provide all or a portion of the Services incurred in connection with (i) through (iv) and only to the extent they would not have been incurred by ABM or an Eligible Recipient had it not been for such failure;
  - (vi) Damages of an ABM Affiliate or (subject to **Section 18.3(f)**) an Eligible Recipient which would be direct damages under this Agreement if they had instead been suffered by ABM (including being so considered under this **Section 18.3(k)**); and
  - (vii) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source, including the costs and expenses associated with the retention of external consultants and legal counsel to assist with any re-sourcing of the Services.
- (m) **Duty to Mitigate.** Each Party shall use appropriate efforts to mitigate its damages to the extent within its reasonable control and consistent with the Parties respective performance obligations under this Agreement; provided, however, this provision is not intended to expand or diminish a Party's rights or obligations under this Agreement, alter the plain meaning of the provisions contained herein or limit a Party's rights to act in its own self-interest.

## 19. DISPUTE RESOLUTION

### 19.1 Informal Dispute Resolution.

- (a) If a dispute arises between the Parties relating to this Agreement, other than as provided in **Section 19.1(d)**, the Parties agree to use the following alternative dispute resolution ("ADR") procedure prior to either Party pursuing other available remedies:
  - (i) A meeting shall be held promptly between the Parties, attended by Supplier's Contract Manager and ABM's Project Executive, to attempt in good faith to negotiate a resolution of the dispute.
  - (ii) If the foregoing individuals are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may, upon written notice to the other Party, refer the dispute for resolution to the senior corporate executives specified below: for Supplier: General Manager – Small and Medium Industry ; and for ABM: Senior VP and Chief Administrative Officer.
  - (iii) The designated senior corporate executives specified above will confer as often as they deem reasonably necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Such designated senior corporate executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of such designated senior corporate executives, but may include the preparation of agreed-upon statements of fact or written statements of position
- (b) During the course of negotiations under **Section 19.1(a)** above, 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 advised of the other's position. All negotiation and mediation proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for those proceedings shall not be used as evidence by the other Party in any formal proceedings; provided, however, the underlying facts supporting such materials may be subject to discovery.

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- (c) Each Party fully understands its specific obligations under the provisions of this Agreement. Neither Party considers such obligations to be vague or in any way unenforceable, and neither Party will contend to the contrary at any future time or in any future proceeding.
- (d) This **Section 19.1** shall not be construed to prevent or delay a Party from instituting, and a Party is authorized to institute, formal proceedings to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, or (iii) seek injunctive relief in the event (A) Supplier breaches (or attempts or threatens to breach) its obligation to provide Termination Assistance Services as provided in **Section 4.3**; (B) Supplier breaches (or attempts or threatens to breach) its obligation respecting continued performance in accordance with **Section 19.3**; (C) Supplier breaches (or attempts or threatens to breach) its obligation to provide access to computers or files containing ABM Data in accordance with **Section 13.4**; (D) either Party breaches (or attempts or threatens to breach) its obligation with respect to the other Party's Proprietary Information under **Article 13**; (E) either Party infringes or misappropriates (or attempts or threatens to infringe or misappropriate) the other Party's patents, copyrights, trademarks, trade secrets or other proprietary rights in violation of **Article 14**; or (F) Supplier breaches (or attempts or threatens to breach) its obligations under **Section 20.6**.

#### **19.2 Mediation.**

If the designated senior corporate executives cannot resolve the dispute within a reasonable period of time, then either Party may initiate third-party mediation. Unless otherwise agreed by the Parties, the location of the mediation shall be San Francisco, California. The Party receiving a notice of mediation shall promptly respond to the notifying Party so that both Parties can jointly select a neutral and impartial mediator and schedule the mediation session. The mediation contemplated by the Parties is intended to be a voluntary process among the Parties to promote understanding and, where possible, to arrive at a mutually acceptable resolution of their dispute. A Party may withdraw from the mediation at any time. The mediation process is confidential, and all such confidential information will be treated as compromise and settlement information for the purposes of any applicable rules of evidence. The Parties will jointly share the cost of the mediation services.

#### **19.3 Jurisdiction.**

Each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in San Francisco, California, and each Party irrevocably submits to the sole and exclusive jurisdiction of the courts in San Francisco, California in personam, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party. Each Party hereby agrees to waive any right it might otherwise have to trial by jury.

#### **19.4 Continued Performance.**

Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate the Term as to all or any part of the Services under **Article 20** or **Section 4.3(a)(5)**. Supplier acknowledges and agrees that any interruption to the Service may cause irreparable harm to ABM and/or the Eligible Recipients, in which case an adequate remedy at law would not be available. Supplier expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Supplier's provision of the Services to ABM and/or the Eligible Recipients under this Agreement, except as specifically and expressly agreed in writing by ABM and Supplier.

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## **19.5 Governing Law.**

This Agreement and performance under it shall be governed by and construed in accordance with the applicable laws of the State of California, without giving effect to the principles thereof relating to conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

## **20. TERMINATION**

### **20.1 Termination for Cause.**

- (a) **By ABM.** If Supplier:
- (i) fails to meet its Transition Services obligations as provided in Section 4.2(g);
  - (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from ABM (provided, that if Supplier begins promptly and works diligently and in good faith to cure such breach in accordance with this provision and such breach is not capable of being cured within thirty (30) days, Supplier may have up to fifteen (15) additional days to cure such breach if it demonstrates that it is capable of curing such breach within the additional period and the breach does not materially impair the ability of ABM or an Eligible Recipient to conduct its business);
  - (iii) commits a material breach of this Agreement which is not capable of being cured within the period specified in subsection (ii) above;
  - (iv) commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement;
  - (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed fifty percent (50%) of the cumulative At Risk Amount during any rolling six (6) month period;
  - (vi) fails to perform in accordance with the Increased Impact Service Level of the same Critical Performance Indicator for three (3) consecutive months or during four (4) months of any six (6) consecutive month period;

then ABM may, by giving notice to Supplier, terminate the Term with respect to all or any part of the Services, in whole or in part, as of a date specified in the notice of termination. Supplier shall not be entitled to any Termination Charges in connection with a termination for cause. If ABM chooses to terminate the Agreement in part, the Charges payable under the Agreement will be adjusted in accordance with the pricing by charge component, as set forth in Schedule J, to reflect such partial termination. For avoidance of doubt, the Parties acknowledge and agree that, to the extent one or more material breaches of a Companion Agreement also constitute a material breach of this Agreement, viewed in its entirety, the right to terminate shall extend to this Master Professional Services Agreement and all Companion Agreements.

The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under Section 20.1(a)(v) and (vi) does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other subsections, and no Party shall contend otherwise in any dispute or controversy between the Parties.

- (b) **By Supplier.** In the event that ABM fails to pay undisputed Supplier Charges in accordance with Section 12.2 or fails to comply with its obligation to pay disputed amounts above the specified

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threshold into escrow in accordance with **Section 12.4(d)**, and fails to cure such default within thirty (30) days of notice from Supplier of the possibility of termination for failure to make such payment, Supplier may, by notice to ABM, terminate the Term.

## **20.2 Termination for Convenience.**

ABM may terminate the Term with respect to the entire Agreement, any Functional Services Area(s) or any Companion Agreement(s) for convenience and without cause at any time. If ABM elects to terminate all Services provided under this Master Agreement and all Companion Agreements on this basis, ABM shall give Supplier at least six (6) months prior notice designating the termination date. If ABM elects to terminate less than all Services and/or less than all Companion Agreements, ABM shall give Supplier at least ninety (90) days prior notice designating the termination date. In either event, if ABM elects to terminate on this basis, it shall pay Supplier the applicable Termination Charge in accordance with **Schedule N**.

## **20.3 Termination Upon Supplier Change of Control.**

In the event of a change in Control of Supplier (or that portion of Supplier providing Services under this Agreement) or the Entity that Controls Supplier (if any), where such Control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Supplier (or that portion of Supplier providing all or any material portion of the Services under this Agreement) are acquired by any entity (other than a wholly owned subsidiary of Supplier, and in the case of such a subsidiary, subject to **Section 21.1(b)(i)**), or Supplier (or that portion of Supplier providing all or any material portion of the Services under this Agreement) is merged with or into another entity (other than a wholly owned subsidiary of Supplier, and in the case of such a subsidiary, subject to **Section 21.1(b)(i)**) to form a new entity, then at any time within six (6) months after the last to occur of such events, ABM may at its option terminate the Term by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective; provided, however, if such change in Control of Supplier involves a Direct ABM Competitor, ABM may terminate the Term by giving Supplier at least ten (10) days prior notice, and such Direct ABM Competitor (excluding Supplier Personnel) shall be prohibited from any contact with ABM Data, ABM Proprietary Information and any and all other information about the ABM account, including discussions with Supplier Personnel regarding specifics relating to the Services. If ABM elects to terminate on this basis, ABM shall pay a Termination Charge calculated in accordance with **Schedule N** equal to Wind Down Charges and 50% of the applicable Termination Fee.

## **20.4 Termination Upon ABM Mergers and Acquisitions.**

In the event that, in a single transaction or series of transactions, ABM Industries Incorporated acquires or is acquired by any other Entity (by stock sale, asset sale or otherwise) or merges with any other Entity, then, at any time within six (6) months after the last to occur of such events, ABM may at its option terminate the Term by giving Supplier at least ninety (90) days prior notice and designating a date upon which such termination shall be effective. If ABM elects to terminate on this basis, ABM shall pay a Termination Charge calculated in accordance with **Schedule N** equal to Wind Down Charges and 50% of the applicable Termination Fee.. Notwithstanding the foregoing, in the event ABM Corporation acquires or is acquired by an Entity that has an existing agreement with Supplier for the provision of services substantially similar to, or broader in scope than, the Services (the “**Entity Agreement**”), ABM shall not be required to pay any Termination Charges in connection with the termination of this Agreement or the Entity Agreement to the extent it enters into a single agreement with Supplier with respect to the provision of services to the combined Entity.

## **20.5 Termination for Insolvency.**

- (a) In the event that any Party (a) files for bankruptcy, (b) becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency or the appointment of a receiver or

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similar officer for it, (c) makes an assignment for the benefit of all or substantially all of its creditors, or (d) enters into an agreement for the composition, extension, or readjustment of substantially all of its obligations, then the other Party may terminate this Agreement as of a date specified in a termination notice; provided, however, that Supplier will not have the right to exercise such termination under this Section so long as ABM pays for the Services to be received hereunder in advance on a month-to-month basis. If any Party elects to terminate this Agreement due to the insolvency of the other Party, such termination will be deemed to be a termination for convenience (provided, however, that if ABM elects to terminate on this basis, it shall not be obligated to pay any Termination Charges, including any Wind Down Charges).

- (b) Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable Laws, in the event that Supplier becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the “**Bankruptcy Code**”)) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a “**Bankruptcy Rejection**”), (i) any and all of the licensee and sublicensee rights of ABM arising under or otherwise set forth in this Agreement, including without limitation the rights of ABM referred to in **Section 14.6**, shall be deemed fully retained by and vested in ABM and/or the Eligible Recipients as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Supplier is the debtor; (ii) ABM shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and (iii) to the extent any rights of ABM under this Agreement which arise after the termination or expiration of this Agreement are determined by a bankruptcy court to not be “intellectual property rights” for purposes of Section 365(n), all of such rights shall remain vested in and fully retained by ABM and/or the Eligible Recipients after any Bankruptcy Rejection as though this Agreement were terminated or expired. ABM shall not be required to terminate this Agreement after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including without limitation any of the rights of ABM referenced in **Section 14.6** unless and to the extent required by applicable Laws.

## 20.6 ABM Rights Upon Supplier’s Bankruptcy.

In the event of Supplier’s bankruptcy or of the filing of any petition under the federal bankruptcy laws affecting the rights of Supplier which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, ABM will have the immediate right to retain and take possession for safekeeping all ABM Data, ABM Proprietary Information, ABM licensed Third Party Software, ABM owned Equipment, ABM Owned Materials, ABM owned Developed Materials, and all other Software, Equipment, Systems or Materials to which ABM and/or the Eligible Recipients are or would be entitled during the Term or upon the expiration or termination of this Agreement. At ABM’s request, Supplier shall provide reasonable cooperation and assistance to ABM and assist ABM and the Eligible Recipients in identifying and taking possession of the items listed in the preceding sentence. To the maximum extent permitted by applicable Laws, ABM will have the right to hold such ABM Data, Proprietary Information, Software, Equipment, Systems and Materials until such time as the trustee or receiver in bankruptcy or other appropriate court officer can provide adequate assurances and evidence to ABM that they will be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Supplier and ABM agree that without this material provision, ABM would not have entered into this Agreement or provided any right to the possession or use of ABM Data, ABM Proprietary Information, or ABM Software covered by this Agreement.

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## 21. GENERAL

### 21.1 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement will be binding on the Parties and their respective successors and permitted assigns.
- (b) **Assignment.** Neither Party may, or will have the power to, assign this Agreement without the prior written consent of the other, except in the following circumstances:
  - (i) Either Party may assign its rights and obligations under this Agreement, without the approval of the other Party, to an Affiliate which expressly assumes such Party's obligations and responsibilities hereunder and is not a Direct Competitor of the other Party; provided, that the assigning Party shall remain fully liable for and shall not be relieved from the full performance of all obligations under this Agreement. Any Party assigning its rights or obligations to an Affiliate in accordance with this Agreement shall, within one (1) business day after such assignment, provide notice thereof to the other Party together with a copy any relevant provisions of the assignment document.
  - (ii) ABM may assign its rights and obligations under this Agreement to an Entity acquiring, directly or indirectly, Control of ABM, an Entity into which ABM is merged, or an Entity acquiring all or substantially all of ABM's assets, without the approval of Supplier. The acquirer or surviving Entity shall agree in writing to be bound by the terms and conditions of this Agreement.
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void.

### 21.2 Entire Agreement; Amendment.

- (a) This Agreement, including any Schedules and Exhibits referred to herein and attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement; provided that this Agreement shall not be construed to alter the rights, obligations or liabilities of the Parties with respect to the subject matter of the Prior Agreement to the extent that it relates to such rights, obligations or liabilities arising, or based on, the actions of the Parties prior to the Commencement Date (provided that, unless otherwise expressly provided herein, this Agreement shall not supersede any software licenses, maintenance contracts, disaster recovery contracts or other unrelated service contracts between ABM and International Business Machines Corporation). No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver, or discharge is sought to be enforced.
- (b) This Agreement replaces and supersedes the Prior Agreement in its entirety in all respects as of the Commencement Date and the Prior Agreement shall be thereafter of no force or effect, except as set forth in Section 21.2(a).

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### **21.3 Notices.**

- (a) Any notice, notification, request, demand, or determination provided by a Party pursuant to the following:
- (i) Section 4.3 [Termination Assistance Services];
  - (ii) Section 6.12 [Notices of Default];
  - (iii) Section 7.7 [Notice of Adverse Impact];
  - (iv) Section 10.2 [Savings Clause]
  - (v) Section 11.6 [Extraordinary Events];
  - (vi) Section 13.3(d) [Loss of Proprietary Information];
  - (vii) Section 17.5 [Indemnification Procedures];
  - (viii) Section 17.6 [Indemnification Procedures — Government Claims]
  - (ix) Section 18.2 [Force Majeure];
  - (x) Section 18.3(j) [Waiver of Liability Cap];
  - (xi) Section 19.1 [Informal Dispute Resolution];
  - (xii) Article 20 [Termination]; and
  - (xiii) Section 21.1 [Binding Nature and Assignment],

shall be in writing and shall be delivered in hard copy using one of the following methods: and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery, or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise agreed, the foregoing notices shall be delivered as follows:

In the case of ABM:

ABM Industries, Inc.  
160 Pacific Avenue, Suite 222  
San Francisco, CA 94111  
Attention: VP, Chief Information Officer

With a copy to:

ABM Industries, Inc.  
160 Pacific Avenue, Suite 222  
San Francisco, CA 94111  
Attention: General Counsel

In the case of Supplier:

IBM  
420 Taylor Street  
San Francisco, CA 94111  
Attention: Supplier Account Executive; and

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With a copy to:

IBM Global Services  
Route 100  
Somers, NY 10589  
Attention: General Counsel.

- (b) All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 21.3(a)**, may be sent in hard copy in the manner specified in **Section 21.3(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of ABM:

ABM Industries, Inc.  
420 Taylor Street  
San Francisco, CA 94111  
Attention: VP, Chief Information Officer  
and

In the case of Supplier:

IBM  
420 Taylor Street  
San Francisco, CA 94111  
Attention: Supplier Account Executive

- (c) Notwithstanding the above, for the purpose of service of legal process and receipt of notice or pleadings in judicial proceedings before the federal or state courts of San Francisco, California, as selected by the Parties under **Section 19.2** of the Agreement, both Parties to this Agreement and all parties to all Companion Agreements irrevocably appoint the company below as their agent for service of process and receipt of such notice or notification, and further elect domicile at the address of said company in San Francisco, California, as follows:

In the case of ABM:

ABM Industries, Inc.  
160 Pacific Avenue, Suite 222  
San Francisco, CA 94111  
Attention: General Counsel

With a copy to:

ABM Industries, Inc.  
160 Pacific Avenue, Suite 222  
San Francisco, CA 94111  
Attention: Chief Information Officer

and

In the case of Supplier:

IBM Global Services  
Route 100

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Somers, NY 10589  
Attention: General Counsel.

With a copy to:

IBM  
420 Taylor Street  
San Francisco, CA 94111  
Attention: Supplier Account Executive

- (d) A Party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.

#### **21.4 Counterparts.**

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

#### **21.5 Headings.**

The article and section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

#### **21.6 Relationship of Parties.**

Supplier, in furnishing services to ABM and the Eligible Recipients hereunder, is acting as an independent contractor, and Supplier has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Supplier under this Agreement. Except as expressly provided in this Agreement, Supplier is not an agent of ABM or the Eligible Recipients and has no right, power or authority, expressly or impliedly, to represent or bind ABM or the Eligible Recipients as to any matters, except as expressly authorized in this Agreement.

#### **21.7 Severability.**

In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid or unenforceable by a court with jurisdiction over the Parties, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remaining provisions of this Agreement and the application of the challenged provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each such provision shall be valid and enforceable to the full extent permitted by law.

#### **21.8 Consents and Approval.**

Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

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## **21.9 Waiver of Default; Cumulative Remedies.**

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

## **21.10 Survival.**

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, all provisions of this Agreement will survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

## **21.11 Publicity.**

Neither Party shall use the other Party's name or mark or refer to the other Party directly or indirectly in any media release, public announcement, or public disclosure relating to this Agreement, including in any promotional or marketing materials, customer lists or business presentations without the prior written consent of the other Party to each such use or release, except as required by applicable Law.

## **21.12 Service Marks.**

Supplier agrees that it shall not, without ABM's prior consent, use any of the names, service marks or trademarks of ABM or the Eligible Recipients in any of its advertising or marketing materials.

## **21.13 Export.**

The Parties acknowledge that certain Equipment, Software and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the laws and regulations of the United States and other countries. No Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such laws or regulations. To the extent within Supplier's control, Supplier shall be responsible for, and shall coordinate and oversee, compliance with such export laws in respect of such items exported or imported hereunder.

## **21.14 Third Party Beneficiaries.**

Except as expressly provided herein, this Agreement is entered into solely between, and may be enforced only by, ABM and Supplier. This Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including without limitation employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

## **21.15 Covenant Against Pledging.**

Supplier agrees that, without the prior written consent of ABM, it shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from ABM under this Agreement for any reason whatsoever, other than to a Supplier Affiliate. Without limiting the foregoing, in the event of such an assignment, transfer, pledge, hypothecation or other encumbrance of its rights to receive payments from

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ABM under this Agreement, Supplier shall continue to be ABM's sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered will not be considered a third party beneficiary under this Agreement and will not have any rights or causes of action against ABM.

#### **21.16 Order of Precedence.**

In the event of a conflict, this Agreement shall take precedence over the Schedules attached hereto, and the Schedules shall take precedence over any Attachments or Exhibits. Notwithstanding the foregoing, the Parties acknowledge and agree that the terms, conditions and pricing in Attachment L.1 may in certain circumstances, be inconsistent with the terms, conditions and pricing in the remainder of the Agreement. In the event of a direct conflict or inconsistency between the provisions of Attachment L.1 and the remainder of the Agreement, then, to the extent possible, such provisions shall be interpreted so as to make them consistent. If such interpretation is not possible, the provisions of Attachment L.1 shall take precedence over the Agreement for the purposes of Attachment L.1 only. Nothing in Attachment L.1 shall be interpreted to modify or limit Supplier's obligations or ABM's rights or remedies in connection with the other provisions of the Agreement.

#### **21.17 Hiring of Employees.**

- (a) **Solicitation and Hiring.** Except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Supplier will not solicit for employment directly or indirectly, nor employ, any employees of ABM or an Eligible Recipient without the prior approval of ABM. Except as expressly set forth herein in connection with the expiration or termination of this Agreement, during the Term and for a period of twelve (12) months thereafter, ABM will not solicit for employment directly or indirectly, nor employ, any employee of Supplier involved in the performance of Supplier's obligations under this Agreement without the prior consent of Supplier. In each case, the prohibition on solicitation and hiring shall extend ninety (90) days after the termination of the employee's employment or, in the case of Supplier employees, the cessation of his or her involvement in the performance of Services under this Agreement. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.
- (b) **Liquidated Damages.** The Parties recognize that the damages resulting from a breach of this Section 21.17 may not be capable of precise determination. Accordingly, if a Party hires an employee of the other Party in breach of this provision, the breaching Party shall pay the other Party liquidated damages equal to three (3) months of his or her base salary and wages for each employee so hired. The Parties acknowledge and agree that this is a reasonable estimate as of the date of this Agreement of the damages the other Party will suffer.
- (c) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this Section 21.17, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

#### **21.18 Further Assurances.**

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

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## **21.19 Liens.**

Supplier will not file, or by its action or inaction permit, any mechanics or materialman's liens to be filed on or against property or realty of ABM or any Eligible Recipient. In the event that any such Liens arise as a result of Supplier's action or inaction, Supplier will obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) business days.

## **21.20 Covenant of Good Faith.**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

## **21.21 Acknowledgment.**

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

## **21.22 Right to Perform Service for Others**

Each Party recognizes that Supplier Personnel providing Services to ABM under this Agreement may perform similar services for others and, except as otherwise expressly agreed, this Agreement shall not prevent Supplier from using personnel and equipment provided to ABM under this Agreement for such purposes.

## **21.23 Eligible Recipients**

- (a) Supplier will provide Services to Eligible Recipients, subject to the terms of this Section.
- (b) ABM is fully responsible for the performance of ABM's obligations under this Agreement with respect to the Services provided to such Eligible Recipients.
- (c) Nothing in this Section relieves ABM of its obligations or expands Supplier's obligations under this Agreement.

## **21.24 Remarketing**

Without the prior written consent of Supplier, ABM may not remarket all or any portion of the Services, or make all or any portion of the Services available to any entity, other than to the Eligible Recipients and Authorized Users.

## **21.25 Freedom of Action**

Subject to and without limiting Supplier's obligations under this Agreement (including its obligations with respect to ABM Data, ABM Proprietary Information and ABM Owned and licensed Materials and Direct ABM Competitors), the Parties acknowledge and agree that Supplier may enter into similar agreements with other customers to provide equipment, software or services similar to the Equipment, Software and Services provided under this Agreement.

## **21.26 Reference**

Unless otherwise directed by ABM, Supplier shall periodically use ABM as a reference for prospective Supplier customers interested in purchasing services that include services the same as or substantially

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similar to the Services. Supplier shall offer to use ABM as a reference in such circumstances at least once each calendar quarter. In conjunction with the foregoing, ABM's VP, Chief Information Officer (or equivalent level of ABM management) shall serve as the contact point for such prospective Supplier customers and shall respond to all inquiries in a timely manner. Notwithstanding **Section 13.3**, Supplier acknowledges and agrees that ABM's VP, Chief Information Officer (or equivalent level of ABM management) may freely discuss all aspects of Supplier's performance and ABM's satisfaction with such performance with prospective Supplier customers. Supplier shall provide such prospective Supplier customers with appropriate ABM contact information. The identity of such prospective Supplier customers and all information related thereto shall be considered Supplier Proprietary Information.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

**ABM Industries Incorporated**

By: /s/ Henrik C. Slipsager  
Name: Henrik C. Slipsager  
Title: President & CEO  
Date: September 29, 2006

**International Business Machines Corporation**

By: /s/ Harris Warsau  
Name: Harris Warsau  
Title: VP — SMB Americas  
Date: September 28, 2006

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**SUBSIDIARIES OF REGISTRANT**  
**AS OF OCTOBER 31, 2006**

Name	State of Incorporation	Percentage of Voting Securities Owned by Immediate Parent
ABM Industries Incorporated	Delaware	Registrant
(*) ABM Facility Services Company	California	100%
ABM Engineering Services Company	California	100%
ABM CMS, Inc. **	California	100%
ABM Janitorial Services, Inc.	Delaware	100%
ABM Co. of Boston	California	100%
ABM Janitorial Northeast, Inc.	California	100%
ABM Janitorial — Northern California	California	100%
ABM Mid-Atlantic, Inc.	California	100%
American Building Maintenance Co.	California	100%
American Building Maintenance Co. — West	California	100%
American Building Maintenance Co. of Georgia	California	100%
American Building Maintenance Co. of Hawaii	California	100%
Allied Maintenance Services, Inc.	Hawaii	100%
American Building Maintenance Co. of Kentucky	California	100%
American Building Maintenance Co. of New York	California	100%
American Building Maintenance Co. of New York — Manhattan	California	100%
Bonded Maintenance Company	Texas	100%
Bradford Building Services, Inc.	California	100%
Servall Services, Inc.	Texas	100%
ABM Janitorial Services Co., Ltd.	Brit. Columbia	100%
ABM Payroll Service, Inc.	California	100%
ABM Security Services, Inc.	California	100%
SSA Security, Inc.	California	100%
Elite Security, Inc.	California	100%
American Public Services	California	100%
Ampco Pacific Airpark, LLC***	California	60%
Ampco System Parking	California	100%
Amtech Energy Services**	California	100%
Amtech Lighting & Electrical Services	California	100%
Amtech Lighting Services	California	100%
Amtech Lighting Services of the Midwest	California	100%
Amtech Reliable Elevator Company of Texas**	Texas	100%
Beehive Parking, Inc.**	Utah	100%
Canadian Building Maintenance Company, Ltd.	Brit. Columbia	100%
Supreme Building Maintenance, Ltd.	Brit. Columbia	100%
System Parking, Inc.	California	100%

(\*) Subsidiary relationship to registrant or to subsidiary parents shown by progressive indentation.

\*\* Inactive companies.

\*\*\* A Limited Partnership.

EXHIBIT 23.1

**CONSENT OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors  
ABM Industries Incorporated:

We consent to the incorporation by reference in the following registration statements on Form S-8 of ABM Industries Incorporated of our reports dated December 21, 2006, with respect to the consolidated balance sheets of ABM Industries Incorporated and subsidiaries as of October 31, 2006 and 2005, and the related consolidated statements of income, stockholders' equity and comprehensive income, and cash flows for each of the years in the three-year period ended October 31, 2006, and the related financial statement schedule II, management's assessment of the effectiveness of internal control over financial reporting as of October 31, 2006 and the effectiveness of internal control over financial reporting as of October 31, 2006, which reports appear in the October 31, 2006 annual report on Form 10-K of ABM Industries Incorporated.

Registration No.	Form	Plan
333-78423	S-8	"Age-Vested" Career Stock Option Plan
333-78421	S-8	"Time-Vested" Incentive Stock Option Plan
333-48857	S-8	Long-Term Senior Executive Stock Option Plan
333-85390	S-8	2002 Price-Vested Performance Stock Option Plan
333-116487	S-8	2004 Employee Stock Purchase Plan
333-137241	S-8	2006 Equity Incentive Plan

As discussed in Note 1 to the consolidated financial statements, effective November 1, 2005, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R), *Share Based Payments*.

/s/ KPMG LLP  
KPMG LLP

San Francisco, California  
December 21, 2006

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PERSUANT TO SECURITIES EXCHANGE ACT OF 1934  
RULE 13a-14(a) OR 15d-14(a)**

I, Henrik C. Slipsager, certify that:

1. I have reviewed this Annual Report on Form 10-K of ABM Industries Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

December 22, 2006

/s/ Henrik C. Slipsager

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Henrik C. Slipsager  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PERSUANT TO SECURITIES EXCHANGE ACT OF 1934  
RULE 13a-14(a) OR 15d-14(a)**

I, George B. Sundby, certify that:

1. I have reviewed this Annual Report on Form 10-K of ABM Industries Incorporated;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

December 22, 2006

/s/ George B. Sundby

George B. Sundby  
Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATIONS PURSUANT TO SECURITIES EXCHANGE ACT OF 1934  
RULE 13a-14(b) OR 15d-14(b) AND  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of ABM Industries Incorporated (the "Company") for the year ended October 31, 2006, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Henrik C. Slipsager, Chief Executive Officer of the Company, and George B. Sundby, Chief Financial Officer of the Company, each certifies for the purpose of complying with Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code, that:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

December 22, 2006

/s/ Henrik C. Slipsager

Henrik C. Slipsager  
Chief Executive Officer  
(Principal Executive Officer)

December 22, 2006

/s/ George B. Sundby

George B. Sundby  
Chief Financial Officer  
(Principal Financial Officer)