

## **END USER LICENSE AGREEMENT**

BY OPENING THE PACKAGE, INSTALLING, PRESSING "AGREE" OR "YES" OR USING THE PRODUCT, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, DO NOT INSTALL OR USE THE PRODUCT, PROMPTLY RETURN THE PRODUCT TO BMC OR YOUR BMC RESELLER, AND IF YOU RETURNED THE LICENSE WITHIN 15 DAYS OF THE DATE OF YOUR ORDER, CONTACT BMC OR YOUR BMC RESELLER FOR A REFUND OF LICENSE FEES PAID. IF YOU REJECT THIS AGREEMENT, YOU WILL NOT ACQUIRE ANY LICENSE TO USE THE PRODUCT.

This Agreement ("**Agreement**") is between the entity or individual entering into this Agreement ("**Customer**") and the BMC Entity for the applicable Region where Customer acquired the License as described in Section 18 ("**BMC**").

### **1. GENERAL DEFINITIONS.**

"**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

"**Documentation**" means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"**Licensed Capacity**" is the amount of each Product licensed as established in the Order.

"**Order**" is an agreed written or electronic document, subject to the terms of this Agreement that identifies the Products to be licensed and the Licensed Capacity and/or the Support to be purchased and the fees to be paid.

"**Product**" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by BMC to Customer under Support.

"**Support**" is the support services program as further specified in this Agreement.

"**Territory**" means the country(ies) where Customer is licensed to install the Product as specified in the Order.

**2. SCOPE.** Licenses are granted, and Support is obtained, solely by execution of Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is agreed to by each party. Orders may be entered under this Agreement by and between (a) BMC or an Affiliate of BMC; and (b) the Customer or an Affiliate of Customer. With respect to an Order, the terms "BMC" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two party agreement between such entities, and BMC or its authorized reseller will separately invoice the Customer named in the Order for the associated License fees and Support fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by BMC and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether BMC acknowledges, accepts or fully or partially performs under such purchase order, **BMC OBJECTS** to any additional or different terms in the purchase order.

**3. LICENSE.** Subject to the terms, conditions, payment requirements and restrictions set forth in this Agreement, BMC grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual (unless a non-perpetual license is provided on an Order) license to install in the Territory, access and use the Product (i) up to the Licensed Capacity, (ii) for Customer's and its Affiliates internal business operations, (iii) in accordance with the Documentation and the applicable Order, and (iv) make one copy of the Product for archival purposes only (collectively a "**License**"). Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

**4. RESTRICTIONS.** Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity or other than as set forth in the License above; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product, or copy or partial copy of a Product;; (c) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the Product to any third party; (e) use the Products in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the products to be used by an outsourcing or service bureau provider on Customer's behalf; (f) provide a third party with the results of any functional evaluation, or performance tests, without BMC's prior written approval; or (g) attempt to disable or circumvent any of the licensing mechanisms within the Product.

**5. PRODUCT PERFORMANCE WARRANTY.** BMC warrants that (a) the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order, (b) BMC has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the Product, BMC has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation the Products in accordance with the License. This warranty will not apply to any problems caused by hardware, Computers, or software other than the Product, or misuse of the Product, use of the Product other than as provided by the applicable License, modification of the Product, or claims made either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 12.

**6. LIMITED REMEDIES.** BMC's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: BMC's use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time, or if BMC cannot have the Product perform in substantial accordance with its Documentation replace the Product within such time period, then BMC will refund the amount paid by Customer for the License

for that Product. Customer's rights and BMC's obligations in this Section are conditioned upon Customer's providing BMC during the warranty period (a) full cooperation and access to the Product in resolving any claim; and (b) written notice addressed to the BMC Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in BMC's development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.

**7. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE PRODUCT IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

**8. SUPPORT.** Customer may acquire BMC support services ("**Support**") on an Order for the total Licensed Capacity of a Product. Once Support is acquired for a Product, Customer is automatically enrolled in Support on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least 30 days written notice prior to the next Support anniversary date. The annual fee for Support will be agreed upon at the time of each Order. A further description of Support is located at [www.bmc.com/support/review-policies](http://www.bmc.com/support/review-policies), and is incorporated herein by this reference. BMC may change its Support terms to be effective upon Customer's support anniversary date. BMC reserves the right to discontinue Support for a Product where BMC generally discontinues such services to all licensees of that Product. If Customer terminates Support and then re-enrolls in Support, BMC may charge Customer a reinstatement fee.

**9. PAYMENT, DELIVERY AND TAXES.** If Customer is purchasing directly from BMC, Customer will pay each License fee and/or Support fee upon receipt of invoice. Customer will pay, or reimburse, BMC or when required by law the appropriate governmental agency for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on BMC's net income) imposed in connection with the License and/or the Support fees which are exclusive of these taxes. For Products that are delivered electronically, upon request from BMC, Customer agrees to provide BMC with documentation supporting that the designated Product was received electronically. If Customer accepts any Product in a non-electronic format, there may be an additional charge and it is the sole responsibility of Customer to bear any sales/use tax obligation, penalties, and interest. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law. All Products are licensed FCA ("Free Carrier" as per Incoterms 2000) shipping point. The Products are accepted on the date BMC delivers the Product to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the Product Performance Warranty provided in this Agreement.

**10. PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) BMC, its Affiliates or licensors retain all right, title and interest to the Product, Support and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC reserves any rights not expressly granted to Customer in this Agreement. (b) "**Confidential Information**" means all proprietary or confidential information that is disclosed to the recipient ("**Recipient**") by the discloser ("**Discloser**"), and includes, among other things (i) any and all information relating Discloser financial information, customers, employees, products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, and its licensors, the Product (excluding portions of the Documentation that BMC makes publicly available) and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. (c) **Notification Obligation.** If the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

**11. DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY.** EXCEPT FOR VIOLATIONS OF LICENSE RESTRICTIONS (SECTION 4), AND PROPRIETARY RIGHTS AND CONFIDENTIALITY (SECTION 10) AND FOR INFRINGEMENT CLAIMS (SECTION 13), NEITHER PARTY, ITS AFFILIATES OR BMC'S LICENSORS ARE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, SUPPORT, THE PRODUCT OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE PRODUCT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF

ACTUAL, DIRECT DAMAGES UP TO THE GREATER OF THE AMOUNT PAID AND PAYABLE BY CUSTOMER FOR THE LICENSE TO THE APPLICABLE PRODUCT GIVING RISE TO SUCH DAMAGES.

12. **TRIAL LICENSE.** BMC may determine, in its sole discretion, to make products available to Customer without an Order and without charge. Such products are deemed to be "Products" pursuant to this Agreement except that (a) they are provided to Customer solely so that Customer may evaluate internally whether to acquire a license to the products for a fee, (b) the license term for such products is 30 days; (c) the Products are provided "AS IS" and without any warranty or support, and (d) the products cannot be put into productive use or included as part of Customer's business processes in any manner, unless or until they are expressly licensed and paid for under an Order. BMC may terminate all of Customer's rights and licenses to these Products for BMC's convenience upon notice to Customer.

13. **INFRINGEMENT CLAIMS.** If a third party asserts a claim against Customer asserting that Customer's use of a Product in accordance with this Agreement violates that third-party's patent, trade secret or copyright rights ("**Infringement Claim**"), then BMC will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer based on infringement by the Product. BMC's obligations under this Section will not apply if: (a) BMC's legal department does not receive prompt, detailed written notice of the Infringement Claim from Customer, (b) BMC is not able to retain sole control of the defense of the Infringement Claim and all negotiations for its settlement or compromise, (c) BMC does not receive all reasonable assistance, or (d) the Infringement Claim is based on (i) the use of Product in combination with products not approved by BMC in the Product's Documentation, (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer, or (iii) the failure of Customer to use the Product as permitted by the Order and in accordance with the Documentation. BMC will not bind Customer to a monetary obligation in a settlement or compromise, or make an admission on behalf of Customer, without obtaining Customer's prior consent. If BMC determines in BMC's reasonable discretion that use of the Product should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and BMC is unable to have such injunction stayed or overturned, or if BMC settles an Infringement Claim on terms that would require Customer to stop using the Product, then BMC will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in BMC's reasonable judgment, neither (a) or (b) is commercially reasonable, terminate Customer's License to the Product and (i) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Order under which the Products were initially licensed; and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product or issue a pro rata refund for any fees paid in advance. This Section contains Customer's exclusive remedies and BMC's sole liability for Infringement Claims.

14. **TERMINATION.** Upon thirty days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders placed prior to its effective date and such Orders will remain in full force and effect under the terms of this Agreement. BMC may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order within 30 days after receipt of written notice from BMC of non-payment; (ii) terminate any or all Orders, Licenses to the Products and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of BMC, its Affiliates or licensors, or uses the Products outside of the scope of the applicable Licenses; or (iii) terminate all Licenses and this Agreement in whole or in part if Customer commits any other material breach of this Agreement and fails to correct the breach within 30 days after BMC notifies Customer in writing of the breach. Upon any termination of a License, Customer will immediately uninstall and stop using the relevant Product, and upon BMC's request, Customer will immediately return such Product to BMC, together with all related Documentation and copies, or certify its destruction in writing.

15. **AUDIT.** If requested by BMC, and not more than once a year, Customer agrees to deliver to BMC, within 30 days of such request, as specified by BMC either (a) periodic product usage reports generated from specific products or (b) written periodic product usage reports, to be provided solely when the product does not generate reports. Additionally, if requested by BMC not more than once a year, Customer agrees to allow BMC to perform an audit at the locations where the Products are installed, during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity upon receipt of invoice. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BMC's reasonable costs of conducting the audit.

16. **EXPORT CONTROLS.** Customer represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Product is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Product under such regulations; d) will not acquire the Product for a person who is restricted under such regulations; e) will not use the Product in contradiction to such regulations; and f) will not use the Product for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Product exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Product is intended for civil purposes only. Therefore, Customer agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in Customer forfeiting all rights to the Product..

17. **GOVERNING LAW AND DISPUTE RESOLUTION.** A party will provide written notice to the other party of any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof ("Controversy"). The parties shall engage in good faith negotiations to resolve the Controversy. Only if the Controversy is not resolved through good faith negotiations within 15 days of the sending of the written notice of Controversy, the Controversy may be submitted to litigation or binding arbitration, based on the place of incorporation of the parties, as follows:

(i) If both parties to this Agreement are entities incorporated under the law of any state in the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both sides hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens.

(ii) If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the arbitration shall be held in Amsterdam, Netherlands under the then-applicable rules of the International Chamber of Commerce and the substantive laws of the Netherlands will govern.

(iii) If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the arbitration shall be held in Singapore under the then-applicable rules of the Singapore International Arbitration Centre and the substantive laws of Singapore will govern.

(iv) In all other instances, the arbitration shall be held in New York City, New York, under the then-applicable international rules of the American Arbitration Association and the substantive laws of the State of Texas will govern.

For all arbitrations conducted hereunder: (a) the arbitration shall be conducted in English; (b) the relevant arbitral institution shall determine the number of arbitrators, but any Controversy in which the amount in dispute is greater than \$10 million USD shall be decided by three arbitrators, with each party having the right to select one arbitrator; (c) the costs of such arbitration shall be borne equally, pending the arbitrator's award; (d) the arbitration award rendered shall be final and binding on the parties, shall not be subject to appeal to any court and shall be enforceable in any court having jurisdiction over the Parties; (e) the arbitration proceedings, award and pleadings shall all be confidential, unless disclosure of particular information is required for purposes of enforcing/challenging the award or to meet local securities law requirements; and (f) the party prevailing in arbitration shall be entitled to recover its reasonable attorneys' fees and the necessary costs incurred in connection with the arbitration.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute.

18. **BMC ENTITIES.** The following licensing entities apply to this Agreement:

| Region                                                                                         | Licensing Entity                                  | Address of Licensing Entity                                                                                            |
|------------------------------------------------------------------------------------------------|---------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| United States and Latin America South (not a specified Central or South America country below) | BMC Software, Inc.                                | 2101 CityWest Boulevard, Houston, Texas 77042                                                                          |
| Canada                                                                                         | BMC Software Canada Inc.                          | 50 Minthorn Boulevard, Suite 200 Markham, Ontario L3T 7X8 Canada                                                       |
| EMEA (Europe, Middle East and Africa)                                                          | BMC Software Distribution B.V.                    | Boeing Avenue 245, 1119 PE Schiphol Rijk, The Netherlands                                                              |
| Brazil                                                                                         | BMC Software do Brasil Ltda.                      | Rua Leopoldo Couto de Magalhães Jr, 758 - 14º andar, São Paulo – SP – Brazil                                           |
| Mexico                                                                                         | BMC Software Distribution de México, S.A. de C.V. | Torre Esmeralda II Blvd. Manuel Avila, Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.                 |
| Argentina                                                                                      | BMC Software de Argentina S.A.                    | Ing. Butty 220 – Piso 14, Buenos Aires, Republica Argentina, C1001AFB                                                  |
| S.E.A (Southeast Asia), Australia, New Zealand, Hong Kong, Taiwan                              | BMC Software Asia Pacific Pte Ltd                 | 600 North Bridge Road, #20-01/10 Parkview Square, Singapore 188778                                                     |
| China                                                                                          | BMC Software (China) Limited                      | Suite 501-504, Level 5, Tower W1, The Towers, Oriental Plaza, #1 East Chang An Ave., Dong Cheng, Beijing 100738, China |
| Japan                                                                                          | BMC Software K.K.                                 | Harmony Tower 24th Floor, 1-32-2 Honcho, Nakano-ku, Tokyo, 164-8721                                                    |
| Korea                                                                                          | BMC Software Korea Ltd                            | 33 <sup>rd</sup> Fl., ASEM Tower World Trade Center, 159-1, Samsung-dong, Kangnam-ku, Seoul 135-798                    |

19. **ASSIGNMENT AND TRANSFERS.** Customer may not assign or transfer a Product separate from the applicable Agreement and License, and may not assign or transfer an Agreement or a License, except in the event of a merger with or into, or a transfer of all or substantially all of Customer's assets to, a third party who assumes all of Customer's liabilities and obligations under the Agreement and License, and expressly agrees in writing to be bound by and comply with all of the terms of the Agreement and License. Except as specifically authorized by applicable law, any attempt to assign or transfer an Agreement or License in violation of this provision will be null and void and be treated as a violation of BMC's intellectual property rights or use outside the scope of the License.

20. **DATA PROTECTION.** (a) Customer acknowledges that BMC neither requires nor needs Customer to (i) send BMC any personal data collected by Customer ("**Customer Collected Data**") or (ii) give BMC access to any Customer Collected Data. Consequently, Customer remains responsible for either filtering, making anonymous, encrypting such Customer Collected Data or for having proper procedures in place to prevent Customer Collected Data from being sent to or accessed by BMC. (b) In the course of normal business, BMC may collect and process personal information related to the Customer (mainly contact and related information) in order to perform its obligations under this Agreement and/or under an Order, such information being referred to hereinafter as "**Customer Contact Information**". BMC undertakes to comply with all the relevant data protection legislation and/or regulations where the Customer Contact Information is to be processed. BMC shall in particular : (i) allow Customer to access, modify, correct or erase Customer Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Contact Information and to prevent its unauthorized access, use, or disclosure; (iii) refrain from transferring any Customer Contact Information to any third party without obtaining the express consent of the person to whom Customer Contact

Information relates to, and (iv) refrain from using Customer Contact Information for any other purpose than performing its obligations under this Agreement and/or any Order.

21. **MISCELLANEOUS TERMS.** A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements, between the parties relating to the subject matter of this Agreement. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. Any delay or failure of any party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, storms or natural disasters, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this Agreement; provided, however, this provision does not apply to the payment of monies or any breach of Section 10. Customer agrees that BMC and its affiliates may refer to Customer as a customer of BMC, both internally and in externally published media. The BMC Products may contain third party software which is delivered to Customer as part of the Product and may not be taken out of the Product or used separately from the Product and for which additional terms may be included in the Documentation. Any additional documents presented to a BMC representative by Customer for signature as a condition for going on a Customer's site will be governed by this Agreement and to the extent that such document presents additional terms or conflicts with this Agreement, it shall be considered null and void

22. **U.S. FEDERAL ACQUISITIONS.** This Section applies only to acquisitions of the commercial Product and Documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Products are delivered to the United States Government, the United States Government hereby agrees that the Products qualify as "commercial items" within the meaning of the Federal acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government's use and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights – Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988)."

23. **ADDITIONAL TERMS.** The following additional terms are incorporated into this Agreement.

a. **DEFINITIONS.** Terms set forth below have the indicated meaning regardless of whether they are capitalized.

"**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

"**Cloud Environment**" means a shared pool of configurable computing resources (e. g., networks, servers, storage, applications and services) managed so they behave as if they were one computer.

"**Cloud Service Provider**" is an entity that provides Cloud Services to Clients under agreements pursuant to transactions for which the Cloud Service Provider is compensated.

"**Cloud Services**" means the dynamic provisioning of IT resources as a service, where typically the Cloud infrastructure is shared across multiple tenants, and tenants are billed on a utility/subscription basis for what they use. Examples of Cloud Services include Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS).

"**Computer**" or "**Server**" has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.

"**Documentation**" means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"**Enterprise**" is the environment consisting of all hardware owned or leased by a Customer or by a Client respectively, in the Territory.

b. **LICENSE RESTRICTIONS.** The following restrictions apply to certain Products.

**BMC Application Automation – License Add-on:** Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

**AppSight Products:**

- **BMC AppSight Initial Platform** ("AppSight System") may only be used to support a Customer's own applications according to the AppSight System configuration licensed. For this purpose, Customer's "own" applications are those of which Customer is the ultimate beneficiary or applications developed by Customer as an independent software vendor. Each AppSight System may only be used with the platform designated on the Product Table (Windows/. Net or J2EE) unless a BMC AppSight Additional Platform is licensed for that AppSight System which enables the AppSight System to be used with an additional platform. Each AppSight System may only be used for the Workflow designated on the Product Order Form unless a BMC AppSight Additional Platform is licensed for that AppSight System for an additional Workflow.

- o **AppSight System-Team Edition** may only be used at a designated Site to support a designated Application for a designated Workflow.

- o **AppSight System – Group Edition** may be used at a designated Site to support multiple applications of a designated Group for a designated Workflow.

- o **AppSight System – Division Edition** may be used at multiple Sites to support multiple applications of a designated Division for a designated Workflow.

- **BMC AppSight Named User** is a license to use the full BMC AppSight System. Customer must provide the individual domain ID or email ID for each named user. Once designated, the BMC AppSight Named User may only be changed if the individual

leaves the Customer or the Team, Group or Division as applicable. BMC AppSight Named Users may not be transferred from one AppSight System to another.

- **BMC AppSight QA User** is a license to use the AppSight Test Recorder module of the AppSight System.
- **BMC AppSight Level 1 Viewer** is a license to use limited-functions of AppSight System that provides a user with the ability to view and replay the visual recording of a Black Box log. The AppSight Level 1 Viewer may be used by the named users provided to BMC.
- **BMC AppSight for Citrix Support User** is a license to use the AppSight System for Citrix application support. Only licensed BMC AppSight for Citrix users may use the AppSight System for Citrix support.
- **BMC AppSight Connector for Defect/Incident Tracking** may only be used to interface the AppSight System to Customer's defect/incident tracking application.
- **BMC Desktop Capture**. Customer must provide the individual domain ID or email ID for each named user. The BMC Desktop Capture Player may be used by licensed named users to play back and view BMC Desktop Capture incident recordings. Once designated, a named user may only be changed if the individual leaves the Customer.

**BMC AppSight and BMC Application Problem Resolution Products:**

- **License Key**. The Product may require a software license key that limits usage to that provided under the terms of the Agreement and this Product Order Form. Licensee must install and run license manager software provided with the Product at no additional cost. All AppSight Consoles must be connected to the license manager.
- **AppSight Black Box** is the agent portion of the AppSight System. . All AppSight Systems include unlimited AppSight Black Boxes which may be installed on any computers of Customer or Customer's customers. Customer may provide Customer's customers the limited right to install and to use on behalf of Customer the AppSight Black Boxes (but not any other components of the AppSight System) but only for the sole purpose of providing information to Customer to support Customer's own software applications, and in no event to support Customer's customer's own internal software applications.
- **Embedded Black Box**. Customer may incorporate the AppSight Black Box into a Customer application, in which case, in addition to the licenses granted above, Customer is hereby granted a worldwide, nonexclusive, perpetual license to (a) incorporate the unmodified unaltered object code version of the AppSight Black Box into Customer's designated application ("Customer Application"); (b) reproduce and distribute the AppSight Black Box as incorporated into the Customer Application; and (c) to use in unaltered form the BMC trademarks, service marks or marketing logos (the "BMC Trademarks") solely to promote the Customer Application, provided Customer obtains BMC's prior written approval for each new usage. Customer shall ensure that any Customer Application incorporating the AppSight Black Box shall be governed by a license agreement which is at least as protective of BMC's proprietary rights in the AppSight Black Box as of Customer's proprietary rights in the Customer Application, but no less protective than this Agreement, including rights and restrictions related to end user's right to make backup and archival copies. In the event Customer incorporates the Black Box into Customer's Application, Customer shall include in the startup screen, help and/or the about screens in the Customer Application, BMC's logo and the following, "POWERED BY BMC'S APPSIGHT BLACK BOX TECHNOLOGY. " Furthermore, Customer shall visually display the BMC name and the BMC product names and trademarks in the documentation for the Customer Application incorporating the AppSight Black Box, on Customer's website and in advertising and promotional materials.

**BMC Atrium Orchestrator – Adapters License Add-on:** Restricts license rights to deploy one unique adapter for every unit licensed; also includes unlimited deployment rights to use Light Weight Activity Peers in combination with licensed adapters; test and development license are provided at no additional cost.

- **Adapter** - a system/interfaces/gateways/connectors used to talk to external applications.
- **Light Weight Activity Peer** - Slave peers/servers that can optionally be added to a grid to accommodate network latencies and/or security topologies when deployed in combination with adapters; these peers do not directly add incremental processing power.

**BMC Atrium Orchestrator Automation Pack – Device Endpoint License Add-on:** Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Network Automation and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

**BMC Atrium Orchestrator Automation Pack – Server Endpoint License Add-on:** Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Server Automation, Discovery Synch, and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

**BMC Atrium Orchestrator - Peer License Add-on:** Restricts license rights to deploy one peer for every unit licensed; a peer can either be a Configuration Distribution Peer or an Application Peer; test and development license are provided at no additional cost.

- **Application Peer** – Server that executes workflows.
- **Configuration Distribution Peer** – Master application that controls all workflows, including load balancing across the grid of Peers.

**BMC BladeLogic Application Release Automation:** Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

**BMC BladeLogic Automation Suite – Base License, BMC Remedy IT Service Management, BMC ProactiveNet Performance Management Suite – Base License or BMC TrueSight Operations Management – Base License:** Includes unlimited use of the following *BMC Atrium Orchestrator* core product components including Repository, Access Manager, Grid Manager, Metrics and Reporting, Operations Actions Management Modules, and Operations Actions Utility Modules. Test and development licenses are provided at no additional cost.

Restricts license rights to use the following *BMC Atrium Orchestrator* product components for configuration of an initial Orchestration environment as detailed here: One (1) Configuration Distribution Peer, 3 Development Studio user licenses, 5 Operator Control Panel user licenses, and Application Adapters for BMC products.

- **Adapter** - a system/interfaces/gateways/connectors used to talk to external applications
- **Configuration Distribution Peer** – Master application that controls all workflows, including load balancing across the grid of Peers.
- **Development Studio** – Graphical workflow authoring tool used to create and modify workflows.

- **Operator Control Panel** – Web-based UI designed for operators to monitor workflows in action, launch workflows manually, or view reports on workflow actions.

**BMC BladeLogic Database Automation:** Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

**BMC BladeLogic Server Automation – Compliance Module:** Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

**BMC BladeLogic Server Automation – Configuration Module:** Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC BladeLogic Server Automation – Provisioning Module:** Excludes use of BMC BladeLogic agent for server configuration, patching, compliance, and remediation tasks.

**BMC BladeLogic Server Automation Suite:** Excludes the use of BMC BladeLogic agent for the application packaging and deployment of internally built, proprietary, or custom-developed code.

**BMC Capacity Management for Mainframes:** Any BMC Capacity Management for Mainframes Product and/or any BMC Performance Analyzer for Mainframes, BMC Performance Predictor for Mainframes, BMC Performance Perceiver for Mainframes, BMC Performance Analyzer for Mainframe Applications and other related products that may be released as part of the BMC Capacity Management for Mainframes must be licensed for all Computer(s) within the mainframe environment for which the Product or one of its components will process data or execute functionality on behalf of, regardless of whether the Product or one of its components is specifically installed on that Computer. The Products may be installed on or moved to any Computer(s) included in the licensed environment.

**BMC Capacity Management Products:** Any BMC Capacity Management product for distributed systems environments can be reassigned over time from one Computer to another provided that no data related to the first Computer remains stored in the Capacity Management Product repositories.

**BMC Cloud Lifecycle Management – Core License Add-on (“CLM Core”):**

- The Product may only be used in a Cloud Environment.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC Atrium Orchestrator for the Licensed Capacity, only in order to deliver the process orchestration use cases that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities or product components, including, but not limited to peers, adapters, and runbook content.

**BMC Cloud Lifecycle Management – Standard Pack License Add-on (“CLM Standard”):**

- The Product may only be used in a Cloud Environment.
- If Customer is also a Cloud Service Provider then Product cannot be used by the Cloud Service Provider for other environments, including but not limited to the Cloud Service Provider's internal IT environment, or System Integration activities for Clients which are not part of Cloud Services. The Product may not be installed on Client premises or accessed or used directly by Clients.
- The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters or Runbook content other than what is installed out-of-the-box.
- Customer may only use the BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC Atrium Orchestrator for the Licensed Capacity, only in order to deliver the process orchestration use cases that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities or product components, including, but not limited to peers, adapters, and runbook content.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The product includes the right to use BMC TrueSight Capacity Optimizer for Servers for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC TrueSight Capacity Optimization, including but not limited to, the use of BMC TrueSight Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

**BMC Cloud Lifecycle Management – Foundation Standard Pack License Add-on (“CLM Foundation”):**

- The Product may only be used in a Cloud Environment.
- If Customer is also a Cloud Service Provider then The Product cannot be used by the Cloud Service Provider for other environments, including but not limited to the Cloud Service Provider's internal IT environment, or System Integration activities for Clients which are not part of Cloud Services. The Product may not be installed on Client premises or accessed or used directly by Clients.



- The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters or Runbook content other than what is installed out-of-the-box.
- The Product includes the right to use the BMC BladeLogic Server Automation (BBSA) for Server Provisioning and Software Deployment functionality only. The Product does not include the right to use any other functionality of BBSA, including, but not limited to, patching, compliance, application release automation, configuration management, discovery, inventory, and nsh-scripting.
- Customer may only use the BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.
- The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity. The Product includes the right to use BMC Network Automation only in order to enable the initial provisioning, on-going network operations, and use of the Virtual Data Center feature for Network Devices in the Cloud Environment. The Product does not include the right to use BMC Network Automation for the management of Network Devices that are not in a BMC Network Automation Pod.
- The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.
- The product includes the right to use BMC Capacity Optimization for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC Capacity Optimization, including but not limited to, the use of BMC Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

**License Restriction for Borland Silk Performer Synthetic Transaction Monitoring for BMC Software:** The Borland Silk Performer Synthetic Transaction Monitoring for BMC Software product may only be used with BMC performance management products and BMC application performance management products.

**Desktop/Mobile Management Product Restrictions for BMC Configuration Management Products:** Each "Desktop/Mobile Management" License is limited for use with one Client Endpoint. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer.

- **Desktop/Mobile Patch Management Restriction:** A "Desktop/Mobile Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Client Endpoint.
- **Desktop/Mobile Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Desktop/Mobile Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one licensed Client Endpoint, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose.
- **BMC Configuration Management Desktop OS Management Restriction:** A "BMC CM Desktop OS Management" License may only be used to manage operating system migration activities on one Client Endpoint. Each BMC CM Desktop OS Management License: (a) may only be used on a licensed Client Endpoint that is licensed for use with both a Desktop/Mobile Application Management License and a Desktop/Mobile Configuration Discovery License; and (b) may not be redeployed or harvested to a different Client Endpoint.
- **Extranet Application Management Restriction:** An "Extranet Application Management" License may only be used on one Client Endpoint. The parties must mutually agree on the name of each Single Application and its primary function at the time of Order. Single Application is defined as a Tuner channel containing one application with one primary function, and Tuner is defined as is the client component of the Product configured by Customer for deployment on licensed Endpoints.

**BMC Configuration Management Control Center Module Restriction for BMC Configuration Management Products:** Each "BMC CM Control Center" License may only be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

**BMC Configuration Management Developers Kit Definition and Restriction for BMC Configuration Management Products:**

A "BMC CM Developers Kit" license allows Customer to embed the "SDK Run Time Code" in unmodified object code form, into a single software application developed by Customer to create an "SDK Client." "SDK Run Time Code" means the unmodified object code files in the BMC CM Product that are designated as re-distributable. "SDK Client" means a software technology with a principal purpose and functionality substantially different than that of the SDK Run Time Code and that uses only a BMC Desktop/Mobile Management Product, a BMC Device Management Product and/or a BMC Server Management Product, as applicable, to invoke the update functionality of the SDK Run Time Code. An SDK Client may only be used on, or distributed to, licensed Endpoints that are licensed separately by Customer, which licensed Endpoints may be within or outside of Customer's organization. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer. "**Device Endpoint**" means a personal digital assistant or similar computing device. "**Endpoint**" means a Client Endpoint, a Device Endpoint, a Server Endpoint, or Other Endpoint, as the case may be. "**Other Endpoint**" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**Device Management Product Restriction for BMC Configuration Management Products:** Each "Device Management" License is limited for use with one Device Endpoint. "**Device Endpoint**" means a personal digital assistant or similar computing device.



**Server Management Product Restrictions for BMC Configuration Management Products:** Each “Server Management” License is limited for use per CPU – Subcapacity.

- **Server Patch Management Restriction:** A “Server Patch Management” License may only be used to manage, deploy, update and inventory anti-virus software and security patches per CPU – Subcapacity.
- **Server Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Server Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on licensed Server Endpoints, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose. With respect to the above Server Management Licenses, Customer must comply with any restrictions designated at the time of Order on the maximum number of CPUs that may be included in each Server Endpoint. “**Server Endpoint**” is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**CONTROL-M/Assist:** Control-M/Assist may only be used to interface with the third party scheduler and may not be used to schedule or manage batch processes outside of the cross-scheduler dependencies.

**Control-M Self Service Mobile Integration Kit:** The Control-M Self Service Mobile Integration Kit is governed by the terms and conditions of the license agreement provided with the product.

**BMC Database Automation – License Add-on:** Excludes the use of the BMC Database Automation agent for multiple operations. Once the agent is registered within the console and a job has been executed against the target, the Product license has been consumed.

**BMC Decision Support – Database Automation (5 Viewer/Query Licenses):** Excludes use of Report Authoring module which must be licensed separately.

**BMC Decision Support – Network Automation (5 Viewer/Query Licenses):** Excludes use of Report Authoring module which must be licensed separately.

**BMC Decision Support – Server Automation (5 Viewer, 1 Query License):** Excludes use of Report Authoring module which must be licensed separately.

**BMC FootPrints Service Core 5 Named User BASE Software Package:** May be used with no more than three workspaces per instance and by no more than 15 named users.

**BMC Identity Products:**

- **Internal User:** If a Product name includes the term “Internal User,” that Product can only be used by Customer’s employees (full time and part time) and contractors whose information is being managed using the BMC IdM tools. Information on these users will typically be found in the HR database.
- **External User:** If a Product name includes the term “External User,” that Product can only be used by Customer’s business partners and customers/ prospects whose information is being managed using the BMC IdM tools or Customer’s employees (full or part time)/contractors who are licensed to use one or more of the following BMC Identity Management Tools: (1) BMC Identity User Administration (2) BMC Identity Password Management (3) BMC Identity Compliance Manager, provided the users have no more than 2 logons (access points) being managed by the IdM tools.
- **Archive User:** If a Product name includes the term “Archive User,” that Product can only be used by users whose identity information is stored within the IdM system but is not being actively managed; the information could be stored for the purpose of audit/ forensics etc.
- **Developer User:** If a Product name includes the term “Developer User,” that Product can only be used by users who create or modify applications using the BMC Directory Management Studio.

**License Allocation Restriction for BMC ITSM Products:** Notwithstanding anything to the contrary in this Order or the Agreement, and when the Product is licensed (i) on the “per named user” Unit of Measurement, Customer may exchange 5 named user licenses of the Product for 2 licenses of the same Product with the Unit of Measurement of “per concurrent user” or (ii) on the “per concurrent user” Unit of Measurement, Customer may exchange 2 concurrent user licenses for 5 licenses of the same Product with the Unit of Measurement of “per named user”. Customer will not incur additional charges for such exchange of licenses so long as Customer does not exceed the Licensed Capacity of the Product granted to Customer, however, Customer must: (i) notify BMC in writing of its intent to exchange the Product Licenses and (ii) enter into a separate Order to reflect Customer’s new Licensed Capacity and the new Unit of Measurement.

**BMC Middleware Management - Performance and Availability and BMC Middleware Management - Transaction Monitoring Products:** If Customer is using BMC Middleware Management version 6. 0 or lower, notwithstanding the Licensed Capacity the number of individual employees or contractors of Customer to whom access to the Management Console is granted (“**End Users**”) is limited to the lesser of (a) the Licensed Capacity of the Product if priced on a per named user Unit of Measurement, or (b) 250 End Users.

**BMC Middleware and Transaction Management Products:** If Customer is using BMC Middleware Management version 6. 0 or lower, when licensed on the per CPU - Subcapacity or per MIPS Unit of Measurement, regardless of the Licensed Capacity, Customer is limited to ten (10) individual employees or contractors to whom access to the Management Console is granted (“**End Users**”). When licensed on the per named user Unit of Measurement, Customer is limited to the lesser of (a) the Licensed Capacity of the Product, or (b) 250 End Users.

**BMC Mobile Device Management Products:** For BMC Mobile Device Management (MDM) Products, any clickwrap agreement with AirWatch, LLC contained in the Products is void and of no effect. Customer’s use of these Products is governed by the Agreement.

**BMC Monitoring Only Products:** Customer is not entitled to use analytics as further detailed in the Documentation.

**BMC myIT Suite:** Each named user shall be licensed for a maximum of three (3) Device Endpoints. “**Device Endpoint**” means a personal digital assistant or similar computing device. An additional user license is required for every 3 devices registered by a unique named user. For users who register a fourth device and for every multiple of 3 devices registered by a unique user, an additional license is consumed. When a device is unregistered and the total number of devices registered by a unique user falls below 4 or a multiple of 3 devices, a MyIT user license is released for reuse.

**BMC Real End User Experience Monitoring and Analytics - Licensed Add-on Product:** For synthetic transaction monitoring solutions, each instance of the execution server installed should be counted. For real end user transaction monitoring solutions, each instance of the watchpoint created should be counted.

**BMC Remedy Products:** Customer may not bypass, in any way, the use of a concurrent or named user license to manage an update (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license). Concurrent users are for use within one production instance (a Server or Server group) and may not be used in more than one production instance.

**Development License Restriction for BMC Remedy Products:** If a Product name includes the term "Dev Lsn", Customer will restrict installation, access and use of such Product to a server dedicated to development and testing only, and will not allow any production or commercial activity on that server.

**Hot Backup License Definition and Restriction for BMC Remedy Products:** A hot backup license is a replicate of the Remedy production licenses on one backup server. Customer may access that backup server only when the customary server on which the AR System is installed fails or in preparation of that backup server for such situation.

**Load Balanced System Restriction for BMC Remedy Products:** If Customer has multiple servers in a single logical environment pointing to a single AR System database instance, only one Instance of Remedy "per Instance" licenses is required for installation on these servers (except for the AR System, which must be licensed for each server).

**BMC Server Automation – Compliance License Add-on:** Excludes use of BMC BladeLogic agent for server configuration, patching, and provisioning tasks.

**BMC Server Automation – Configuration License Add-on:** Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC Server Automation – License Add-on:** Excludes the use of BMC BladeLogic agent for the application packaging and deployment of internally built, proprietary, or custom-developed code.

**BMC Server Automation – Patch License Add-on:** Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC Server Automation – Provisioning License Add-on:** Excludes use of BMC BladeLogic agent for server compliance, remediation, and provisioning tasks.

**BMC Service Desk Express Products:** No terms in any Business Objects or Crystal license agreement embedded in the Product apply to the Product. Customer may make and operate 2 additional copies of the Product solely for internal pre-production configuration and testing purposes.

**BMC Service Desk Express Suite Restriction for BMC Service Desk Express Products:** When purchasing Concurrent User licenses for the "Service Desk Express" Product, regardless of the number of such licenses purchased and regardless of the number of purchases made (including future purchases), Customer is restricted via license keys to a total of (i) five Concurrent Users conducting a process in the report environment of the Crystal Reports "Web Server" product which is embedded in the "Service Desk Express" Product and (ii) two named users accessing the "Crystal Reports Professional" product which is bundled with the "Service Desk Express" Product.

**Products Installed on Customer's Amazon Web Services ("AWS") Cloud Environment:**

- In instances where Customer hosts the Product on Customer's AWS cloud environment, Customer is responsible for working with AWS to ensure the security of its overall AWS cloud environment and the Product.
- An Amazon Machine Image ("**AMI**") is a special type of pre-configured operating system and virtual application software which is used to create a virtual machine within the Amazon Elastic Compute Cloud ("**EC2**"). An AMI serves as the basic unit of deployment for services delivered using EC2. In instances where BMC provides Customer with an AMI of a Product to be used on Customer's AWS cloud environment, Customer is responsible for the security of the Product's operation and any potential vulnerabilities in a Product AMI's preconfigured OS stack, Application stack, and/or OS configuration.

c. **UNITS OF MEASUREMENT.** The following units of measurement apply to certain Products.

**per adapter:** A license is required for each installation of an adapter that interfaces with the Product.

**per agent:** A license is required for each unit of software with the official name of Remote Sys Call Daemon or RSCD Agent that can be deployed on a physical or virtual operating system.

**per application:** A license is required all unique collection of application component templates and configuration objects used to form a single logical platform defined by the Customer.

**per asset:** A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Other Endpoint monitored, managed or discovered by the Product. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer. "**Device Endpoint**" means a personal digital assistant or similar computing device. "**Other Endpoint**" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**per Cisco™ UCS Server:** A license is required for each Cisco Unified Computing System (UCS) Server on which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

**per Client Endpoint:** A license is required for each Client Endpoint. "**Client Endpoint**" means a laptop, desktop or other non-Server Computer.

**per component:** A license is required for all objects that represent a physical or logical part of the service model.

**per concurrent access license:** A license is required for the maximum number of simultaneous sessions accessing the Product. Sessions are counted in packs of 5.

**per concurrent session:** A license is required for the maximum number of simultaneous sessions accessing the Product.

**per concurrent user:** A license is required for the maximum number of individual employees or contractors of Customer to whom simultaneous access has been granted to the Product on a computer or multiple computers.

**per CPU – Full Capacity:** A license is required for the total number of active, physical CPUs in each Computer upon which the Product is installed or which the Product manages, either remotely or locally. "**CPU**" means a physical processor or central unit in a

designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

**per CPU – Subcapacity:** A license is required for all active, physical CPUs which the Product manages, either remotely or locally. "**CPU**" means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer's programs and refers to the "socket" which can contain one or more processor cores.

**per database:** A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges.

**per deployed robot:** A license is required for all PATROL End-to-End Response Timer robots deployed.

**per Device Endpoint:** A license is required for each Device Endpoint. "**Device Endpoint**" means a personal digital assistant or similar computing device.

**per engine:** A license is required for each mainframe general purpose engine on the server upon which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

**per enterprise:** A license is required per Customer and per Client each, regardless of the number of times Customer installs the Product in its Enterprise or its Client's Enterprise. "**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider.

**per gigabyte:** A license is required for the total allocated database space of all Computers on which the Product has been installed or operated.

**per gigabyte range:** A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The Product may not be moved to another Computer unless the current Computer is taken out of service. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges among different Computers. For example: if Customer licenses 26-50 gigabytes, the Customer is only licensed for a maximum of 50 gigabytes in total across all the databases of the licensed Product on one particular Computer.

**per installed server:** A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) upon which the Product or any of its components is installed.

**per instance:** A license is required for all named occurrences of the Product created or installed in the Enterprise.

**per Linux engine:** A license is required for all engines of a mainframe Computer on which Customer is running Linux, when applicable classified by Linux Group using BMC's standard Computer classification.

**per managed asset – server endpoint:** A license is required for every Server Endpoint monitored, managed (directly or indirectly), or discovered by the Product(s). "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**per managed asset – device endpoint:** A license is required for every Device Endpoint that is monitored, managed, or discovered by the Product(s). A "**Device Endpoint**" can be any virtual or physical Non-Server Client Computer (e.g. laptop, desktop computer, PDA, smart phone); any Network device (e.g. router, switch, hub) standalone or chassis-based device/card/processor using a unique-IP address (also includes virtual network devices managed through the IP address of its physical host); and independent Storage (e.g. a disk array, a fiber switch, a tape library, a switch director). When applicable, the license must be computed at the appropriate tier level.

**per managed component:** A license is required for all objects that represent a physical or logical part of the service model managed by the Product.

**per managed network device:** A license is required for each Network Device managed using a unique IP-address. "**Network Device**" means a standalone or chassis-based network device/card/processor.

**per managed server:** A license is required for each Server managed by the Product or one of its components whether locally or remotely. When applicable, this license must be computed at the appropriate tier level based on the cumulative count of managed servers. Network Devices are not counted as Servers. This license does not include the Product's installation on or management of Integrated Facility for Linux (IFL) engines. "**Network Device**" means a standalone or chassis-based network device/card/processor.

**per MIPS:** A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, or which is managed or monitored by the Product. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. Computer-specific passwords will be issued for the Product.

**per monitored element:** A license is required for all remotely monitored elements, such as a Server, database, operating system, URL, firewall, storage, or network device.

**per monitored server:** A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) which the Product or one of its components is monitoring regardless of whether the Product is monitoring it locally or remotely.

**per named user:** A license (with a Classification at the appropriate Level, if applicable) is required for all individual employees or contractors or clients of Customer to whom access has been granted to the Product on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product at any given time.

**per node:** A license is required for every Node which the Product manages and/or monitors. "**Node**" means a laptop, desktop, or any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**per port:** A license is required for each port. A port is defined as a physical connection point used by a storage device to connect other devices or systems. For the purpose of BMC licensing, all active ports (Fibre Channel, iSCSI, etc.) for all managed devices (storage arrays, filers, tape libraries, etc.) are counted. Ports on hosts, gateways and switches are not to be counted.

**per project:** A license is required for each specific project, facility or business unit, as the case may be specified at the time of order.

**per Server Endpoint:** A license is required for each Server Endpoint. "**Server Endpoint**" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, intranet, or other networked technologies.

**per Service Management MIPS:** A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which the Product is installed, managed or monitored. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide.

**per site:** A license is required for the physical site at which the Product is installed regardless of the number of times the Product is installed.

**per task:** For all Control-M Products, except those that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in the Control-M "Active Jobs" databases in any 24-hour period, regardless of whether the Tasks execute or not. For the Control-M Products that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in solely the Mainframe environment's Control-M "Active Jobs" database. Tasks in the Control-M "Active Jobs" databases include all Tasks in all Distributed Systems and/or Mainframe environments in any 24-hour period (including but not limited to development, staging, QA, pre-production, production, and test environments), except that, (i) SMART folders/table and sub-folders/tables which contain scheduling definitions and are listed as tasks in the "Active Jobs" databases are not counted as Tasks, (ii) Tasks that have time zone settings may remain in the "Active Jobs" databases for up to three consecutive days, but are only counted as one Task, (iii) a Task that runs more than once during the day (with the same Order ID) is counted as one Task – this includes Tasks that are rerun and cyclic Tasks, and (iv) Tasks that are provided for by licenses under alternative Units of Measurement (i.e. tier or MIPS) are not considered Tasks under this "per task" unit of measurement. The number of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed. "**Task**" is interchangeable with "job" and means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that is scheduled to execute, as well as the scheduling criteria, flow control, and resource usage.

**per terabyte:** A license is required for the total aggregate storage capacity in the Enterprise.

**per third-party software:** A license is required for each installation of the third-party software product that interfaces with the Product.

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**YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.**