

BMC MASTER SUBSCRIPTION SERVICES AGREEMENT

THIS MASTER SUBSCRIPTION SERVICES AGREEMENT (“AGREEMENT”) GOVERNS YOUR 30-DAY FREE TRIAL OF THE BMC SUBSCRIPTION SERVICES.

IF YOU PURCHASE THE BMC SUBSCRIPTION SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THE BMC SUBSCRIPTION SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the BMC Subscription Services if you are BMC’s direct competitor, except with BMC’s prior written consent. In addition, you may not access the BMC Subscription Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on November 9, 2012. This Agreement is between the entity or individual entering into this Agreement (“**Customer**”) and the BMC Contracting Entity for the applicable region as described in Section 10 (“**BMC**”). It is effective between Customer and BMC as of the date of your acceptance of this Agreement.

THIRTY DAY FREE TRIAL.

BMC will make the BMC Subscription Services available to Customer on a trial basis free of charge until the earlier of (a) the thirtieth day after Customer’s acceptance of this Agreement or (b) the start date of any Order for purchase of the BMC Subscription Services. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE BMC SUBSCRIPTION SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE BMC SUBSCRIPTION SERVICES BY OR FOR CUSTOMER, DURING THE THIRTY DAY FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME BMC SUBSCRIPTION SERVICES AS THOSE COVERED BY THE TRIAL, OR EXPORTS SUCH DATA BEFORE THE END OF THE THIRTY DAY TRIAL PERIOD.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, DURING THE THIRTY DAY FREE TRIAL PERIOD THE BMC SUBSCRIPTION SERVICES ARE PROVIDED “AS IS” WITH NO WARRANTY.

1. DEFINITIONS.

1.1 “**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%.

1.2 “**BMC Subscription Services**” means the hosted service which packages web-based access and the right-to-use the supported applications and associated reference, user and technical guides. One or more of BMC’s subscription services offerings may be ordered pursuant to the terms of this Agreement. A list of the BMC Subscription Services available under this Agreement and an Order is provided on Attachment A.

1.3 “**Additional Services**” means the service(s) named and described in an Order for the purchase of such Additional Service.

1.4 “**Customer Data**” means all electronic data or information submitted to the BMC Subscription Services by Customer, a third party on behalf of Customer, or as directed by Customer.

1.5 “**Order**” means (i) the agreed ordering document for the purchase of the Services, (ii) that is subject to this Agreement, and (iii) that identifies the particulars of the purchase and fees to be paid.

2. SCOPE. Subject to Customer’s payment of applicable fees, BMC will provide Customer with access to BMC’s Subscription Service and with the Additional Services (together, the “**Services**”) as set forth in this Agreement and the applicable Order. This Agreement contemplates the execution by the parties of one or more Orders. 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 will separately

invoice the Customer named in the Order for the associated subscription fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders.

3. BMC SUBSCRIPTION SERVICES.

3.1 Access Rights. Subject to the terms of this Agreement, BMC hereby grants to Customer a worldwide, non-exclusive, non-transferable, non-sublicenseable, limited license to access and use the BMC Subscription Services in accordance with the terms of this Agreement, solely in connection with the operation of the business of Customer.

3.2 BMC Responsibilities. BMC will (i) provide the BMC Subscription Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; (ii) use commercially reasonable efforts to maintain the security of Customer passwords; (iii) provide the support described at <http://www.bmc.com/support/review-policies> ("**Support**") to Customer for the BMC Subscription Services, which may be changed by BMC upon prior notice to customer. If a service level agreement ("**SLA**") is provided for the BMC Subscription Services, the terms of such SLA will be attached to an Order.

3.3 Customer Responsibilities and Restrictions. (a) Customer will (i) prevent unauthorized access to, or use of, the BMC Subscription Services, and notify BMC promptly of any such unauthorized access or use, (ii) comply with all applicable laws in using the Services, and (iii) be responsible for obtaining its own Apple Push Notification certificate, if the Services are used to manage devices running iOS. (b) Customer will not (i) modify, copy or create derivative works based on the Services; (ii) create Internet "links" to or reproduce any content forming part of the BMC Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the BMC Subscription Services or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the BMC Subscription Services; (iv) interfere with or disrupt the integrity or performance of the BMC Subscription Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material via the BMC Subscription Services; (vi) send or store viruses or malicious code via the BMC Subscription Services; (viii) attempt to gain unauthorized access to the BMC Subscription Services or its related software, systems, platforms or networks; (ix) use any components provided with the Services separately from the Services; or (x) distribute, rent, lease, sublicense or provide the Services to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data.

3.4 Additional Services. Customer may purchase Additional Services via an Order. BMC offers other optional services which may be ordered pursuant to a separate BMC Master Services Agreement and statement of work. For purposes of clarity, such services may not be ordered under this Agreement.

4. FEES AND PAYMENT.

4.1 Fees. The fees payable for the Services will be set forth in the Order. The fees will be invoiced in accordance with the relevant Order and are due upon receipt of invoice.

4.2 Taxes. 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 or arising from the employment relationship between BMC and its personnel) imposed in connection with the fees paid for the Services, which are exclusive of these taxes.

4.3 Suspension of BMC Subscription Services. In addition to its other rights and remedies, BMC reserves the right, without liability to the Customer, to suspend any and all access to the BMC Subscription Services if Customer's account becomes more than thirty (30) days past due until all accounts are paid in full. 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.

5. TERM AND TERMINATION.

5.1 Term. (a) **Agreement.** This Agreement begins on the Effective Date and will remain in effect unless terminated pursuant to Section 5.2 below. (b) **Order(s).** Each Order will begin on the start date specified in the relevant Order and continue for the subscription term specified therein.

5.2 (a) Termination for Convenience. Upon thirty (30) days advance written notice, either party may terminate this Agreement for its convenience; however, such termination will have no effect on Orders executed by the parties prior to its effective date, including but not limited to payment obligations contained therein, and such Orders will remain in full force and effect under the terms of this Agreement for the term specified therein. Orders may not be terminated for convenience unless otherwise specified therein; (b) **Termination for Cause.** Either party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. (c) **Suspension of Services for Cause.** In addition to its other rights and remedies, BMC reserves the right, without liability to Customer, to immediately suspend any and all access to the Services if Customer commits a material breach of this Agreement or any relevant Order until such material breach is cured. If such material breach is (i) unable to be cured, or (ii) is not cured within 10 business days, then BMC may immediately terminate the Agreement and/or the affected Order.

5.3 Effects of Termination. Upon termination pursuant to 5.2(b) and (c) above, all rights and licenses granted herein will terminate and Customer will make no further use of the Services. No termination will relieve the Customer of the obligation to pay any fees accrued or payable to BMC. Upon written request by Customer made within thirty (30) days after the effective date of termination, BMC will make available to Customer a file containing the Customer Data. After such thirty

day period, BMC shall have no obligation to maintain or provide any Customer Data and will thereafter delete Customer Data.

6. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

6.1 Proprietary Rights. BMC, its Affiliates or licensors retain all right, title and interest to the Services and all related intellectual property and proprietary rights. The Services are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC owns all right, title and interest in all software, programming, documentation, templates, questionnaires, methodologies, models, charts, reports and any other items used to deliver the Services or made available to Customer as a result of the Services ("**Service Items**") and access to and use of the relevant Service Items will be governed by the terms of this Agreement. BMC reserves any rights not expressly granted to Customer. "**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 to products or services provided by a Discloser, its customer-related and financial information, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to BMC, and its licensors, the Services; and (iii) the terms of this Agreement, including without limitation, 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 or was 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 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.

6.2 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. Notwithstanding the foregoing, Customer agrees that BMC may refer to Customer as a customer of BMC, both internally and in externally published media.

6.3 Customer Data. As between BMC and Customer, Customer owns all rights, title and interest in and to Customer Data. Customer Data is deemed Confidential Information under this Agreement. BMC will use the Customer Data only as necessary to provide the Services in accordance with this Agreement. At any time during the term of the BMC Subscription Services, Customer may request copies of all Customer Data from the BMC Subscription Services. Customer is responsible for complying with all legal and contractual requirements, including applicable privacy laws and regulations and its agreements with third parties who generate and/or process the Customer Data, relating to the collection, use, processing and transfer of Customer Data. Customer acknowledges and consents that Services provided may require Customer Data to be transferred to a country outside of Customer's country or the country where the Customer Data originated. Customer is solely responsible for the transmission of Customer Data to BMC and to the BMC Subscription Services. Customer is solely responsible for the encryption of any Customer Data.

6.4 Suggestions. Customer agrees that BMC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any BMC products or services any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the Services.

7. DISCLAIMERS AND LIMITS ON LIABILITY.

7.1 Disclaimer. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BMC, ITS AFFILIATES AND LICENSORS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SERVICES OR USE THEREOF. BMC, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

7.2 DISCLAIMER OF DAMAGES. EXCEPT FOR A BREACH OF SECTION 3.3 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 8, NEITHER PARTY OR ITS AFFILIATES ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE SERVICES (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 ANY NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

7.3 LIMITS ON LIABILITY. EXCEPT FOR A BREACH OF SECTION 3.3 AND EACH PARTY'S RESPONSIBILITIES IN SECTION 8, NEITHER PARTY OR ITS AFFILIATES SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEEDING THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER PURSUANT TO THE ORDER(S) GIVING RISE TO LIABILITY.

8. INFRINGEMENT CLAIMS.

8.1 Indemnification by BMC. If a third party asserts a claim against Customer asserting that Customer's use of the Services 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 Services. If BMC believes the Services may violate a right, then BMC will, at its expense: (a) modify the Services, or (b) procure the right to continue using the Services, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Services and issue a pro-rata refund for the unexpired pre-paid portion of such Services.

8.2 Indemnification by Customer. Subject to the terms of this Agreement, if a third party asserts a claim against BMC asserting that the Customer Data or Customer's use of the Service in violation of this Agreement violates that third-party's patent, trade secret or copyright rights, or otherwise harms the third party ("**Claim**"), Customer will, at its own expense: (a) defend or settle the Claim; and (b) indemnify BMC for any damages finally awarded against BMC based on the Claim.

8.3 Indemnity Process. Neither party's obligations under this Section will apply if: (a) the indemnifying party's legal department does not receive prompt, detailed written notice of the Infringement Claim/Claim from the party being indemnified, (b) the indemnifying party is not able to retain sole control of the defense of the Infringement Claim/Claim and all negotiations for its settlement or compromise, (c) the indemnifying party does not receive all reasonable assistance from the party being indemnified. Neither party will bind the indemnified party to a monetary obligation in a settlement or compromise, or make an admission on behalf of the indemnified party, without obtaining that party's prior consent.

8.4 THIS SECTION CONTAINS EACH PARTY'S EXCLUSIVE REMEDIES AND THE INDEMNIFYING PARTY'S SOLE LIABILITY FOR INFRINGEMENT CLAIMS/CLAIMS, RESPECTIVELY.

9. EXPORT CONTROLS. By using the Technology (as this term is defined below), Customer acknowledges that it is responsible for complying with the applicable laws and regulations of the United States and all other relevant countries relating to exports and re-exports. Customer agrees that it will not download, access, license or otherwise export or re-export, directly or indirectly, any software code (delivered as a BMC Product, through support/maintenance, or through other services), any technical publications relating to the software code, such as release notes, reference, user, installation, systems administrator and technical guidelines, or services (collectively, "**Technology**") in violation of any such laws and regulations, including regulations prohibiting export to certain restricted countries ("**Restricted Countries**"), or without any written governmental authorization required by such applicable laws. The list of Restricted Countries can and does change from time to time. It currently includes Cuba, Iran, North Korea, Sudan and Syria. In particular, but without limitation, the Technology may not be downloaded, licensed, transferred or otherwise exported or re-exported, directly or indirectly, including via remote access (a) into a Restricted Country or to a national or resident of a Restricted Country; (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or Other Blocked Persons, the U.S. Commerce Department's Denied Parties List, Entity List, or Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use. By downloading, licensing and/or using the Technology, Customer represents and warrants that (w) it is not located in, under the control of, acting on behalf of, or a national or resident of any Restricted Country; (x) Customer is not on any list in (b) above; (y) Customer is not involved in any end use listed in (c) above; and (z) no U.S. federal agency has suspended, revoked, or denied its export privileges. Customer agrees that all rights to use the Technology are granted on the condition that such rights are forfeited if it fails to comply with these terms.

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 Technology is intended for civil purposes only. Therefore, Customer agrees not to license, download or transfer, directly or indirectly any Technology controlled by it to any military entity or to any other entity for military purposes, including any State Security Forces pursuant to this Agreement, nor to knowingly transfer any Technology to end-users for use in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons. Customer also agrees, (a) not to export or re-export any Technology to an entity that is based in China and describe themselves as "Institute(s)" or "Academy(ies)"; or (b) not to knowingly export or re-export any Technology to any country that is subject to European Union, United Nations or Organizations for Security and Co-operation in Europe sanctions without first obtaining a validated license.

10. GOVERNING LAW AND BMC CONTRACTING ENTITIES. This Agreement is governed by the substantive laws in force, without regard to conflict of laws principles: (a) in the State of Texas, if you acquired the BMC Subscription Service in the United States, Puerto Rico, or any country in Central or South America; (b) in the Province of Ontario, if you acquired the BMC Subscription Service in Canada (subsections (a) and (b) collectively referred to as the "**Americas Region**"); (c) in Singapore, if you acquired the BMC Subscription Service in Japan, South Korea, Peoples Republic of China, Special

Administrative Regions of Hong Kong or Macau, Taiwan, Philippines, Indonesia, Malaysia, Myanmar, Singapore, Brunei, Vietnam, Cambodia, Laos, Thailand, India, Pakistan, Australia, New Zealand, Papua New Guinea or any of the Pacific island states (collectively, "**Asia Pacific Region**"); or (d) in the Netherlands, if you acquired the BMC Subscription Service in any other country not described above. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed in its entirety.

The following BMC contracting entities apply to this Agreement:

Territory	BMC Contracting Entity	Address of Contracting 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 PD 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	210 Middle Road, #12-01/08 IOI Plaza, Singapore 188994
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 rd Fl., ASEM Tower World Trade Center, 159-1, Samsung-dong, Kangnam-ku, Seoul 135-798

11. U.S. FEDERAL ACQUISITIONS. This Article applies to all acquisitions of the commercial product and/or services subject to this Agreement by or on behalf of the U.S. Federal Government (the "Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Government. By accepting delivery of the product and/or service, the Government hereby agrees that the product and/or service qualifies as "commercial" within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Government's use and disclosure of the product and/or service, and shall supersede any conflicting contractual terms and conditions. If the license granted by this Agreement fails to meet the Government's needs or is inconsistent in any respect with U.S. Federal law, the Government agrees to return the product, unused, to BMC. 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)."

12. DATA PROTECTION. BMC and Customer specifically agree that with regard to European Economic Area data protection laws (if applicable), Customer shall be considered the 'data controller', BMC the 'data processor' and both parties shall fulfill their respective legal obligations, including but not limited to any approval and/or notification obligations towards national data protection authorities. BMC will process Customer Data in accordance with Customer's lawful and explicit instructions. Personal data in Customer Data shall be limited to contact information and/or contract identification information (such as PO number) and shall not include sensitive personal data, i.e. data where processing or transfer of the data is prohibited according to applicable privacy laws or other data requiring the written consent of the data subject prior to processing in accordance with applicable law. BMC takes no responsibility with regard to data content processed on behalf of Customer and/or handling as per Customer's instructions. Customer acknowledges and consents that Services provided require Customer Data to be transferred to a country outside of Customer's country or the country where the Customer Data originated. BMC will provide all requested information regarding the processing of Customer's Data as Customer may reasonably require to enable Customer to comply with data protection laws. Customer shall indemnify and hold harmless BMC from any failure to comply with its obligations under this Section 12. Further information with regard to BMC's processing of data is published at www.bmc.com/legal/privacy.

13. VERIFICATION. Customer agrees that BMC or its agent may monitor the BMC Subscription Services to ensure Customer's compliance with the terms of this Agreement. If such monitoring reveals that Customer has exceeded the Capacity for the BMC Subscription Services, Customer agrees to pay the applicable fees for additional capacity.

14. MISCELLANEOUS TERMS. BMC is not liable for its failure to perform any of its obligations under this Agreement during any period in which performance is delayed by Customer or circumstances beyond BMC's reasonable control. The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Customer will receive system notifications from BMC and its licensors, if applicable (i.e. planned downtime notices, etc). This Agreement, including any Exhibits and Orders constitutes the entire agreement between Customer and BMC and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written concerning the Services. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. There are no third party beneficiaries to this Agreement; Customer is not entering into a contractual relationship with BMC's licensors and BMC's licensors have no liability to Customer. No modification or waiver of any provision hereof will be effective unless made in a writing signed by both BMC and Customer. Customer may not assign or transfer this Agreement or the Services to a third party, whether by merger or otherwise. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. Any additional or conflicting terms of any Customer purchase order are rejected by BMC and do not apply.

**ATTACHMENT A
UNITS OF MEASUREMENT
AND SERVICES DESCRIPTIONS**

A. UNITS OF MEASUREMENT. The following Units of Measurement apply to certain BMC Subscription Services.

UNIT OF MEASUREMENT	UNIT OF MEASUREMENT DEFINITION
per instance - OnDemand	A subscription is required for each named occurrence of the Service on a computer or multiple computers.
per managed asset - device endpoint - OnDemand	A subscription is required for every Device Endpoint that is monitored, managed, or discovered by the Service. 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, firewall, load balancer) 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 device (e.g. a disk array, a tape library, a switch director and any physical switch). When applicable, the license must be computed at the appropriate tier level.
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 named user - OnDemand	A subscription is required for all individual employees or contractors or clients of Customer to whom access has been granted to the Service on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Service at any given time.

B. SERVICES DESCRIPTIONS. The following BMC Subscription Services may be ordered under the terms of this Agreement.

1. BMC Mobile Device Management Core OnDemand which requires one of or a mix of the following:
 - BMC Mobile Device Management OnDemand - Hosting Fee Shared
 - BMC Mobile Device Management OnDemand - Hosting Fee Dedicated
2. BMC Mobile Device Content Locker OnDemand which requires BMC Mobile Device Management Core OnDemand and associated Hosting Fee in addition to one of or a mix of the following:
 - BMC Mobile Device Content Locker OnDemand - Hosting Fee Shared
 - BMC Mobile Device Content Locker OnDemand - Hosting Fee Dedicated
3. BMC Mobile Device Content Locker OnDemand - Additional Storage 25GB which requires BMC Mobile Device Management Core OnDemand and associated Hosting Fee and BMC Mobile Device Content Locker OnDemand and associated Hosting Fee
4. BMC Mobile Device Remote Control OnDemand which requires BMC Mobile Device Management Core OnDemand and associated Hosting Fee

In the event any of the four above-referenced BMC Subscription Services contain a click-through agreement from AirWatch Technologies, LLC, ("**AirWatch Agreement**") such AirWatch Agreement shall be of no effect. The Agreement shall govern BMC's provision of the Subscription Services in lieu of such AirWatch Agreement.

5. BMC Remedyforce Service Desk
 - BMC Remedyforce Service Desk – Mobility
 - BMC Remedyforce Service Desk – Sandbox *
 - BMC Remedyforce Service Desk – Additional File Storage 1GB
 - BMC Remedyforce Service Desk – Additional Data Storage 500MB
 - BMC Remedyforce Service Desk Casual User Add on License

* Quantity must match quantity of BMC Remedyforce Service Desk on new orders. For add-on orders, total quantity must match total quantity of BMC Remedyforce Service Desk for current term.

For the BMC Subscription Services described in #5, the following terms apply:

End user – Customers receive 250 end user licenses at no additional cost for each Remedyforce standard named user license they purchase. Remedyforce end users can access the Remedyforce self service portal to search the knowledge base, submit service requests and check the status of their service requests and on behalf of others. End users can also approve records and use Chatter.

Standard user (Licensed Product) – Remedyforce Service Desk Staff have full functionality of Remedyforce features and can create and manage incidents, problems, changes, broadcasts, tasks, knowledge articles, configuration items, service requests, service level agreements, reports, dashboards, Chatter, and other service desk related functions, including change assessments and approvals.

Casual user (License Add on)- Remedyforce casual users will have the same functionality as Remedyforce standard users, but their average login time and number of records updated may not exceed 40% of the average login time and number of records updated by standard users in the same Org

Platform user (License Add on) – This user license is purchased in addition to the current Remedyforce standard named user LP. This is an option to add full rights to platform functionality to build and use custom applications, use Appexchange apps, etc

6. BMC End User Experience Management on Demand is a BMC hosted and managed web application performance monitoring and management solution which requires the purchase of both of the following

BMC End User ExperienceManagement OnDemand – Activation
BMC End User ExperienceManagement OnDemand – Traffic Units

and for which Customer may optionally purchase

BMC End User Experience Management OnDemand – 10 Watchpoint Packs