



TermScout Certified Contract



Technology Solutions Master Agreement

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BMC TECHNOLOGY SOLUTIONS MASTER AGREEMENT

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 BMC OFFERINGS.

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

This Agreement was last updated on September 29, 2026. This Agreement is between the entity or individual entering into this Agreement ("**Customer**") and the BMC contracting entity set forth on the applicable Order ("**BMC**"). If Customer has a fully executed BMC Technology Solutions Master Agreement then such fully executed BMC Technology Solutions Agreement supersedes and replaces any clickwrap or click-through agreements (or other similar agreements) that Customer may be required to accept as a part of accessing or using the BMC Offerings. For Customer's convenience, prior versions of this Agreement are available at <https://www.bmc.com/legal/tsma.html>.

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 the legal power to direct or cause the direction of the general management and policies of the company, partnership or legal entity.

1.2 "Authorized Users" means the following entities acting under the instructions and control of Customer or Customer Affiliates, that are bound by terms and conditions no less restrictive than those contained herein, and for whom Customer takes full responsibility: (i) Customer, Customer Affiliates, and their employees, consultants, contractors and agents; and (ii) IT Services providers that have an appropriate agreement in place with BMC authorizing such access and use of the BMC Offerings.

1.3 "BMC Offerings" means the On Premises Subscriptions, Subscription Services, and/or Consulting Services provided under the terms of this Agreement and the applicable Attachments, and as further described under the applicable Order.

1.4 "Consulting Services" means the consulting, implementation, training or other services provided under the terms of Attachment C (Consulting Services) and as further described under the applicable Order.

1.5 "IP Rights" means all intellectual property or other proprietary rights worldwide, including patents, trade secrets, copyrights, trademarks, moral rights, and any other intellectual or industrial property including registrations, applications, renewals, and extensions of such rights.

1.6 "IT Services" means facilities management, service bureau, outsourcing, application management and development, installation, implementation, maintenance, web page hosting, infrastructure or application program hosting, network services, or any other information processing or related services, provided by the service provider or outsourcer to Customer under an agreement pursuant to a bona fide transaction for which the service provider or outsourcer is compensated (which IT Services may involve access to and/or use of the BMC Offerings). For clarity, an entity that has an IT Services business is not permitted to access and use the BMC Offerings as a consultant, contractor, or agent under Section 1.2.

1.7 "On Premises Subscriptions" is the generally available object code of the software and the accompanying User Guide provided to Customer under the terms of Attachment A (On Premises Subscriptions) and as further described under the applicable Order, including all items delivered by BMC to Customer under Support.

1.8 “Order” means the agreed ordering document for the purchase of the BMC Offerings that is subject to this Agreement and that identifies the terms of the purchase and fees to be paid. The term “Order” includes Customer’s online registration for and purchase of Subscription Services, if any.

1.9 “Subscription Services” means BMC’s generally available software-as-a-service offerings, provided under the terms of Attachment B (Subscription Services) and as further described under the applicable Order. Subscription Services include the applicable User Guide.

1.10 “User Guide” means the online help, functional guide and technical specifications for the Subscription Services and On Premises Subscriptions, as updated by BMC from time to time, and includes publications such as release notes, license entitlement descriptions, reference, user, installation, systems administrator and technical guidelines. The User Guide may be viewed here: <https://docs.bmc.com/xwiki/bin/view/Main/>.

2. SCOPE. Subject to the terms of this Agreement, including the relevant Attachments, Customer may purchase and BMC will provide Customer the BMC Offerings as set forth in this Agreement and the applicable Order. 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 executed by an authorized representative of each party. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein. Orders may be entered under this Agreement by and between (a) BMC or an Affiliate of BMC; and (b) 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 invoice the Customer named in the Order for the associated fees. Orders may also be placed via a BMC authorized reseller. 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. SUPPORT. BMC will provide the support described at <http://www.bmc.com/support/review-policies> (“**Support**”) to Customer for the On Premises Subscriptions and the Subscription Services.

4. FEES AND PAYMENT.

4.1 Fees. The fees payable for the BMC Offerings and the payment period for such fees will be set forth in and paid in accordance with the Order. All payments are due within 30 days of the date of the invoice.

4.2 Late Fees. Late balances may, at BMC’s sole election, bear interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.

4.3 Taxes. Customer will pay taxes imposed in connection with the fees paid for the BMC Offerings, which are exclusive of these taxes.

4.4 Payment Disputes. If Customer disputes an invoice in good faith, it will notify BMC within 30 days of receiving the invoice. The parties will seek to resolve such dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period, but will timely pay all undisputed amounts. After the discussion period, either party may pursue all available remedies.

4.5 Solution Providers. With regard to BMC Offerings acquired by Customer through an authorized reseller or distributor of BMC (“**Solution Provider**”), notwithstanding anything to the contrary in Sections 4.1 to 4.4 above, Customer will have no direct payment obligations to BMC for such fees.

5. TERM AND TERMINATION.

5.1 Term. This Agreement begins on the Effective Date and will remain in effect unless terminated pursuant to Section 5.2 below.

5.2 Termination.

- a) **Termination for Convenience.** Customer may terminate this Agreement by providing BMC with at least 30 days’ prior written notice; provided, however, such termination will have no effect on Orders in effect at the time of such termination. Orders may not be terminated for convenience unless otherwise specified therein. Customer may notify BMC of its intent to terminate by emailing BMC at order_services@bmc.com.

- b) **Termination for Cause.** Either party may terminate this Agreement and/or an Order for cause upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. In the event Customer terminates the Agreement and an Order for BMC's material breach, BMC will refund the amount paid by Customer to BMC for the BMC Offerings on such Order, pro-rated from the date of the notice of the termination.

5.3 Effects of Termination. Upon termination or expiration of any Order or this Agreement, all rights and Licenses granted thereunder will terminate and Customer will make no further use of the BMC Offerings. Except as set forth in Section 5.2(b), no termination will relieve the Customer of the obligation to pay any fees accrued or payable to BMC pursuant to any Order. Any terms in this Agreement which by their nature extend beyond termination of this Agreement will remain in effect until fulfilled.

6. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

6.1 Proprietary Rights. BMC, its Affiliates or licensors retain all right, title and interest to the BMC Offerings and all related intellectual property and proprietary rights. The BMC Offerings 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, ideas, features, content, functions, graphics and any other items provided as part of the BMC Offerings ("**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. Customer shall not access the BMC Offerings in order to build a competitive product or service or copy any ideas, features, functions or graphics of the BMC Offerings.

6.2 Confidentiality. "**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, BMC product vulnerabilities, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) the terms of this Agreement and any Orders, including without limitation, pricing information; and (iii) as to BMC and its licensors, the BMC Offerings and Service Items. 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, but in no event with less than a reasonable degree of care and protection, 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 and its Affiliates' 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.

6.3 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 exercise its commercially reasonable efforts to preserve the confidentiality of the portion of the Discloser's Confidential Information that Recipient is bound to furnish, including, without limitation, seeking or cooperating with Discloser to seek an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the portion of the Discloser's Confidential Information that is furnished.

6.4 Suggestions. Customer grants BMC a royalty-free, worldwide, transferable, sublicensable, 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 BMC Offerings.

7. DISCLAIMER OF DAMAGES AND LIMITS ON LIABILITY.

7.1 DISCLAIMER OF DAMAGES. NEITHER PARTY OR ITS AFFILIATES OR LICENSORS ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE BMC

OFFERINGS, OR ANY OUTPUT FROM ANY AI OFFERING (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.

7.2 LIMITS ON LIABILITY. NEITHER PARTY OR ITS AFFILIATES OR LICENSORS SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE BMC OFFERINGS, OR ANY OUTPUT FROM ANY AI OFFERING EXCEEDING THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE BMC OFFERINGS GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS FOR THE BMC OFFERINGS.

7.3 SPECIAL CAP ON LIABILITY. NOTWITHSTANDING ANYTHING IN SECTION 7.2 TO THE CONTRARY, FOR BREACHES OF THE OBLIGATIONS OF CONFIDENTIALITY SET FORTH IN SECTION 6.2 OF THE AGREEMENT, BREACHES OF THE OBLIGATIONS SET FORTH IN THE DATA PROCESSING AGREEMENT(S) BETWEEN THE PARTIES, AND BREACHES OF THE INFORMATION SECURITY TERMS REFERENCED IN SECTION 7 OF ATTACHMENT B, NEITHER PARTY OR ITS AFFILIATES OR LICENSORS SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE BMC OFFERINGS EXCEEDING TWO TIMES THE TOTAL AMOUNTS PAID AND PAYABLE BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE BMC OFFERINGS GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE.

7.4 EXCLUSIONS. THE DISCLAIMERS AND LIMITATIONS IN THIS SECTION 7 WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE DISCLAIMERS AND LIMITATIONS IN THIS SECTION 7 DO NOT APPLY TO EACH PARTY'S OBLIGATIONS UNDER SECTION 8, INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S IP RIGHTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, DEATH OR BODILY INJURY, ACTS OF FRAUD, OR ANY LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED BY LAW.

8. INFRINGEMENT CLAIMS.

8.1 Indemnification by BMC. If a third party asserts a claim against Customer asserting that Customer's use of the BMC Offerings in accordance with this Agreement violates that third party's IP 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 or settled upon against Customer based on infringement by the BMC Offerings or Deliverables, including court costs and reasonable attorney's fees. If BMC believes the BMC Offerings may violate a right, then BMC will, at its expense: (a) modify the BMC Offerings, or (b) procure the right to continue using the BMC Offerings, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the BMC Offerings and issue a pro-rata refund for the unexpired pre-paid portion of such BMC Offerings.

8.2 Indemnification by Customer. Subject to the terms of this Agreement, if a third party asserts a claim against BMC asserting that any of the following violates that third-party's IP Rights: (i) Customer Content as defined in Attachment B, (ii) Customer Property as defined in Attachment C, or (iii) Customer's use of the BMC Offerings in violation of this Agreement (each a "**Claim**"), then Customer will, at its own expense: (a) defend or settle the Claim; and (b) indemnify BMC for any damages finally awarded or settled upon against BMC based on the Claim, including court costs and reasonable attorney's fees. Notwithstanding the foregoing, if Customer is a state or local governmental entity or higher education institution that is legally prohibited by applicable law from indemnifying BMC, then the indemnification obligations in this Section 8.2 will not apply to Customer.

8.3 Indemnity Process. Neither party's obligations under this Section 8 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, or (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 written consent. The indemnified party agrees to use all reasonable efforts to help the indemnifying party mitigate damages resulting from an Infringement Claim/Claim, including without limitation Customer promptly installing all On Premises Subscription updates that BMC provides to mitigate any Infringement Claim.

8.4 THIS SECTION 8 CONTAINS EACH PARTY'S EXCLUSIVE REMEDIES AND THE INDEMNIFYING PARTY'S SOLE LIABILITY FOR INFRINGEMENT CLAIMS/CLAIMS, RESPECTIVELY.

9. COMPLIANCE WITH LAWS. Each party shall comply with all applicable laws in the performance of its obligations under this Agreement.

10. EXPORT CONTROLS. Both parties agree to comply with applicable export regulations, including but not limited to, U.S. Export Administration Regulations and the OFAC embargoes and sanctions lists. More information on BMC's export compliance program may be found here: <https://www.bmc.com/legal/export-compliance.html>.

11. TRIAL OF BMC OFFERINGS. BMC may make certain BMC Offerings available to Customer as a trial, proof of concept, or proof of value in which BMC may or may not participate, without an Order and without charge. Such trial offerings are deemed to be "BMC Offerings" pursuant to this Agreement except as set forth in this Section 11. Any BMC Offering provided as a trial is provided to Customer solely so that Customer may evaluate internally, for no more than a 30-day period, whether to acquire usage rights to such BMC Offering for a fee. Such BMC Offering (a) is provided "AS IS" without any warranty, service level agreement or support, and (b) cannot be put into productive use or included as part of Customer's business processes in any manner, unless or until it is expressly subscribed to and paid for under an Order. BMC may terminate all of Customer's rights to these BMC Offerings for BMC's convenience upon notice to Customer. Upon termination of any trial for Subscription Services, if Customer does not acquire a paid-for subscription to access and use such trial Subscription Services, all Customer Content input into such trial Subscription Services during the trial period will be deleted. BMC'S ENTIRE LIABILITY FOR DIRECT DAMAGES RELATED TO ANY TRIAL OF THE BMC OFFERINGS IS LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR SUCH TRIAL OR \$100.

12. GOVERNING LAW AND DISPUTE RESOLUTION. Any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof (each, a "Controversy") will be resolved as follows:

- (i) **UNITED STATES.** 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 parties hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens. Notwithstanding the foregoing, if Customer is a state or local governmental entity or higher education institution and legally required to apply state law, then Customer's state law will apply to the Controversy, without reference to conflict of law principles.
- (ii) **CANADA.** If Customer is located in Canada (outside Quebec), then the law of the Province of Ontario law apply, without reference to conflict of law principles. If Customer is located in Quebec, then the laws of the Province Quebec will apply, without reference to conflict of law principles.
- (iii) **EMEA.** If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the Controversy shall be tried in the District Court located in Amsterdam, the Netherlands and the substantive laws of the Netherlands shall govern. Both parties hereby submit to the exclusive jurisdiction of the District Court in Amsterdam, the Netherlands and waive all defenses based on forum non conveniens.
- (iv) **ASIA PACIFIC.** 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.
- (v) **OTHER REGIONS.** 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.

13. U.S. GOVERNMENT END USER RIGHTS. This Section 13 applies only to acquisitions of the commercial BMC Offerings 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, agreement or other activity with the United States Government. When BMC Offerings are delivered or provided to the United States Government, the United States Government agrees that this commercial license Agreement and the BMC Offerings governed by this Agreement are defined in accordance with and qualify as "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" as outlined in FAR 12.211, FAR 12.212 and DFARS 227.7202-3, as applicable. The terms and conditions of this Agreement shall pertain to

the United States Government's use (including documentation or technical data), duplication, and disclosure of the BMC Offerings, and shall supersede any conflicting contractual terms and conditions.

14. DATA PROTECTION. The processing of personal data under this Agreement is governed by the BMC Data Processing Agreement(s) set forth on the Order.

15. CONDUCTING BUSINESS WITH HONESTY AND INTEGRITY. BMC is committed to conducting business with honesty and integrity. BMC's Code of Conduct set forth in <https://www.bmc.com/legal/code-of-conduct.html> governs the conduct of all officers, directors, and employees of BMC, and contingent workers and business partners acting on BMC's behalf. BMC demonstrates its commitment to environmental stewardship by its global accreditation for ISO 14001:2015.

16. FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for obligations of confidentiality or a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including, but not limited to (i) Acts of God, explosion, flood, lightning, tempest, fire or accident; (ii) war, hostilities (whether war is declared or not), invasion, acts of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil war; (iv) riot, civil commotion or disorder; (v) acts, restrictions, regulations, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any local, state, national, governmental or supra-governmental authority; and/or (vi) epidemics, pandemics and quarantines (a "**Force Majeure Event**"). If either party is affected by Force Majeure Events, it shall promptly notify the other party (when possible) in writing of the matters constituting the Force Majeure Events. If possible, the party affected by the Force Majeure Event shall take reasonable steps available to it to minimize the effects of the Force Majeure Events on the performance of its obligations under the Agreement and/or affected Order. If a Force Majeure Event prevents BMC from performing the BMC Offerings for more than 30 days, either party may terminate this Agreement and all relevant Orders. Upon such termination BMC will refund all prepaid and unused amounts to Customer, provided Customer has paid BMC for all BMC Offerings that were performed up to the date of termination.

17. INSURANCE. BMC will provide and maintain the following insurance or its local equivalent if available in the corresponding country, but only for losses arising out of BMC's provision of BMC offerings: (a) worker's compensation insurance as prescribed by the law of the state applicable to the employees performing the BMC offerings; (b) employer's liability insurance with a limit of \$1,000,000 USD for each occurrence; (c) commercial general liability insurance with \$1,000,000 USD per occurrence combined single limit and \$2,000,000 USD general aggregate, including coverage for products liability and completed operations; (d) automobile liability insurance, including coverage for hired and non-owned vehicles of \$1,000,000 USD for combined single limit for bodily injury and/or property damage; and (e) professional liability insurance covering errors and omissions and cyber liability in the amount of \$1,000,000 USD for each occurrence and in the aggregate associated with USD offerings performed under this agreement. BMC will provide certificates of insurance upon customer's request. Where necessary, policy limits shall be expressed in equivalent local currency.

18. ASSIGNMENT. Customer has the right to assign this Agreement and all Orders in whole to an Affiliate, or to a successor in connection with (i) the sale of all or substantially all of the assets of Customer or (ii) a merger by operation of law, by providing written notice to BMC. The assignee may not be a known direct competitor of BMC. The successor entity or Affiliate must agree in writing with BMC (in advance of the assignment) to be bound by the terms of this Agreement. Any Customer transfer or assignment except as expressly authorized above will be null and void. BMC may assign this Agreement and any Orders in whole or in part in connection with (i) the sale of some or all of BMC's assets, (ii) a corporate reorganization, or (iii) a merger by operation of law, by providing written notice to Customer.

19. AI TERMS OF USE. The parties agree to comply with BMC's AI Terms of Use, a copy of which is located here: <https://www.bmc.com/legal/aiterms.html>.

20. HIGH RISK USE. Customer is responsible for determining the scope of use of the BMC Offerings. BMC has not specifically designed the BMC Offerings for use in high-risk environments such as nuclear facilities, aircraft systems, air traffic control, life support machines, or weapons systems, where failure could cause death, injury, or serious damage, or any other use defined as high-risk by applicable laws (collectively, "**High Risk Activities**"). BMC disclaims all liability for Customer's use of the BMC Offerings in direct connection with High Risk Activities.

21. MISCELLANEOUS TERMS. The parties are independent contractors, and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. This Agreement, including the Attachments and Orders, constitutes the entire agreement between Customer and BMC and supersedes and replaces (i) any prior or contemporaneous negotiations or agreements, whether oral or written, concerning the BMC Offerings, (ii) terms contained on, provided in connection with or accessed through any customer portal or vendor onboarding website or process,



and (iii) any click-through legal terms Customer is required to acknowledge with regard to BMC Offerings purchased under this Agreement. 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. 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. This Agreement may not be modified or rescinded except in writing signed by both parties. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. The BMC Offerings may contain hyperlinks to websites controlled by parties other than BMC. BMC is not responsible for and does not endorse the content or accept any responsibility for Customer's use of these websites. Customer should refer to the policies posted by other websites regarding privacy and other topics regarding data privacy before using them. The BMC Offerings may contain third party software that is delivered to Customer as part of the BMC Offerings and may not be taken out of the BMC Offerings or used separately from the BMC Offerings and for which additional terms may be included in the User Guide. In compliance with all applicable laws and for internal purposes only, BMC may compile and use de-identified, aggregate, or statistical information related to Customer's use of the BMC Offerings for the purposes of enhancing and improving the BMC Offerings, developing new products and services, and for other development, diagnostic, statistical, and corrective purposes, provided that such information (a) does not incorporate Customer's personally identifiable information or personal data and (b) does not identify or describe the Customer. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

ATTACHMENTS INCORPORATED INTO AGREEMENT
Attachment A – On Premises Subscriptions Attachment
Attachment B – Subscription Services Attachment
Attachment C – Consulting Services Attachment

ATTACHMENT A
ON PREMISES SUBSCRIPTIONS ATTACHMENT
to the
BMC TECHNOLOGY SOLUTIONS MASTER AGREEMENT

Except as otherwise provided herein, the terms of the BMC Technology Solutions Master Agreement (the “**Base Agreement**”) are incorporated into this On Premises Subscriptions attachment (the “**Attachment**”). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the “**Agreement**” for purposes of Customer’s purchase and ongoing use of On Premises Subscriptions, only if On Premises Subscriptions are set forth on an Order referencing the Base Agreement. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer’s purchase of On Premises Subscriptions only.

1. DEFINITIONS.

1.1 “Licensed Capacity” is the amount of the On Premises Subscriptions licensed to Customer as established in the Order.

2. LICENSE GRANT. Subject to the terms, conditions, payment requirements and restrictions set forth in the Agreement, BMC grants Customer a non-exclusive, non-transferable, non-sublicensable term license to install in the Territory (as defined in an Order), to access and use the On Premises Subscriptions during the term specified on the Order: (i) by Authorized User(s), (ii) up to the Licensed Capacity, (iii) for Customer’s and its Affiliates’ internal business operations, (iv) in accordance with the User Guide and the applicable Order, and (v) to make a reasonable number of copies of the On Premises Subscriptions for archival purposes only (collectively a “**License**”).

3. RESTRICTIONS. Customer will not: (a) copy, operate, or use any On Premises Subscriptions 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 On Premises Subscriptions, or copy or partial copy of an On Premises Subscriptions; (c) disassemble, reverse engineer, decompile, or otherwise attempt to derive any On Premises Subscriptions’ 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 On Premises Subscriptions to any third party; (e) use the On Premises Subscriptions in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the On Premises Subscriptions to be used by an outsourcing or service bureau provider on Customer’s behalf; (f) publicly release penetration test or security vulnerability test results of any type relating to the On Premises Subscriptions without BMC’s prior written consent and without following BMC’s published vulnerability disclosure process found at <https://www.bmc.com/corporate/trust-center/vulnerability-disclosure.html>; (g) publish or make public any benchmark, security, or performance data or information about the On Premises Subscriptions without BMC’s prior written consent; or (h) attempt to disable or circumvent any of the licensing mechanisms within the On Premises Subscriptions.

4. ON PREMISES SUBSCRIPTIONS PERFORMANCE WARRANTY. BMC warrants that (a) the On Premises Subscriptions will perform in substantial accordance with its User Guide 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 On Premises Subscriptions, BMC has not inserted any code that is not addressed in the User Guide and that is designed to delete, interfere with or disable the normal operation of the On Premises Subscriptions in accordance with the License. This warranty will not apply to any problems caused by (i) hardware, (ii) software other than the On Premises Subscriptions, (iii) misuse of the On Premises Subscriptions, (iv) use of the On Premises Subscriptions other than as provided by the applicable License, (v) modification of the On Premises Subscriptions, 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 or On Premises Subscriptions provided pursuant to Support.

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 On Premises Subscriptions perform in substantial accordance with its User Guide, or replacement of the non-conforming On Premises Subscriptions within a reasonable period of time, or if BMC cannot have the On Premises Subscriptions perform in substantial accordance with its User Guide or replace the On Premises Subscriptions within such time period, then BMC will refund the amount paid by Customer for the those On Premises Subscriptions. Customer agrees to provide BMC during the warranty period (i) full cooperation and access to the On Premises Subscriptions in resolving any claim; and (ii) written notice 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 reference to the User Guide to which such alleged defects are contrary.

EXCEPT FOR THE EXPRESS WARRANTIES IN THIS ATTACHMENT, THE ON PREMISES SUBSCRIPTIONS, INCLUDING ANY OUTPUT GENERATED FROM ANY AI OFFERINGS, ARE PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IN THE UNITED STATES AND CANADA, MERCHANTABILITY, AND NON-INFRINGEMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE ON PREMISES SUBSCRIPTIONS WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

5. **DELIVERY.** For On Premises Subscriptions that are delivered electronically, upon request from BMC, Customer agrees to provide BMC with documentation supporting that the On Premises Subscriptions were received electronically. If Customer accepts any On Premises Subscriptions 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. All On Premises Subscriptions are licensed FCA ("Free Carrier" as per Incoterms 2000) shipping point. The On Premises Subscriptions are accepted on the date BMC delivers the On Premises Subscriptions to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the On Premises Subscriptions Performance Warranty provided in the Agreement.

6. **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, the prior 12 months of (a) Product usage reports generated from specific Products (b) third party usage reports related to the On Premises Subscriptions (e.g., SCRT reports) and (c) written Product usage reports, to be provided solely when the Product does not generate reports (together, "**Reports**"). Additionally, if requested by BMC not more than once a year and upon at least ten days prior written notice to Customer, Customer agrees to allow BMC to perform an audit ("**Audit**") to ensure compliance with the terms of the Agreement at the locations where the On Premises Subscriptions are installed, during normal business hours. Customer agrees to cooperate during any such Audit and to provide reasonable access to its information and systems. If Customer is found to have exceeded its Licensed Capacity for an On Premises Subscription based on such Reports or Audit, BMC will issue a quote for the additional capacity through the end of the term of the applicable Order and Customer agrees to pay the applicable fees for such additional capacity.

ATTACHMENT B
SUBSCRIPTION SERVICES ATTACHMENT
to the
BMC TECHNOLOGY SOLUTIONS MASTER AGREEMENT

Except as otherwise provided herein, the terms of the BMC Technology Solutions Master Agreement (the “**Base Agreement**”) are incorporated into this Subscription Services attachment (the “**Attachment**”). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the “**Agreement**” for purposes of Customer’s purchase and ongoing use of Subscription Services, only if Subscription Services are set forth on an Order referencing the Base Agreement. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer’s purchase of Subscription Services only.

1. DEFINITIONS.

1.1 “Capacity” means the amount of access to the Subscription Services purchased as specified in an Order, which is counted in accordance with the Unit of Measure described in the Order.

1.2 “Customer Content” means all electronic data or information (a) submitted to the Subscription Services by Customer, a third party on behalf of Customer, or as directed by Customer or (b) collected, processed or returned by the Subscription Services.

2. ACCESS TO SUBSCRIPTION SERVICES.

2.1 Access Rights. Subject to the terms of this Agreement, BMC will provide Customer with worldwide access to the Subscription Services in accordance with the Order (i) up to the Capacity, (ii) for Customer’s and its Affiliates’ internal business operations, (iii) in accordance with the User Guide and the applicable Order. Customer may exercise its rights under this Section 2.1 through its Authorized Users.

2.2 Use of Subcontractors. Customer acknowledges and agrees that BMC uses subcontractors to provide portions of the Subscription Services. BMC’s subcontractors acting as subprocessors are listed in the Data Processing Agreement between the parties and/or on each Order. BMC is responsible for the performance of all subcontractors providing any of the Subscription Services and for such subcontractors’ compliance with the terms of this Agreement.

2.3 Acceptable Use Policy and Restrictions.

- a) Customer will (i) maintain the confidentiality of all authentications and passwords for the Subscription Services and immediately notify BMC if it becomes aware that an unauthorized party has gained access to such authentications and passwords, (ii) be responsible for use of the Subscription Services by its Authorized Users in compliance with this Agreement, and (iii) prevent unauthorized access to, or use of, the Subscription Services, and notify BMC promptly of any such unauthorized access or use.
- b) Customer will not (i) modify, copy or create derivative works based on the Subscription Services; (ii) create Internet “links” to or reproduce any content forming part of the Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Subscription Services or part thereof, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (iv) interfere with or disrupt the integrity or performance of the Subscription Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, or send or store material in violation of any third party’s privacy rights via the Subscription Services; (vi) send or store viruses or malicious code via the Subscription Services; (vii) attempt to gain unauthorized access to the Subscription Services or its related software, systems, platforms or networks, including any form of security and/or penetration testing; (viii) use any components provided with the Subscription Services separately from the Subscription Services; (ix) distribute, rent, lease or provide the Subscription Services to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (x) conduct penetration test or security vulnerability tests of any type on the Subscription Services without BMC’s prior written consent; (xi) publish or make public any benchmark, security, or performance data or information about the Subscription Services without BMC’s prior written consent; or (xii) use any third party components, systems, platforms or networks that are delivered as part of the Subscription Services separately from such Subscription Services.

3. **TERM AND TERMINATION.**

3.1 Suspension of Subscription Services for Cause. In addition to its other rights and remedies, BMC reserves the right, without liability to Customer, to suspend access to the Subscription Services if Customer commits a material breach of this Agreement and fails to cure the same within 30 days from Customer's receipt of written notice of such breach from BMC. However, BMC may immediately suspend access to the Subscription Services without any cure period if BMC determines in good faith that Customer's material breach of the Agreement will cause material harm to BMC, the Subscription Services, or any other customer. Once the material breach is resolved, BMC will promptly restore Customer's access to the Subscription Services in accordance with this Agreement.

3.2 Return of Customer Content. Upon written request by Customer made within 60 days after the effective date of termination of the Subscription Services, BMC will make the Customer Content available to Customer for retrieval in an industry standard format. After such 60-day period, BMC shall have no obligation to maintain any Customer Content and will thereafter delete Customer Content.

3.3 Termination Assistance. Upon Customer's request and upon (a) the expiration of an Order or (b) the termination of an Order for any reason other than Customer's breach, BMC shall perform such services as the parties in good faith agree are reasonably necessary to facilitate the orderly transition of the Subscription Services to the successor service provider or to the Customer. BMC will provide any such services under the terms and conditions of the Agreement, and subject to payment of the then-current fees and charges, generally applicable to BMC's performance of such services, as agreed between the parties at such time.

4. **LIMITED WARRANTY.**

4.1 Warranties and Limited Remedies. BMC warrants to Customer that:

- a) the online availability of the Subscription Services will be maintained in accordance with the service levels described at <https://www.bmc.com/content/dam/bmc/corporate/service-level-agreement.pdf> (the "**Service Level Agreement**" or "**SLA**"). Customer's exclusive remedy and BMC's sole obligation for breach of the warranty in this Section 4.1(a) is described in the Service Level Agreement;
- b) the Subscription Services (i) will perform in substantial accordance with the then-current online User Guide available via the Subscription Services, (ii) will be performed in a manner consistent with industry standards reasonably applicable to the provision thereof and (iii) will not materially degrade during the term of any Order. Customer's exclusive remedy and BMC's sole obligation for breach of the warranty in this Section 4.1(b) will be BMC's use of commercially reasonable efforts to have the Subscription Services perform in substantial accordance with the User Guide, or replace the non-conforming portion of the Subscription Services within 30 days from the written notice of claim, or if BMC cannot have the Subscription Services perform in substantial accordance with the User Guide or replace the Subscription Services within such time period, then Customer may terminate the non-performing Subscription Services, and upon such termination BMC will refund the amount paid by Customer for the Subscription Services, pro-rated from the date of the notice of the claim. Customer agrees to provide BMC with written notice of the claim, description of the alleged defects and a reference to the User Guide to which such alleged defects are contrary; and
- c) in connection with the Subscription Services (i) it has used commercially reasonable efforts consistent with industry standards to scan for and promptly remove any software viruses for no charge and (ii) it has not inserted any Disabling Code. "**Disabling Code**" means computer code inserted by BMC, that is not addressed in the User Guide, and that is designed to expose data, delete, interfere with, and/or disable the normal operation of the Subscription Services. This Disabling Code warranty does not apply to BMC passwords necessary for the operation of the Subscription Services, or for any use by Customer outside the scope of this Agreement.

4.2 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 SUBSCRIPTION SERVICES OR USE THEREOF, INCLUDING ANY OUTPUT GENERATED FROM ANY AI OFFERINGS. BMC, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5. **CUSTOMER CONTENT.** As between BMC and Customer, Customer owns all right, title and interest in and to Customer Content. Customer Content is deemed Confidential Information under this Agreement. BMC will use the Customer Content only as necessary to (a) provide, operate, maintain, and improve the BMC Offerings; (b) perform BMC's obligations and enforce BMC's rights under this Agreement; and (c) provide Support, troubleshooting, and enablement. At any time during the term of the Subscription Services, Customer may request copies of all Customer Content from the Subscription Services. Customer is responsible for complying with all legal and contractual requirements, including its agreements with third parties. With the exception of Customer Content collected by the Subscription Services, Customer is solely responsible for the transmission of Customer Content to BMC and to the Subscription Services. Customer is solely responsible for the encryption of any Customer Content during such transmission.
6. **VERIFICATION.** Customer agrees that BMC or its agent may monitor the 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 Subscription Services through the end of the term of such Subscription Services, Customer will execute an Order for additional Capacity of such Subscription Services, promptly upon BMC's request.
7. **INFORMATION SECURITY.** BMC employs comprehensive organizational and technical security safeguards to protect the security and integrity of Customer Content in line with industry best practices, as set forth in the Information Security Requirements found at <http://www.bmc.com/content/dam/bmc/corporate/hinfosec.pdf>.
8. **TECHNICAL NOTIFICATIONS.** Any general notifications regarding technical matters from BMC to Customer will be sent to the Customer contact stated in the Technical Contact Information section of the Order. The Customer contact in the Order has been assigned by Customer as the Customer contact for operational issues that may arise. Customer shall notify BMC of any change to the Customer contact details in writing, which may include via e-mail. Customer will receive system notifications from BMC and its licensors, if applicable (i.e. planned downtime notices, etc.).

ATTACHMENT C
CONSULTING SERVICES ATTACHMENT
to the
BMC TECHNOLOGY SOLUTIONS MASTER AGREEMENT

Except as otherwise provided herein, the terms of the Technology Solutions Master Agreement (the “**Base Agreement**”) are incorporated into this Consulting Services attachment (the “**Attachment**”). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the “**Agreement**” for purposes of Customer’s purchase of Consulting Services, only if Consulting Services are set forth on an Order referencing the Base Agreement. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer’s purchase of Consulting Services only.

1. **SCOPE**. BMC agrees to render to Customer Consulting Services under the terms of the Agreement and as further described in an Order. BMC will render the Consulting Services in the location(s) set forth in the Order. The performance of the Consulting Services will not relieve or alter the rights, obligations and responsibilities of Customer and of the BMC Affiliate providing Subscription Services and/or Licenses with respect to Subscription Services and/or Licenses under the applicable agreement. BMC will notify Customer in writing of any subcontractors prior to the commencement of the Consulting Services.

2. **SERVICE EXPENSES**. BMC will submit invoices to Customer for incurred expenses in accordance with the applicable Order, and Customer will pay for such expenses in accordance with such Order.

3. **EDUCATION**. Customer may acquire Learning Pass Credits and Education Services (collectively, “**BMC Education**”) on an Order. The BMC Education terms that govern such Orders are set forth in the Education Program Guide located at <https://www.bmc.com/content/dam/bmc/education/education-program-guide.pdf>, and is incorporated herein by this reference.

4. **STATEMENTS OF WORK**. Consulting Services may require the execution of a Statement of Work, in which case, such Statement of Work will be considered an Order for Consulting Services. In the event of any conflict between the terms of a Statement of Work and the Agreement, the Agreement shall prevail except for matters of service fees, payment and reimbursement of expenses, and termination of Consulting Services, if further specified in the Statement of Work.

5. **PROPRIETARY RIGHTS AND RIGHTS IN DELIVERABLES**.

5.1 **Ownership of Materials Used in the Consulting Services**. Unless specifically provided in an Order, Customer shall supply all of the facilities; equipment; supplies; computer programs; information about Customer’s business, systems, software and needs; and other materials necessary for completion of the Consulting Services (“**Customer Property**”), and BMC shall supply the people described in the Order, the know-how and the tools necessary to provide the Consulting Services, which may include, among other things, software, templates, questionnaires, graphs, methodologies, models, charts and reports (“**BMC Property**”). Customer Property and copies and modifications of Customer Property will remain the sole property of Customer or if applicable, Customer’s licensors, and BMC Property and copies and modifications of BMC Property will remain the sole property of BMC or if applicable, BMC’s licensors. Customer hereby grants to BMC a royalty-free, paid-up, non-exclusive, non-sublicensable and non-transferable license to use the Customer Property for the purpose of providing the Consulting Services.

5.2 **Deliverables**. “**Deliverables**” are those created under the Order, including, but not limited to, software, software scripts, routines, libraries or other code, or appliances, methodologies, templates, tools, policies, records, working papers, reports, methodologies, know-how, data, or other intellectual property, written or otherwise, including any derivative works or modifications to the above, whether pre-existing or created during the performance of the Consulting Services and all proprietary and intellectual property rights embedded therein delivered as a result of the Consulting Services as specified under the Order. BMC owns all right, title and interest in the Deliverables. Provided Customer has paid in full for the Consulting Services that resulted in the Deliverables, BMC will deliver the Deliverables to Customer in accordance with the applicable Order. Subject to compliance with the terms of the Agreement and the applicable Order, BMC grants Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free, paid-up license to use, create derivative works of and modify all Deliverables solely for its internal business operations. If Customer is a contractor engaging BMC for the benefit of a third party (“**Client**”), then provided that the Client is properly identified in the Order and that Customer is responsible for such Client’s compliance with the provisions of the Agreement and the relevant Order, Customer may assign to the Client the rights granted to Customer in this Section 5.2.

5.3 Copyright Notice. Each party agrees to reproduce the copyright notice and any other legend or ownership notice on any copies made under the licenses granted pursuant to this Section 5.

5.4 Retention. Customer acknowledges that BMC provides similar services to other customers and that nothing in the Agreement shall be construed as operating to prevent BMC from carrying on such business. Further, BMC may use ideas, concepts, or know-how developed or acquired by BMC during performance of the Consulting Services to the extent retained by BMC's personnel as impressions and general learning.

6. LIMITED WARRANTY. BMC warrants that it will perform the Consulting Services in conformance with generally accepted practices within the software services industry and in accordance with the Order. Customer must notify BMC of any breach of this warranty no later than 90 days after completion of the Consulting Services under the Order. Customer's exclusive remedy and BMC's entire liability under this warranty shall be for BMC to re-perform any non-conforming portion of the Consulting Services within a reasonable period of time, or if BMC cannot remedy the breach during such time period then refund the portion of the fee attributable to such non-conforming portion of the Consulting Services under the Order. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by BMC in writing.

EXCEPT FOR THE EXPRESS WARRANTIES IN THE AGREEMENT, THE CONSULTING SERVICES AND DELIVERABLES ARE PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, FITNESS FOR A PARTICULAR PURPOSE AND IN THE UNITED STATES AND CANADA, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND NON-INFRINGEMENT.

7. MUTUAL INDEMNITY. Each party shall indemnify and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the negligence, gross negligence, or willful misconduct of the indemnifying party's employees or contractors arising out of the Agreement and while at the Customer's premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action. Notwithstanding the foregoing, if Customer is a state or local governmental entity or higher education institution that is legally prohibited by applicable law from indemnifying BMC, then Customer's indemnification obligations in this Section 7 will not apply.

8. INDEPENDENT CONTRACTOR. All of the services performed by BMC under the Agreement will be performed as an independent contractor.