

## ADDITIONAL TERMS FOR SERVICES

These Additional terms apply to the implementation, training or other services (“**Services**”) as described in the Order Form or the Statement of Work (each a “**SOW**”) to which these Additional Terms are attached by reference (collectively, the “**Agreement**”). The terms “**Customer**” and “**BMC**” have the same meaning assigned to them under the SOW. BMC will notify Customer in writing of any subcontractors prior to the commencement of the Services. In the event of any conflict between the terms of the SOW and these Additional Terms, these Additional Terms shall prevail except for matters of service fees, termination for convenience, payment and reimbursement of expense terms if further specified in the SOW. Neither the execution nor fulfilment of the services will relieve or alter BMC’s or Customer’s acceptance, obligations, and responsibilities with respect to the affected BMC Software products licensed under the applicable software license agreement.

**1. SERVICE FEES AND EXPENSES.** The fees payable to BMC for the Services to be rendered will be detailed in the SOW. BMC will submit invoices to Customer for such fees and incurred expenses either upon completion of the Services, or at stated intervals, in any case accordance with the applicable SOW. Customer shall pay amounts invoiced plus applicable taxes within 30 days following receipt of the invoice. 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.

**2. EDUCATION.** Customer may acquire Learning Pass Credits and Education Services (collectively, “**BMC Education**”) on a SOW. The BMC Education terms that govern such SOWs 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.

**3. TERM AND TERMINATION.** The Agreement shall continue in effect until completion of the SOW provided that either party may terminate the Agreement 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 for BMC’s material breach, Customer will only pay for Services performed up to the date of termination. For subscription based offerings, BMC will refund the amount paid by Customer to BMC for the Services on such SOW, pro-rated from the date of the notice of the termination. Any terms in the Agreement which by their nature extend beyond termination of the Agreement will remain in effect.

### **4. PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

**4.1 License.** Subject to the terms of the Agreement, BMC grants Customer a perpetual, non-exclusive, non-transferable, non-sublicense license to use and modify all programming, documentation, reports, and any other deliverables delivered to Customer as a result of the Services provided under the SOW (“**Deliverables**”) solely for its own internal use. Except as expressly permitted by applicable law and the Agreement, Customer may not sell, rent, lease, sublicense, timeshare, outsource or otherwise use the Deliverables. Notwithstanding anything in this Section 4 to the contrary, in the event that Customer is a contractor engaging BMC for the benefit of a third party (“**Client**”), then, provided that the Client is properly identified in the SOW and that Customer is responsible for such Client’s compliance with the provisions of the Agreement, Customer may assign the rights provided to it in this Section 4.1.

**4.2 Mutual 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 Discloser’s financial information, customers, employees, products or services, including, without limitation,

software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, the Deliverables; and (iii) the terms of the 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 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 the 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, contractors and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of the Agreement. **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 is 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 portion of the Discloser’s Confidential Information that Recipient is bound to furnish, including, without limitation, cooperating with Discloser to obtain 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.

**4.3 Ownership.** BMC owns all right, title and interest in the Deliverables, including all intellectual property rights embodied therein. All business information, systems, software and any other materials provided by Customer under the Agreement (“**Customer Property**”) remains the property of Customer.

**5. LIMITED WARRANTY.** BMC warrants that it will perform the Services in conformance with generally accepted practices within the software services industry and in accordance with the SOW. Customer must notify BMC of any breach of this warranty no later than 90 days after completion of the Services under the SOW. 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 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 Services under the SOW. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by BMC in writing.

**6. LIMITATION ON LIABILITY.** BMC’s liability is limited exclusively to damages caused by willful intent or gross negligence, damages causing death or personal injury and damages subject to the product liability law. All other liability is excluded. Within the limits of applicable normative law, BMC’s liability is limited to amounts paid by Customer under the SOW.

### **7. INFRINGEMENT INDEMNITY.**



**7.1** If a third party asserts a claim against Customer asserting that Customer's use of a Deliverable in accordance with the Agreement violates that third-party's IP Rights ("**Customer Infringement Claim**"), then BMC will, at its own expense: (a) defend or settle the Customer Infringement Claim; and (b) indemnify Customer for any damages finally awarded or settled upon against Customer, but only if: Customer promptly notifies BMC of the Customer Infringement Claim, BMC retains sole control of the defense of the Customer Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by BMC. If BMC believes a Deliverable may violate a right, then BMC will, at its expense: (a) modify the Deliverable, or (b) procure the right to continue using the Deliverable, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Deliverable and issue a refund prorated over five years from the completion date of the related SOW.

**7.2** If a third party asserts a claim against BMC asserting that BMC's use of Customer Property in accordance with the Agreement violates that third-party's IP Rights ("**BMC Infringement Claim**"), then Customer will, at its own expense: (a) defend or settle the BMC Infringement Claim; and (b) indemnify BMC for any damages finally awarded or settled upon against BMC, but only if: BMC promptly notifies Customer of the BMC Infringement Claim, Customer retains sole control of the defense of the BMC Infringement Claim and all negotiations for its settlement or compromise, and BMC provides all reasonable assistance requested by Customer.

**7.3** The indemnified party agrees to use all reasonable efforts to help the indemnifying party mitigate damages resulting from an Infringement Claim. This Section contains each party's exclusive remedy and sole liability for Infringement Claims. For the purposes of the Agreement, "**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.

**8. 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 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.

**9. NON-SOLICITATION.** During the term of the Agreement, and for a period of six months thereafter, Customer will not solicit for employment any employees of BMC or its affiliates who, within six months prior to such solicitation, directly performed under the Agreement.

**10. INSURANCE.** BMC will provide and maintain the following insurance, but only for losses arising out of BMC's provision of Services under the Agreement:

- (i) Worker's Compensation insurance as prescribed by the law of the state applicable to the employees performing the Services;
- (ii) Employer's Liability insurance with a limit of \$1,000,000 USD for each occurrence;
- (iii) 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;
- (iv) 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

(v) 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 Services performed under this Agreement.

BMC will provide certificates of insurance upon Customer's request.

**11. 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>.

**12. PERSONAL DATA.** The terms governing the processing of personal data will be described in the SOW or under a signed Data Processing Agreement. In the event there is no signed Data Processing Agreement or no reference to the processing of data by BMC in the SOW, personal data will be processed pursuant to the terms described at <https://www.bmc.com/content/dam/bmc/corporate/bmcdpa.pdf>.

**13. FORCE MAJEURE.** Except for provisions of the Agreement relating to protection of Confidential Information and failure to pay fees, neither party will be liable for non-performance caused by circumstances beyond their reasonable control, 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; (vi) import or export regulations or embargoes; (vii) defaults of subcontractors where such default is itself caused by force majeure; and/or (viii) epidemics, pandemics, and quarantines (including but not limited to those connected with the COVID-19) (together, "**Force Majeure Events**"). 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. If a Force Majeure Event prevents BMC from performing the Services for more than 30 days, either party may terminate the Agreement. Upon such termination BMC will refund all prepaid and unused amounts to Customer, provided Customer has paid BMC for all Services that were performed up to the date of termination.

**14. MISCELLANEOUS TERMS.** All of the services performed by BMC will be performed as an independent contractor. If any provision of the Agreement is held to be unenforceable, the remaining provisions shall nonetheless be enforceable. No failure by either party in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of a right. This Agreement shall be governed by the substantive laws of Australia, excluding the United Nations Convention on the International Sale of Goods and the parties hereby submit to the exclusive jurisdiction of the courts located in Australia. Nothing in the Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute. Except for assignments to parent entities or majority owned subsidiaries, neither party may assign or transfer the Agreement, in whole or in part, to any third party without first obtaining the prior written consent of the other party. The Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to this subject matter. Any amendment or change must be in a writing of the parties. Any additional documents presented to a BMC employee or consultant by Customer for signature as a condition for going on a Customer's site will be governed by the Agreement and to the extent that such document adds to or conflicts with the Agreement, it shall be considered null and void.