C-10607
01/27/2016

CITY CLERK
ORIGINAL

END USER LICENSE AGREEMENT FOR TRACKIT PRODUCTS

BY OPENING THE PACKAGE, INSTALLING, PRESSING "AGREE" OR "YES" OR USING THE PRODUCT, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS. IF YOU REJECT THIS AGREEMENT OR ARE

NOT SATISFIED WITH THE SOFTWARE, YOU MAY (I) OBTAIN A REFUND OF THE PURCHASE PRICE OF THE SOFTWARE OR THE SOFTWARE UPGRADE (AS APPLICABLE), OR (II) REQUEST REPLACEMENT SOFTWARE IN THE EVENT YOU IDENTIFY THAT THE SOFTWARE IS DEFECTIVE,

PROVIDED THAT, IN EACH CASE, YOU RETURN TO THE POINT OF PURCHASE THE SOFTWARE, ANY ACCOMPANYING DOCUMENTATION AND DATED PROOF OF PURCHASE WITHIN THIRTY (30) DAYS FROM THE DATE OF PURCHASE OF THE SOFTWARE.

This Agreement ("Agreement") is between the entity or individual entering into this Agreement ("Customer") and the BMC Entity for the applicable Territory as described in Section 19 ("BMC"). In addition to the restrictions imposed under

this Agreement, any other usage restrictions contained in the Product installation instructions or release notes shall apply to your use of the Product.

Territory: The country where Customer acquired the license.

1. GENERAL DEFINITIONS.

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

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

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

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

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

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

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

3. LICENSE. Subject to the terms of this Agreement, BMC grants Customer a non-exclusive, non-transferable, non-sub-licensable perpetual (unless a non-perpetual license is provided on an Order) license, as specified in the relevant Order, to exercise the following rights to the Product up to the Licensed Capacity: (a) copy the Product for the purpose of installing it on Customer's owned or leased hardware at a facility owned or controlled by Customer in the Territory; (b) operate solely for Customer's and its Affiliates own internal Customer's business operations; and (c) make one copy of the Product for archival purposes only (collectively a "License"). Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

4. RESTRICTIONS. Customer will not: (a) copy, operate or use any Product in excess of the applicable Licensed Capacity; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("Identification") from any Product; (c) copy any Product or any portion of any Product without reproducing all Identification on each copy or partial copy; (d) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (e) distribute, rent, lease, sublicense or provide the Product to any third party or use it in a

service bureau, outsourcing environment, or for the processing of third party data; (f) provide a third party with the results of any functional evaluation, or performance tests, without BMC's prior written approval; (g) attempt to disable or circumvent any of the licensing mechanisms within the Product; or (h) violate any other usage restrictions contained in the Documentation.

5. PRODUCT PERFORMANCE WARRANTY. BMC warrants that (a) the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order, (b) BMC has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the Product, BMC has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation the Products in accordance with the License.This warranty will not apply to any problems caused by hardware, software other than the Product, or misuse of the Product use of the Product other than as provided by the applicable License, modification of the Product, or claims made either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, Product provided pursuant to Support or Product provided pursuant to Section 11.

6. LIMITED REMEDIES. BMC's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: BMC's use of commercially reasonable efforts to have the Product perform in substantial accordance with its Documentation, or replacement of the non-conforming Product within a reasonable period of time, or if BMC cannot have the Product perform in substantial accordance with its Documentation replace the Product within such time period, then BMC will refund the amount paid by Customer for the License for that Product. Customer's rights and BMC's obligations in this section are conditioned upon Customer's providing BMC during the warranty period (a) full cooperation and access to the Product in resolving any claim; and (b) written notice addressed to the BMC Legal Department that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in BMC's development or support environment, and a specific reference to the Documentation to which such alleged defects are contrary.

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

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

9. PROPRIETARY RIGHTS AND CONFIDENTIALITY. (a) BMC, its Affiliates or licensors retain all right, title and interest to the Product, Support and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Product. BMC reserves any rights not expressly granted to Customer in this Agreement. (b) "Confidential Information" means all proprietary or confidential information that is disclosed to the recipient ("Recipient") by the discloser ("Discloser"), and includes, among other things (i) any and all information relating Discloser financial information, customers, employees, products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, and its licensors, the Product and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product pricing information. Confidential information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential information of Discloser to any third party or use the Confidential information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential information of the Discloser that it exercises with respect to its own Confidential information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential information to Recipient's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. (c) Notification Obligation. If

the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Notwithstanding the foregoing, Customer agrees that BMC may include Customer's name on customer lists.

10. DISCLAIMER OF DAMAGES; LIMITS ON LIABILITY. EXCEPT FOR VIOLATIONS OF LICENSE (SECTION 3), LICENSE RESTRICTIONS (SECTION 4), PROPRIETARY RIGHTS AND CONFIDENTIALITY (SECTION 9) AND FOR INFRINGEMENT CLAIMS (SECTION 12), NEITHER PARTY, ITS AFFILIATES OR BMC'S LICENSORS ARE LIABLE FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, SUPPORT, THE PRODUCT OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE PRODUCT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW , OR (B) DAMAGES OF ANY KIND IN AN AMOUNT GREATER THAN THE AMOUNT OF ACTUAL, DIRECT DAMAGES UP TO THE CAP. THE TERM "CAP" MEANS (I) IF BMC IS THE PAYOR, THE AMOUNT PAID BY CUSTOMER FOR THE LICENSE TO THE PRODUCT GIVING RISE TO SUCH DAMAGES AND (II) IF CUSTOMER IS THE PAYOR, THE GREATER OF THE AMOUNT PAID OR PAYABLE, BY CUSTOMER FOR THE LICENSE TO THE PRODUCT GIVING RISE TO SUCH DAMAGES.

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

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

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

its destruction in writing. Neither party is liable for its failure to perform any obligation under this Agreement, other than a payment obligation, during any period in which performance is delayed by circumstances beyond that party's reasonable control.

14. AUDIT. If requested by BMC not more than once a year, Customer agrees to deliver to BMC periodic product usage reports generated from specific products (when available) or written reports, whether generated manually or electronically, specifying Customer's use of the Product. Additionally, if requested by BMC not more than once a year, Customer agrees to allow BMC to perform an audit at Customer's facilities during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to its information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BMC's reasonable costs of conducting the audit.

15. 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.

16. GOVERNING LAW. 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 License in the United States, Puerto Rico, or any country in Central or South America; (b) in the Province of Ontario, if you acquired the License in Canada (subsections (a) and (b) collectively referred to as the "Americas Region"); (c) in Singapore, if you acquired the License 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 License 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.

17. ARBITRATION. ANY DISPUTE BETWEEN CUSTOMER AND BMC ARISING OUT OF THIS AGREEMENT OR THE BREACH OR ALLEGED BREACH, SHALL BE DETERMINED BY BINDING ARBITRATION CONDUCTED IN ENGLISH. IF THE DISPUTE IS INITIATED IN THE AMERICAS REGION, THE ARBITRATION SHALL BE HELD IN NEW YORK, U.S.A., UNDER THE CURRENT COMMERCIAL OR INTERNATIONAL, AS APPLICABLE, RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IF THE DISPUTE IS INITIATED IN A COUNTRY IN THE ASIA PACIFIC REGION, THE ARBITRATION SHALL BE HELD IN SINGAPORE, SINGAPORE UNDER THE CURRENT UNCITRAL ARBITRATION RULES. IF THE DISPUTE IS INITIATED IN A COUNTRY OUTSIDE OF THE AMERICAS REGION OR ASIA PACIFIC REGION, THE ARBITRATION SHALL BE HELD IN AMSTERDAM, NETHERLANDS UNDER THE CURRENT UNCITRAL ARBITRATION RULES. THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY PENDING THE ARBITRATOR'S AWARD. THE AWARD RENDERED SHALL BE FINAL AND BINDING UPON THE PARTIES AND SHALL NOT BE SUBJECT TO APPEAL TO ANY COURT, AND MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION. NOTHING IN THIS AGREEMENT SHALL BE DEEMED AS PREVENTING EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THE DISPUTE AS NECESSARY TO PROTECT EITHER PARTY'S CONFIDENTIAL INFORMATION, OWNERSHIP, OR ANY OTHER PROPRIETARY RIGHTS. ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN CONFIDENCE, AND THE PARTY PREVAILING IN ARBITRATION SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND NECESSARY COSTS INCURRED RELATED THERETO FROM THE OTHER PARTY.

18. U.S. FEDERAL ACQUISITIONS. This Article applies to all acquisitions of the commercial Product subject to this Agreement by or on behalf of the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. By accepting delivery of the Product, the government hereby agrees that the Product 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 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 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)."

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

Territory	Licensing Entity	Address of Licensing Entity
United States and Latin America South (not a specified Central or South America country below)	BMC Software, Inc.	2101 CityWest Boulevard, Houston, Texas 77042
Canada	BMC Software Canada Inc.	50 Minthorn Boulevard, Suite 200 Markham, Ontario L3T 7X8 Canada
EMEA (Europe, Middle East and Africa)	BMC Software Distribution B.V.	Boeing Avenue 245, 1119 PE Schiphol Rijk, The Netherlands
Brazil	BMC Software do Brasil Ltda.	Rua Leopoldo Couto de Magalhães Jr, 758 - 14º andar, São Paulo – SP – Brazil
Mexico	BMC Software Distribution de México, S.A. de C.V.	Torre Esmeralda II Blvd. Manuel Avila Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.

Argentina BMC Software de Argentina S.A. Ing. Butty 220 –
Piso 14, Buenos Aires, Republica Argentina, C1001AFB

S.E.A (Southeast Asia), Australia, New Zealand,

Hong Kong, Taiwan BMC Software Asia Pacific Pte Ltd 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 33rd Fl.,
ASEM Tower World Trade Center,
159-1, Samsung-dong, Kangnam-ku, Seoul 135-798

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

21. MISCELLANEOUS TERMS. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. The prevailing party in any litigation is entitled to

recover its attorney's fees and costs from the other party. To the extent BMC Products include third party code: if (a) such third party code is provided for use with a Product, it may be used only with that Product unless otherwise provided for in the Documentation; and (b) the Documentation contains terms that pertain to such third party code, those terms govern the third party code in place of the terms of the applicable Order and this Agreement; except that the third party terms will not (i) negate or amend the rights granted by BMC to Customer or the obligations undertaken by BMC in the applicable Order or this Agreement with respect to a Product; or (ii) impose any additional restrictions on Customer's use of the Product. In some circumstances, usually either for the convenience of its customers or in order to comply with the obligation to make source code available under specific license terms, BMC distributes to customers, without charge, products that are not governed by an Order or this Agreement. Such products are distributed separately from the BMC Products, are governed by the license terms that are included with them, and are provided by BMC AS IS, WHERE IS AND WITHOUT WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND EXCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. The parties have agreed that this Agreement and the documents related thereto be drawn up in the English language. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais. Customer agrees that BMC and its affiliates may refer to Customer as a customer of BMC, both internally and in externally published media.

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

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

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

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

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

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

"Enterprise" is the environment consisting of all hardware owned or leased by Customer in the Territory.

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

BMC AppSight Products:

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

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

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

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

BMC AppSight Named User is a license to use the full BMC AppSight System. Customer must provide the individual domain ID or email ID for each named user. Once designated, the BMC AppSight Named User may only be changed if the individual leaves the Customer or the Team, Group or Division as applicable. BMC AppSight Named Users may not be transferred from one AppSight System to another.

BMC AppSight QA User is a license to use the AppSight Test Recorder module of the AppSight System.

BMC AppSight Level 1 Viewer is a license to use limited-functions of AppSight System that provides a user with the ability to view and replay the visual recording of a Black Box log. The AppSight Level 1 Viewer may be used by the named users provided to BMC.

BMC AppSight for Citrix Support User is a license to use the AppSight System for Citrix application support. Only licensed BMC AppSight for Citrix users may use the AppSight System for Citrix support.

BMC AppSight Connector for Defect/Incident Tracking may only be used to interface the AppSight System to Customer's defect/incident tracking application.

BMC Desktop Capture Customer must provide the individual domain ID or email ID for each named user. The BMC Desktop Capture Player may be used by licensed named users to play back and view BMC Desktop Capture incident recordings. Once designated, a named user may only be changed if the individual leaves the Customer.

BMC AppSight and BMC Application Problem Resolution Products:

License Key. The Product may require a software license key that limits usage to that provided under the terms of the Agreement and this Product Order Form. Licensee must install and run license manager software provided with the Product at no additional cost. All AppSight Consoles must be connected to the license manager.

AppSight Black Box is the agent portion of the AppSight System. All AppSight Systems include unlimited AppSight Black Boxes which may be installed on any computers of Customer or Customer's customers. Customer may provide Customer's customers the limited right to install and to use on behalf of Customer the AppSight Black Boxes (but not any other components of the AppSight System) but only for the sole purpose of providing information to Customer to support Customer's own software applications, and in no event to support Customer's customer's own internal software applications.

Embedded Black Box. Customer may incorporate the AppSight Black Box into a Customer application, in which case, in addition to the licenses granted above, Customer is hereby granted a worldwide, nonexclusive, perpetual license to (a) incorporate the unmodified unaltered object code version of the AppSight Black Box into Customer's designated application ("Customer Application"); (b) reproduce and distribute the AppSight Black Box as incorporated into the Customer Application; and (c) to use in unaltered form the BMC trademarks, service marks or marketing logos (the "BMC Trademarks") solely to promote the Customer Application, provided Customer obtains BMC's prior written approval for each new usage. Customer shall ensure that any Customer Application incorporating the AppSight Black Box shall be governed by a license agreement which is at least as protective of BMC's proprietary rights in the AppSight Black Box as of Customer's proprietary rights in the Customer Application, but no less protective than this Agreement, including rights and restrictions related to end user's right to make backup and archival copies. In the event Customer incorporates the Black Box into Customer's Application, Customer shall include in the startup screen, help and/or the about screens in the Customer Application, BMC's logo and the following, "POWERED BY BMC'S APPSIGHT BLACK BOX TECHNOLOGY." Furthermore, Customer shall visually display the BMC name and the BMC product names and trademarks in the documentation for the Customer Application incorporating the AppSight Black Box, on Customer's website and in advertising and promotional materials.

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

BMC Capacity Management Products: Any BMC Capacity Management Product, BMC Capacity Optimization Product, BMC Performance Assurance Product and/or any other related Products that may be released as part of the BMC Capacity Management solutions for distributed systems environments are licensed to the Computer(s) for which the Products are initially assigned and may not be reassigned to another Computer(s) unless the original Computer(s) has been removed from service. "Removed from service" or "out of service" is defined as no longer providing support for a business application or workload. A license is required for all Computers for which the Product or one of its components executes functionality, either locally or remotely.

BMC Cloud Lifecycle Management – Core License Add-on ("CLM Core"):

* The Product may only be used in Customer's internal cloud environment.

* Access to BMC Atrium Orchestrator base product components is provided through the BMC BladeLogic Automation Suite – Base License. In addition, BMC Cloud Lifecycle Management - Core License Add-on includes the right to One Activity Peer (AP) for high availability.

* Customer may only use the following BMC Atrium Orchestrator Base Adapters: Command Line, File, Web Services, PowerShell or Terminal.

* Customer may only use the following BMC Atrium Orchestrator Application Adapters: VMware vSphere Virtual Infrastructure (VIS), NetApp Data Fabric Manager, NetApp Rapid Cloning Utility, Amazon Elastic Compute Cloud (EC2) and Adapters for BMC Products.

* Customer may only use the following BMC Atrium Orchestrator Runbooks: Storage, IPAM, and MyServices Portal.

BMC Cloud Lifecycle Management – Standard Pack License Add-on ("CLM Standard"):

* The Product may only be used in a Cloud Environment.

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

* The Product includes expanded license rights for BMC Atrium Orchestrator including unlimited peer licenses, use of all generally available Base Adapters, and Development Studio and Operator Control Panel user licenses to support the Licensed Capacity. The Product does not include the right to use any other Application Adapters other than what is installed out-of-the-box.

* Customer may only use the BMC Remedy Service Request Management functionality of the BMC Remedy ITSM product. The Product includes the right to use BMC Remedy Service Request Management for any number of users, to support any service requests that are directly related to the delivery or consumption of Cloud Services, for the Licensed Capacity.

* The Product includes the right to use BMC Network Automation for the network devices in the Cloud Environment as long as the number of supported Network Devices does not exceed the Licensed Capacity.

* The Product includes the right to use BMC ProactiveNet Performance Management for the Licensed Capacity, only in order to deliver the CPU monitoring capabilities that are installed out-of-the-box. The Product does not include the right to use any other functional capabilities of BMC ProactiveNet Performance Management, including but not limited to, use of the BMC ProactiveNet Performance Management console for operational purposes, monitoring of IT infrastructure beyond what is specified, and any other analytics, diagnostics, event or impact management capabilities.

* The product includes the right to use BMC Capacity Optimization for the Licensed Capacity only in order to enable the out-of-the-box Capacity Aware Placement Advice capability as part of the CLM Resource Manager. The Product does not include the rights to use any other functional capabilities of BMC Capacity Optimization, including but not limited to, the use of BMC Capacity Optimization for capacity planning, virtualization and consolidation; capacity analysis, forecasting, reporting and dashboards; and capacity metering for showback or chargeback.

BMC Cloud Operations Management Core – License Add-on:

* This product may only be used in a Cloud Environment.

BMC Cloud Operations Management – Standard Pack License Add-on:

* This product may only be used in a Cloud Environment

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

BMC Configuration Management Developers Kit Definition and Restriction for BMC Configuration Management Products: A "BMC CM Developers Kit" license allows Customer to embed the "SDK Run Time Code" in unmodified object code form, into a single software application developed by Customer to create an "SDK Client." "SDK Run Time Code" means the unmodified object code files in the BMC CM

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

BMC Identity Products:

* Internal User: If a Product name includes the term "Internal User," that Product can only be used by Customer's employees (full time and part time) and contractors whose information is being managed using the BMC IdM tools. Information on these users will typically be found in the HR database.

* External User: If a Product name includes the term "External User," that Product can only be used by Customer's business partners and customers/ prospects whose information is being managed using the BMC IdM tools or Customer's employees (full or part time)/contractors who are licensed to use one or more of the following BMC Identity Management Tools: (1) BMC Identity User Administration (2) BMC Identity Password Management (3) BMC Identity Compliance Manager, provided the users have no more than 2 logons (access points) being managed by the IdM tools.

* Archive User: If a Product name includes the term "Archive User," that Product can only be used by users whose identity information is stored within the IdM system but is not being actively managed; the information could be stored for the purpose of audit/ forensics etc.

* Developer User: If a Product name includes the term "Developer User," that Product can only be used by users who create or modify applications using the BMC Directory Management Studio.

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

BMC Middleware Management – Performance and Availability and BMC Middleware Management – Transaction Monitoring: Notwithstanding the Licensed Capacity, the number of individual employees or contractors of Customer to whom access to the Management Console is granted ("End Users") is limited

to the lesser of (a) the Licensed Capacity of the Product if priced on a per named user metric, or (b) 250 End Users.

BMC Remedy Products: Customer may not bypass, in any way, the use of a concurrent or named user license to manage an update (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license).

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

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

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

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

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

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

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

* Desktop/Mobile Patch Management Restriction: A "Desktop/Mobile Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Client Endpoint.

* Desktop/Mobile Patch Management Pack Restriction: The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Desktop/Mobile Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one licensed Client Endpoint, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose.

* BMC Configuration Management Desktop OS Management Restriction: A "BMC CM Desktop OS Management" License may only be used to manage operating system migration activities on one Client Endpoint. Each BMC CM Desktop OS Management License: (a) may only be used on a licensed Client Endpoint that is licensed for use with both a Desktop/Mobile Application Management License and a Desktop/Mobile Configuration Discovery License; and (b) may not be redeployed or harvested to a different Client Endpoint.

* Extranet Application Management Restriction: An "Extranet Application Management" License may only be used on one Client Endpoint. The parties must mutually agree on the name of each Single Application and its primary function at the time of Order. Single Application is defined as a Tuner channel containing one application with one primary function, and Tuner is defined as is the client component of the Product configured by Customer for deployment on licensed Endpoints.

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

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

* Server Patch Management Restriction: A "Server Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches per CPU – Subcapacity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

per managed asset – Device Endpoint: A license is required for every Device Endpoint that is monitored, managed, or discovered by the Product(s). A "Device Endpoint" can be any virtual or physical Non-Server Client Computer (e.g. laptop, desktop computer, PDA, smart phone); any Network device (e.g.

router, switch, hub) standalone or chassis-based device/card/processor using a unique-IP address (also includes virtual network devices managed through the IP address of its physical host); and independent Storage (e.g. a disk array, a fiber switch, a tape library, a switch director). When applicable, the license must be computed at the appropriate tier level.

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

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

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

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

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

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

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

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

per node: A license is required for the maximum number of Nodes which the Product manages and/or monitors. "Node" means a network device (IP or non-IP) such as a router, switch or Computer.

per port: A license is required for the total port capacity of a managed storage networking device regardless of whether the port is in service. Storage networking devices typically include HBAs (Host Bus Adapters), Storage Switches and Directors. The total port capacity cannot be segregated or aggregated into lower or higher ranges.

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

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

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

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

per task: A license is required for the maximum number of Tasks (as defined below) loaded into the daily CONTROL-M Active Environment in a 24-hour period, excluding any tasks that are provided for by licenses under alternative Units of Measure (i.e. tier or MIPS). A loaded task refers to all Control-M Tasks that are monitored by Control-M in all environments (including but not limited to development, staging, QA, pre-production, production, and test environments). This includes all Control-M environments on Distributed Systems and/or Mainframe Installations. The number of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed – the sum total of the commands constitutes a single Task. For CONTROL-M: licensed tasks equal the maximum number of Tasks loaded into the daily CONTROL-M Active Environment. For Control- M mainframe add-on products (Control-M/Analyzer, Control-O, Control-M Links for z/OS, Control-M/Restart, Control-M/Tape, or Control-M Mainframe Extension Pack), Licensed Tasks equal that of the Licensed Capacity of or managed by Customer's mainframe Active Environment. For all other Task based Products, the maximum number of Tasks that the Product is priced against, is measured as the maximum number of CONTROL-M Tasks. "Task" means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that will execute as well as the scheduling criteria, flow control, resource usage.

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

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

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

CITY OF GLENDALE, an Arizona municipal corporation

Richard A. Bowers, Acting City Manager

ATTEST:

Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney