

## M.I.T. (Massachusetts Institute of Technology)

Remedy OnDemand *Live!*

Service Request Management, CMDB and Service Desk Project

Statement of Work (“SOW”)

EID: MITX130208A

Agreement: Appendix E: Additional Terms



## 1 Executive Summary

Massachusetts Institute of Technology (“Customer” or “MIT”) is an existing Remedy OnDemand customer leveraging the Remedy Change Management and Mobility components for their IS&T department. MIT is interested in configuring the Remedy Service Request Management and Service Desk modules to better understand how to enable their Service Catalog and align their IS&T organization to automated fulfillment processes that conform to industry best practices.

MIT provided several representative use cases (see Appendix D: MIT Supplied Use Cases) that would demonstrate MIT’s objectives of automating its IS&T Service Catalog for end user requests and the necessary fulfillment steps using the Remedy OnDemand solution. To best demonstrate these use cases, BMC is proposing the following approach:

- Upgrade the existing Development environment to the Remedy OnDemand 2013.01 image and import existing Production tickets and existing configurations
- Facilitate business process analysis workshops with the Customer IS&T teams and provide guidance on how to best implement the MIT Supplied Use Cases with Remedy OnDemand
- Configure these processes in the Remedy OnDemand Development environment in a way that demonstrates the MIT Supplied Use Cases, using MIT- specific data such as asset and configuration management as well as support groups and other supporting data

The upgraded Development environment will then be re-configured per the requirements below to leverage components of the Remedy OnDemand product such as the Service Request Management module, Service Desk module, Asset Management module and the Configuration Management Data Base (CMDB).

BMC consultants will work with MIT in a series of workshops to analyze the processes that support the MIT Supplied Use Cases. These workshops will leverage BMC’s experience with IT Service Management and ITIL Industry Best Practices to address the MIT Supplied Use Cases. BMC will leverage onsite consultants with expertise in Remedy, ITIL and ITSM as well as BMC’s *Live!* Delivery center for the Remedy OnDemand configurations.

Based on the analysis of the MIT Supplied Use Cases, BMC will design and configure the following:

- Up to five Service Requests with associated fulfillment processes
- CMDB and Asset Management configuration to support these Service Requests
- Problem Management configuration and reporting
- Software management configuration
- Report configuration

BMC has developed a Fixed Price Services proposal including travel and incidentals to configure this prototype environment. The duration of the engagement is expected to be eight weeks in length. Details on the Fixed Price Services can be found in the remainder of this document.



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## 2 Scope of the Services

BMC's scope of the services is limited to the following software.

### 2.1 Software in Scope

The following software list will be included as part of the scope per BMC recommended best practices in the current MIT Development environment.

| <b>BMC Software</b>       | <b>Version</b> |
|---------------------------|----------------|
| BMC Remedy OnDemand Suite | 2013.01        |



## 3 Services to be Performed

### 3.1 Project Management Services

#### Activities

##### BMC Responsibilities

##### Project Timelines and Management

- Create a project timeline that will be used as the project schedule
- Monitor and report progress against the project plans and timeline

##### Track and Report Project Status, Issues, Risks, and Change Requests

- Monitor project and report status issues, and timeline
- If necessary maintain a log of proposed changes to the SOW and work with Customer to address same as per the agreed change management process
- Maintain a log of project issues and work with Customer to manage same as per the agreed process
- Maintain a log of project risks and issues and work with Customer to mitigate and or resolve same as per the agreed process

##### Coordinate Scheduled Activities

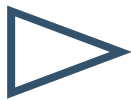
- Coordinate resources and logistics for the BMC resources for scheduled activities
- Identify, assign and manage BMC team members
- Identify and assign BMC team members and commit their time as needed

##### Coordinate and Lead Key Project Meetings

- Project Kick-off Meeting
- Project Closeout Meeting
- Project Status Meetings

##### Customer Responsibilities

- Disclose any information that in good faith can be relevant for the purposes of creating a consistent project plan or can potentially impact the Services
- Assist with the planning and facilitation of key meetings with all project stake-holders at the beginning of the project
- Identify and assign Customer team members to fill project roles and commit their time as needed and defined in the project plan
- Coordinate resources and logistics for Customer resources for scheduled activities and as needed with BMC resource scheduling and logistics
- Work with BMC to recognise and manage project risks.
- Participate in the maintenance of project issues and resolutions
- Assist with the development of the project timeline and with the monitoring and reporting of progress for the project
- Manage all non-BMC resources engaged in the project and be responsible for their engagement and satisfaction of responsibilities in accordance with the agreed schedule.
- Plan, manage and execute all process and or organisational changes relating to this project not stated herein to be the responsibility of BMC.
- Plan, manage and execute all communications and stakeholder management activities not stated herein to be the responsibility of BMC.
- Manage the realisation of benefits arising from the project unless stated herein to be the responsibility of BMC.

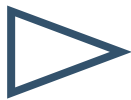


### 3.1 Project Management Services

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Deliverable Descriptions</b> | <p><b><u>Status Reports</u></b></p> <p>BMC will provide periodic status reports to the Customer Project Sponsor and Project Manager to describe ongoing activities, progress, accomplishments, and issues. The report may include the following as appropriate for each reporting period:</p> <ul style="list-style-type: none"> <li>▪ General comments</li> <li>▪ Significant issues</li> <li>▪ Risks</li> <li>▪ Recommended actions/changes</li> <li>▪ Detailed budget performance</li> <li>▪ Detailed schedule performance</li> <li>▪ Activities performed during the period</li> <li>▪ Planned activities for the next reporting period</li> </ul> |
| <b>Completion Criteria</b>      | This activity continues for the duration of this SOW and terminates when the other BMC responsibilities have been completed or upon termination of this SOW if sooner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

### 3.2 Plan and Prepare

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                       |
| <p><b><u>BMC Responsibilities</u></b></p> <p>Conduct Engagement Review (conducted before project team engagement with Customer Project Manager("PM") and Sponsor)</p> <p>Review Engagement Readiness checklist with Customer</p> <ul style="list-style-type: none"> <li>▪ Scope and Customer Success Criteria</li> <li>▪ Deliverable outline</li> <li>▪ Project team requirements</li> </ul> <p><b><u>Conduct Project Kickoff Meeting</u></b></p> <ul style="list-style-type: none"> <li>▪ Align stakeholders and confirm governance model</li> <li>▪ Confirm roles and responsibilities.</li> <li>▪ Confirm project objectives</li> <li>▪ Review high level project plan including key milestones.</li> <li>▪ Discuss Customer's business objectives and expectations (to be revisited at project close out meeting).</li> </ul> <p><b><u>Finalize estimated Project Plan</u></b></p> <ul style="list-style-type: none"> <li>▪ Publish project plan with estimated project milestones, dates and detailed tasks for the project</li> <li>▪ Create a project plan to track relevant activities</li> </ul> |                                                                                                                                                                                                                                                                                                                                       |
| <p><b><u>Customer Responsibilities</u></b></p> <ul style="list-style-type: none"> <li>▪ Assist with the planning and facilitation of a project kick-off meeting with the project stakeholders at the beginning of the project</li> <li>▪ Provide detailed diagrams and other documentation about the technical environment</li> <li>▪ Collaborate to define project milestones, dates and detailed tasks for the project plan</li> <li>▪ Review Project Plan</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                       |
| <b>Deliverable Descriptions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p><b><u>Project Schedule</u></b></p> <p>BMC will provide a work breakdown structure which will list the phases, activities and tasks the BMC team will perform and an outline of customer activities and or dependencies. The plan will be presented in the form of a schedule that will represent the timeline for the project.</p> |



### 3.2 Plan and Prepare

**Completion Criteria**

This phase is complete when the engagement review and project kickoff meeting have been held and the Deliverables have been delivered to the Customer Project Manager.

### 3.3 Remedy OnDemand *Live! Prep*

**Activities**

**Phase Specific Assumptions**

**BMC Responsibilities**

BMC will conduct a foundation data and process analysis workshop to review the MIT Supplied Use Cases and configure foundation data in support of onboarding the ITSM applications required to fulfill these use cases.

**Conduct Functional Awareness and Alignment Workshop**

BMC will review with Customer OOTB processes and functionality of the solution to help MIT align to the solution. BMC's Service Management Process Model (SMPM) will be used to review the OOTB processes. Customer's specifications become functional by populating and configuring various installed forms that create the data driven processes

**Conduct Foundation Data Workshop**

BMC will review the following data types with Customer. Customer will supply this data to BMC in BMC-supplied templates.

- Companies
- Organizations
- Sites
- People
  - Non-support people
  - Support people - roles and permissions
- Support groups

BMC will review with Customer the following data types. BMC will supply its best practice data sets for these items..

Product categorization

- Product catalog
- Operational categorization

**Foundation Data Load**

BMC will load the data from all applicable templates into the system.

**Complete the following deliverables:**

- Solution Requirements Document
- Solution Design Document

BMC will emphasize out of the box (OOTB) functionality to align processes to ITIL and ITSM best practices

The focus of the workshops will be on reviewing processes for the MIT Supplied Use Cases.

The foundation data workshop will be used to review and augment MIT foundation data to ensure fit for use for Service Request Management, Incident, Problem and Asset Management for the Development environment.

Data loads will include data from MIT's existing Remedy OnDemand solution

**Customer Responsibilities**

- Supply all new data in the BMC-supplied templates.
- Perform modifications to all data supplied by BMC to meet their business needs
- Ensure needed individuals are present and engaged in requirements gathering and design discussions
- Provide relevant documentation or data as defined in the assumptions above in a timely manner

**Deliverable Descriptions**

**Foundation Data Worksheets**

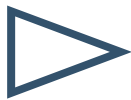


### 3.3 Remedy OnDemand *Live! Prep*

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <p>BMC documented data required to load into the Remedy OnDemand solution</p> <p><b><u>Solution Requirements Document</u></b></p> <p>A Solution Requirements Document will be provided that documents the compilation of the processes, requirements and the configuration settings for the solution. This document may contain any or all of the following items:</p> <ul style="list-style-type: none"> <li>▪ Process analysis</li> <li>▪ Technical analysis</li> <li>▪ Configuration requirements</li> <li>▪ Integration configuration requirements</li> <li>▪ Data conversion/migration requirements</li> <li>▪ Reporting configuration requirements</li> </ul> <p><b><u>Solution Design Document</u></b></p> <p>BMC will provide a detailed Solution Design Document that will summarize the discussions and decisions made concerning the customer-specific installation and configurations of the solution. This document will also define how the requirements will be addressed. This document may contain any or all of the following items:</p> <ul style="list-style-type: none"> <li>▪ Installation information</li> <li>▪ Application configuration information</li> <li>▪ Data configuration/migration information</li> <li>▪ Integration configuration information</li> <li>▪ Reporting information</li> </ul> <p><b><u>Functional Test Plan</u></b></p> <p>BMC will provide a Functional Test Plan document used to define the functional testing that will take place. This may include:</p> <ul style="list-style-type: none"> <li>▪ Definition of the tests that will occur</li> <li>▪ When the test session(s) will occur</li> <li>▪ Who will attend</li> <li>▪ Where they will take place</li> <li>▪ The testing methods</li> <li>▪ The success criteria</li> </ul> |
| <b>Completion Criteria</b> | This phase is complete when the relevant workshops have been conducted and the Deliverables have been provided to the Customer Project Manager.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

### 3.4 Remedy OnDemand *Live!* – Service Request Management

| Activities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Phase Specific Assumptions                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b><u>BMC Responsibilities</u></b></p> <p>BMC will configure the Remedy Service Request Management application in support of the MIT Supplied Use Cases.</p> <p><b><u>Application Configuration</u></b></p> <p>BMC will review and configure with Customer the following data:</p> <ul style="list-style-type: none"> <li>▪ Roles and permissions</li> <li>▪ SRM Console and application functionality</li> </ul> <p><b><u>Service Request Definition (SRD) Review and Development</u></b></p> <p>BMC will configure the SRDs specified in the MIT Supplied Use Cases as well as the fulfillment activities for each of the requests identified.</p> | <p>Configuration work is focused only on the Appendix D: MIT Supplied Use Cases</p> <p>BMC will configure the SRDs after validating the MIT Supplied Use Cases' flows and processes.</p> <p>Where deemed necessary and mutually agreed by the parties, integrations with other MIT systems will be "mocked up" for a demonstration of the end-to-end functionality of the solution.</p> |



### 3.4 Remedy OnDemand *Live!* – Service Request Management

The SRDs identified from the MIT Supplied Use Cases are listed below.

- Configure SRD for Incident Reporting (including CI lookup to asset table of serial number)
- Configure SRD for Hardware Order (including Work Order approvals, configuration of DITR/ITDMS Support Groups and workflow routing, Create tasks for order completion)
- Configure SRD for Data Recovery/Software Repair (Target Support Group Assignment Information)
- Configure SRD for Software Order (AIF for integrated Application approach to automatically check for Software)
- Configure SRD for Application Permissions Modification for SAP (Fulfillment through Service Request/Work Order)

#### Customer Responsibilities

- Ensure needed individuals are present and engaged in requirements gathering and design discussions
- Provide relevant documentation or data as defined in the assumptions above and as outlined in the project schedule.

#### **Deliverable Descriptions**

None

#### **Completion Criteria**

This phase is complete when the activities listed above are complete.

### 3.5 Remedy OnDemand *Live!* – Solution Enhancement

#### **Activities**

#### BMC Responsibilities

BMC will deliver up to 100 hours for the activities detailed in this section in conjunction with the offerings listed above.

BMC will facilitate and document workshops to ensure that MIT Supplied Use Cases are implemented appropriately for the Development environment.

BMC will provide business process analysis to support the MIT Supplied Use Cases and fulfillment activities.

#### Application Configuration

BMC will review with Customer and configure the following data:

#### People Record Modifications:

- Create People record with attributes for Administrative Desktop Renewal Program and DITR Purchase program

#### Asset Management

- Roles and Permissions
- Asset Management settings including asset rules, Software License Management rules
- Supplier information
- Contracts of type Support, Warranty, Lease or Maintenance
- Financial information including Cost Centers, Asset Pricing and Depreciation

#### Atrium CMDB

- Normalization and reconciliation rules

#### **Phase Specific Assumptions**

These hours will be used to address components required to implement the MIT Supplied Use Cases that are not covered in the packaged services offerings listed above.

To demonstrate the entire fulfillment lifecycle of the MIT Supplied Use Cases, CMDB/Asset and Service Desk functionality will need to be configured as well as modifications to People records to support additional attributes.

Limited Asset data will be loaded for the use case elements specified (e.g. laptops). This can be provided by MIT or created by BMC.

Reports will be configured using the Remedy web reporting functionality





### 3.5 Remedy OnDemand *Live!* – Solution Enhancement

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Creation of CIs to support use case requirements</li> </ul> <p><u>Reporting</u></p> <ul style="list-style-type: none"> <li>▪ Reporting for work orders submitted, completed and hardware deployment</li> <li>▪ Pipeline report, incident reports</li> </ul> <p><u>CMDB Data Load</u></p> <ul style="list-style-type: none"> <li>▪ BMC will conduct a review of how to populate the Product Catalog.</li> <li>▪ BMC will load the CI data from the BMC-supplied template into the CMDB.</li> </ul> |                                                                                                                         |
| <p><b><u>Customer Responsibilities</u></b></p> <ul style="list-style-type: none"> <li>▪ Ensure needed individuals are present and engaged in requirements gathering and design discussions</li> <li>▪ Customer will populate the CMDB template and for perform all data validation checks.</li> </ul>                                                                                                                                                                                                                                      |                                                                                                                         |
| <b>Deliverable Descriptions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | None                                                                                                                    |
| <b>Completion Criteria</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | This phase is complete when the activities are done or the solution enhancements hours are used, whichever comes first. |

### 3.6 Project Closeout Phase

|                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|
| <b>Activities</b>                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                         |
| <p><b><u>BMC Responsibilities</u></b></p> <p><u>Conduct Project Closeout Meeting including:</u></p> <ul style="list-style-type: none"> <li>▪ Review completed project closeout checklist</li> <li>▪ Review Customer’s business objectives</li> <li>▪ Review with Customer the BMC Customer Satisfaction Survey process</li> <li>▪ Provide to Customer recommended next steps, as applicable</li> <li>▪ Issue the project completion letter</li> </ul> |                                                                         |
| <p><b><u>Customer Responsibilities</u></b></p> <p>Participate in the Project Closeout Meeting</p>                                                                                                                                                                                                                                                                                                                                                     |                                                                         |
| <b>Deliverable Descriptions</b>                                                                                                                                                                                                                                                                                                                                                                                                                       | None                                                                    |
| <b>Completion Criteria</b>                                                                                                                                                                                                                                                                                                                                                                                                                            | This phase is complete when the project closeout meeting has been held. |



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## 4 Project Estimates

This SOW will begin on a mutually agreed upon date between Customer and BMC. BMC resources will be committed to performing this SOW once an estimated start date and an estimated schedule for the BMC activities has been agreed to by the Customer Project Manager. Dates are subject to change at Customer's request when agreed to by BMC.

The estimated project duration is eight weeks. A preliminary project schedule/WBS will be developed to outline the complete task list. As part of the Project Management Services defined in this SOW, a Status Report highlighting progress relative to plan, outstanding issues, and services planned for the subsequent periods will be created and reviewed periodically with the Customer project manager.

BMC has based its time and price estimates on the General and Phase Specific Assumptions contained in this SOW ("Assumptions"), including but not limited to, the assumption that the Customer Responsibilities outlined herein will be met.

Any change to or non-compliance with any of the Assumptions or Customer Responsibilities may negatively impact the estimates schedule and/or may cause an increase in the fees outlined in the Fee section. BMC will provide written notice should this occur.

BMC will provide written notice to the Customer if in BMC's reasonable opinion the non-fulfilment of the Assumptions and Customer's Responsibilities impacts or prevents BMC's performance of the Services. If Customer fails to remedy such situation within 15 working days after receiving written notice, BMC may invoke the Escalation Procedure to resolve.



## 5 Fees and Costs

|                                                                                                                                                                                         |                                      |                                                                                                                                                                                                                                             |                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>BMC Software Inc. ("BMC")</b><br>2101 Citywest Blvd<br>Houston TX, USA 77042                                                                                                         |                                      | <b>Customer Contact Person &amp; email Address:</b><br>Pat Sheppard<br>Service Delivery Manager<br>Process Development and Improvement<br>Information Services & Technology<br>Massachusetts Institute of Technology<br>Phone: 617-253-3179 |                        |
| <b>Bill To:</b><br>Customer Name: Massachusetts Institute of Technology<br>Contact Name: Pat Sheppard<br>Address: 77 Massachusetts Avenue<br>Cambridge, MA 02139<br>Phone: 617-253-3179 |                                      | <b>Work Location(s) ("Customer Work Location(s)"):</b><br>Customer Name: Massachusetts Institute of Technology<br>Contact Name: Pat Sheppard<br>Address: 77 Massachusetts Avenue<br>Cambridge, MA 02139<br>Phone: 617-253-3179              |                        |
| <b>Offer Expiration Date (the ultimate date for Customer to execute this SOW):</b>                                                                                                      | <b>Estimated Project Start Date:</b> | <b>Estimated Project End Date:</b>                                                                                                                                                                                                          | <b>Opportunity ID:</b> |
| March 31, 2013                                                                                                                                                                          | March 18, 2013                       | May 24, 2013                                                                                                                                                                                                                                | SFDC-158335            |
| <b>Customer Return Address:</b> As Above                                                                                                                                                |                                      |                                                                                                                                                                                                                                             |                        |

### 5.1 Fixed Fee Services

#### 5.1.1 Invoicing Services

All Services will be rendered on a fixed fee basis. At the completion of each milestone and Customer approval of that milestone, as specified in the Milestone Payment Schedule section below, BMC will invoice and Customer agrees to pay the milestone fee, plus applicable taxes subject to the laws where the services are rendered. The invoices shall be payable by Customer in accordance with the payment terms in the Agreement.

#### 5.1.2 Milestone Payment Schedule

The following is the Milestone Payment Schedule and associated fees established between the Customer and BMC:

| Milestones | Milestone Description                                                                 | Milestone Fee USD |
|------------|---------------------------------------------------------------------------------------|-------------------|
| 1          | Remedy OnDemand Live! Prep Service Complete                                           | <b>\$20,500</b>   |
| 2          | Remedy OnDemand Live! A la Carte - Service Request Management Service Complete        | <b>\$25,000</b>   |
| 3          | Remedy OnDemand Live! Personalization Service – Solution Enhancement Service Complete | <b>\$16,700</b>   |
|            | <b>Total Services Fixed Fee</b>                                                       | <b>\$62,200</b>   |

Upon completion of each milestone, BMC will issue a Milestone Completion Letter for approval by Customer. Should Customer not remit a signed copy of the Milestone Completion Letter and not produce reason for non-approval within five (5) business days after letter submission, BMC will assume that Customer approves the Milestone Completion Letter and BMC will invoice Customer in accordance with the Invoicing Services section described above. Should Customer reject a milestone, within five (5) business days from receiving the Milestone Completion Letter, Customer will have to a) notify in writing all reasonable reasons for rejecting such Milestone and b) execute the Escalation Procedure to solve the issue. Customer's milestone approval will not be unreasonably withheld

### 5.2 Business Days

The Services shall be performed during the normal business hours in the country where the services are delivered. A "Business Day" consists of 8 hours.



### 5.3 Travel and Living Expenses

Travel and related expenses are included in the Fixed Price Services estimate. This assumes up to three trips with a total or no more than 11 days of onsite time.

**If a Purchase Order is required please check the appropriate box below:**

Customer's internal systems require a Purchase Order to be raised in order to facilitate payment. A Purchase Order will be submitted with this SOW. Please note: A Purchase Order, made out to the BMC entity stated above and referencing the Engagement ID number found on the cover is required immediately and needs to be sufficient to cover the Services costs and expenses in the Fee table above.

A Purchase Order will be issued separately after signature of this SOW by both parties. Customer confirms that this Purchase Order is only for administrative purposes and will not preclude Customer from paying the applicable BMC invoices.

If a box is not checked, the parties agree that no Purchase Order is required for Customer to pay the applicable BMC invoices.

This SOW including appendixes and the Agreement together constitute the entire agreement between the parties, and supersede all prior agreements and understandings, whether oral or written, relating to this subject matter. The terms of the Agreement are incorporated into this SOW for all purposes. The performance of the Services will not relieve or alter either party's rights, obligations and responsibilities with respect to BMC's software under the applicable software license agreement. These services may not necessarily be all the services required for complete implementation of any BMC Software. Nothing in this SOW or the Agreement is intended to or shall have effect of vesting in or transferring to Customer rights in BMC's, its affiliates' or its suppliers' software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice or tangible form by BMC in the course of performance of the services hereunder. Each party hereto warrants and represents that this SOW, including the Agreement, has been executed by a duly authorized representative of such party.

BMC reserves the right to terminate this SOW for its convenience if the services do not begin due to Customer's delay within forty-five (45) business days from the date of Customer's signature of this SOW or if after Services commences no BMC services associated with this SOW is performed for a 90-day period due to Customer's delay. BMC will notify Customer in writing if this SOW is terminated. Customer shall pay BMC for Services rendered and expenses incurred through the date of termination. In order to re-activate this SOW, a new SOW may have to be negotiated and may be subject to an increase in fees. Any termination provisions in this SOW are in addition to the termination provisions in the Agreement.

The signatures below indicate that BMC and Customer agree to the terms and intend to be bound by this SOW. This signed SOW, including the Agreement and the receipt of a Purchase Order if indicated above, constitutes authorization for BMC to perform the Services and issue invoices. Any additional or conflicting terms of Customer's purchase order, if any, are hereby rejected by BMC. Please sign two (2) copies of this document and return them to BMC.

|            |            |
|------------|------------|
| BMC:       | CUSTOMER:  |
| Signature: | Signature: |
| Name:      | Name:      |
| Title:     | Title:     |
| Date:      | Date:      |

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## 6 Appendix A: Definitions

### **Application Configuration:**

Application configuration is the act of setting certain parameters within the BMC applications which will enable the standard capabilities of each application module.

### **Application Data:**

Application data is optional data that can be loaded into the system. Examples of this include: assignment routing; incident templates; change approval mappings, etc.

### **AR System Level Configuration:**

AR System Level Configuration is any configuration to the BMC application(s) that involves using the capabilities available within the BMC AR System-based tool-set. AR System Level Configurations include parameter settings to the "look and feel" of the user interface, workflow configuration, and field manipulation, to name a few examples.

### **Foundation Data:**

Foundation data is data required for the application to function properly and is defined as:

- Companies
- Organizations
- Sites and Location Structures
- Support Organizations and Groups
- People (includes group memberships, application permissions and functional roles)
- Operational Services Catalogue
- Software Catalogue

### **Gaps:**

A gap can be either functional, technical or process oriented. A gap is a specific business requirement that constitutes applying an application configuration or AR System Level Configuration to the out of the box solution.

### **Implementation:**

An implementation will typically consist of the following activities: requirements gathering, configuration design, installation, foundation data population, application configuration, AR System Level Configuration (if any), integration configuration (if any), testing, documentation and deployment, ultimately making the solution fully functional and usable.

### **Integration Configuration:**

Integration configuration is the installation and configuration of any BMC integration tool provided with the software to facilitate a task associated with connecting one or more systems to exchange data in either a uni- or bi-directional nature in a periodic/scheduled manner (it does not include one-time imports for the sake of configuration).

### **Internal System Testing:**

Internal system testing is a procedure to validate that all of the BMC components are working as a complete solution as designed.

### **Internal Unit Testing:**

Internal unit testing is a procedure to validate that the individual units of each application are functioning properly.

### **Out of the box ("OOTB") Implementation:**

Out of the box is BMC-provided standard application functionality that will be usable after basic installation, foundation data population and application configuration has been completed. No AR System Level Configuration or integration configuration is included.

### **Regression Testing:**

Regression testing is any type of software testing which seeks to uncover regression bugs. Regression bugs occur whenever software functionality that previously worked as desired stops working or no longer works in the same way that was previously planned. Typically regression bugs occur as an unintended consequence of program changes.



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**User Functional Validation:**

User functional validation (“UFV”) is a process to obtain confirmation from a subject matter expert, preferably the owner or client of the object under test, through trial or review, that the solution is configured as mutually agreed to by BMC and Customer.



## 7 Appendix B: Team Structure and Project Governance

### 7.1 BMC Team Structure

| BMC Roles                        |                                                                                                                                                                                                                                                                                       |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Project Manager</b>           | The BMC Project Manager is responsible for project management related activities for this project from the consulting team perspective. This role works closely with the Customer Project Manager to plan activities and logistics for the project and to manage resources and scope. |
| <b>Technical Lead</b>            | The Technical Lead provides the technical expertise for the consulting team and leads the technical activities from the consulting team perspective.                                                                                                                                  |
| <b>Technical Consultant</b>      | The Technical Consultant provides technical services.                                                                                                                                                                                                                                 |
| <b>Solution Services Manager</b> | The Solution Services Manager provides project sponsorship and is the Customer relationship owner.                                                                                                                                                                                    |

### 7.2 Customer Team Structure

| Customer Roles and Role Responsibilities |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Customer Project Sponsor</b>          | <p>Prior to the start of this SOW, Customer will designate a person, called the Project Sponsor. The Project Sponsor must have the authority to act for Customer and to authorize changes to the SOW. The Project Sponsor's responsibilities include:</p> <ul style="list-style-type: none"> <li>▪ With the BMC Project Manager, administer the Change Management Request and authorize Contract Change Orders.</li> <li>▪ Obtain and provide information, data, and decisions to support BMC's requests, Note: Delays may negatively impact the estimated schedule and final charges for this SOW.</li> <li>▪ Co-host the Kickoff Meeting, Engagement Review and the Project Closeout Meeting with the BMC Project Manager.</li> </ul>                            |
| <b>Customer Project Manager</b>          | <p>Prior to the start of the SOW, Customer will also assign a Project Manager for the duration of this SOW. The Customer Project Manager will work with the BMC Project Manager to help plan the work effort and keep it on schedule. The Project Manager's responsibilities include:</p> <ul style="list-style-type: none"> <li>▪ Coordinate activities of assigned Customer personnel to ensure adequate participation in all SOW activities.</li> <li>▪ Help resolve issues and escalate them within the Customer organization, as necessary.</li> <li>▪ Obtain and provide information, data, decisions, and review Deliverables to support BMC requests. Note: delays may negatively impact the estimated schedule and final charges for this SOW.</li> </ul> |



| Customer Roles and Role Responsibilities |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Customer Team Members</b>             | <p>Customer will assign their personnel to the team as defined by the estimated schedule to execute the activities in this SOW and to fulfill the responsibilities outlined in the SERVICES TO BE PERFORMED section. Some of the staffing required will include:</p> <p><b>Technical Lead</b> – This resource(s) will be responsible for providing technical knowledge on BMC software for Customer after this SOW is complete, making recommendations on future implementation methodology, and assisting in the completion of implementation tasks as needed.</p> <p><b>Content Experts</b> – These resources know the most about the software being managed, whether it is an operating system, database or application. In many cases they were involved with the development or administration of the software. The content experts supporting the environment software can usually be found in one of the following groups:</p> <ul style="list-style-type: none"> <li>▪ Operating System – system administrator group</li> <li>▪ Database – DBA group</li> <li>▪ Application – specialist / developer group</li> </ul> <p><b>Infrastructure Facilitators</b> – This group of resources includes any technical and security personnel that will be required to provide access to login accounts and file systems on the targeted systems/applications in the production environment. These resources are usually not directly involved with this SOW, but are vital for planning and executing the rollout of the software to the production environment. This group typically includes:</p> <ul style="list-style-type: none"> <li>▪ System Administrators</li> <li>▪ Network Administrators</li> <li>▪ Security Administrators</li> <li>▪ Change Managers</li> <li>▪ Facility Managers</li> </ul> |

### 7.3 Document Review Process

BMC documents are, unless stated otherwise herein, subject to a one (1) cycle review. The basic review steps are:

- a) Each document will be presented to Customer as version 1.0;
- b) Customer shall have a two (2) business days (“Document Validation Period”) to review version 1.0 and formulate feedback. Customer shall provide feedback to BMC in writing: email is acceptable.
- c) Updates are made to the document by BMC as appropriate and a final document is delivered to Customer as version 2.0.

If the Document Validation Period has been exhausted without feedback from Customer, the document shall be considered complete. If Customer requires additional time to complete its reviews, and assuming BMC agrees to same, such agreement not being withheld unreasonably, an extension period may be granted but such extension will be subject to agreement in advance and may, depending on the impact of such extension, be subject to Change Control and so require a Contract Change Order. Extensions to review periods may impact the estimated schedule and fees.

### 7.4 Change Management

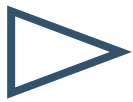
Any changes to project scope or to any of the terms and conditions of this SOW shall be subject to Change Management as described herein.

When the need for a change is identified BMC shall complete a Change Request Form. This form shall describe BMC’s understanding of the change, the impact the change shall have on the project: the estimated resource time required to implement the change; and the estimated additional fees due to BMC (if any) should the change be implemented. BMC shall submit the Change Request Form to Customer for review.

Due to the complexity of some changes, BMC may charge Customer at the published day rates for time spent scoping and assessing the impact of the proposed changes. The project shall not normally be halted whilst changes are considered. Where it is necessary to halt the project whilst a change is considered, BMC may charge Customer for any down-time at the published day rate(s).

Whether such charges shall be applicable shall be agreed by the Project or Program Managers prior to such scoping and assessment work commencing through a separate amendment named Contract Change Order or “CCO”, as described in the Change Control Process.





## 7.5 Change Control Process:

Any changes to this SOW must be mutually agreed upon in writing by both Customer and BMC. Proposed changes shall be submitted in writing by the requesting party. Upon agreement with respect to such change, the scope, estimated project dates and fees may be amended to reflect these changes through a CCO.

## 7.6 Escalation Procedure

Each party will appoint a primary contact prior to the commencement of this SOW. In the event of an issue between the parties; such contacts must be notified in writing immediately with the intent that the parties will resolve the issue in good faith. Should the parties be unable to resolve the issue within a reasonable timeframe (which in any event will be no more than 10 working days), either party may (1) suspend the project until the issue is resolved or (2) terminate the SOW. In the event of termination, **Customer agrees to pay for the Services performed and expenses incurred, if any, up to the termination date.**

## 7.7 General Assumptions

Customer agrees that the services to be performed and associated costs are based upon the following assumptions:

- 1) The Services performed under this SOW will be executed during business hours mutually agreed to by BMC and the Customer Project Manager.
- 2) The Customer is responsible for the planning, management and execution of the overall programme to which the services herein are contributing.
- 3) The BMC team will be provided physical access to Customer facilities consistent with the estimated schedule. Consultants may require access to Customer facilities and systems outside normal business hours.
- 4) Provide adequate office facilities and work environment, including items such as desk space and furniture, office supplies, printers, Internet access, telephones, whiteboard and/or flipchart.
- 5) If a software defect is encountered during the course of the SOW that does not impair the defined scope of work, the Customer and not the BMC project team will work with BMC Customer Support to resolve the issue.
- 6) All aspects of this SOW are detailed in the Services to be Performed section. No aspect of this scope of work is implied.
- 7) Customer understands that resources will need to be dedicated to the project to learn and to provide important input. Customer resources will need to be dedicated to attending workshops and to collecting the required data in a defined timeframe.
- 8) Customer will take responsibility for the content of any data file, control access to the files, and maintain their back-up and recovery.
- 9) Customer will notify BMC of any laws, regulations, and/or statutes specific to Customer's industry that BMC will be required to know to fulfil its obligations under this SOW.
- 10) All services will be provided in a single language mutually agreed to by the parties.
- 11) Customer is responsible for planning, managing and executing all activities relating to process, people and organisational change activities relating to this SOW.
- 12) Customer is responsible for managing its internal and external customers, including but not limited to the development, planning, management and execution of communications plans.



## 8 Appendix D: MIT Supplied Use Cases

The following are the use cases supplied by MIT for use in developing the proposal provided by BMC.

The prototype will clearly illustrate the end state of an IT Service Management using IS&T specific use cases, assets and workflow. There will be no actual integrations (those will be part of any implementation) but the prototype will be able to demonstrate how integrations would behave and what they might look like.

### Use Cases

#### Request and Asset Management

Marcus, an MIT student who has just graduated, takes a position on campus in a research lab (change of role). The lab has particular attributes:

- Lab positions are not covered by the Administrative Desktop Renewal Program (IS&T service offering)
- The lab subscribes to DITR central hardware purchase program (IS&T service offering)

Marcus inherits the old laptop that his predecessor at the lab had been using. The laptop crashes...

- Marcus logs into MyHelp to open incident asking for help
- System requests input of system serial # to lookup age of machine (CMDB)
- Both Marcus and the Help Desk can see the ticket
  - Ticket status
  - Marcus's authorizations (authorizations would be delivered to Remedy in some form)
  - Any history associated with that laptop
  - The machine is not covered under the IS&T Admin Desktop Renewal Program
  - The age of the machine is greater than 3 years
- Help Desk can see other open tickets with that lab
- Help Desk responds and schedules walkins appointment (IS&T service)
- Marcus visits walkins with his laptop and leaves it with the Hardware Repair Center (IS&T service offering)
  - Bill (hardware technician) looks up the laptop and can determine the following:
    - The machine is not covered under the IS&T Admin Desktop Renewal Program
    - The age of the machine
  - Diagnostics reveal that Marcus will need a new laptop
  - Data recovery from the old lap top will need to be initiated
- Bill in Hardware Repair opens a request on Marcus' behalf
  - Bill logs into the IS&T Service Catalog
    - Bill initiates a request for a new laptop for Marcus
    - The system recognizes that Marcus request falls under the DITR central hardware purchase program and presents choices:
      - Institute standard laptop billed to specific cost object
        - This machine would be purchased, imaged and delivered by (DITR/ITDMS)
      - Marcus can spec out what he wants and submit to his lab administrator for approval
      - The system has determined that Marcus has spending authority and he is punched out to ECAT, to manage the purchase himself

Bill and Marcus chose to use the service offered by IT Deployment and Maintenance services (DITR/ITDMS).

- The request to routed to ITDMS to fill out the form and initiate deployment workflow:
  - Financial approval (cost object) is required
  - Paperless deployment - ability to link to mobile application (currently FileMaker Go)
  - Scan of equipment which automatically updates the database and add customer's signature



- Automated billing, including the ability to manage payments from several programs/sources and utilize cost objects
- Check of the balance of credits and debits (inventory is credited when equipment is deployed and billed)
- Credit to the same GL that has been debited in the different cost center
- Marking deployments once billed to avoid double billing
- Reporting of recent deployments, etc.

In addition, Bill includes a request on behalf of Marcus for data recovery from his old laptop with Software Repair (IS&T service offering).

- The ticket is routed to Jake in Software Repair
- Jake starts process for data recovery/data migration from the old machine
- A notification is set to ITDMS
  - ITDMS delivers new imaged laptop to Software Repair
    - Data migration is performed
    - Laptop is returned to ITDMS
  - ITDMS delivers laptop to Marcus

Marcus has also included additional software products to be installed on his new machine in the original request:

- Remedy recognizes whether Marcus is a student or staff (his affiliation would be delivered to Remedy in some form)
- Presents Marcus with choices based on his affiliation
- Marcus chooses the following products:
  - ChemBioDraw
  - Tecplot 360
    - These products are automatically approved for download via Marcus' permissions
- System sends Marcus reminders to install once laptop is delivered

### Request and Change Management

Mary, a manager in the Registrar's Office, needs to make a series of changes to her team members' roles and permissions in SAP:

- New employee Tim
  - Access to both SAP Finance and SAP Human Resources & Payroll (IS&T service offerings)
  - Spend and commit permission on 4 cost objects
  - Ability to run reports on those 4 cost objects
- Current employee Anne
  - Add spend and commit permission for 2 additional cost objects
  - View only access to MITSIS database (IS&T software component)
  - View and reporting access to MIT ID database (IS&T service offering)
- Retired employee Hannah
  - Eliminate all roles and permissions in SAP Finance and SAP Human Resources & Payroll (IS&T service offerings)

Mary logs into the IS&T Service Catalog

- Mary initiates a request for changes to individual roles and permission
- The system recognizes that Mary does not have permissions to authorize these changes herself (authorizations/hierarchy would be delivered to Remedy in some form)
  - Authorization of the request goes to the department approver, Oliver
- Oliver, Mary and the Central Authorizer (IS&T service offering) can see the ticket
  - Ticket status
  - Any history associated with the individual employees
- The Central Authorizer can see other open requests with the Registrar's Office for changes to roles and permissions
- Central Authorizer schedules and approves change request



- Performs needed tasks in the Roles database (IS&T service offering) to make changes to roles and permissions as cited above

#### Change, Incident and Problem Management

Chris, Service Coordinator for Exchange (IS&T service offering), is interested in knowing more about recent incidents with the service:

- He runs a pre-built report from Remedy
  - He notices that in the last couple of weeks there has been a slight increase in incidents (on average) for Exchange
  - He takes a closer look at the detail in each ticket and discovers a trend:
    - Users receive an error message when they try and login to the Outlook Web Access (OWA) web interface to access their email and calendar
    - Help Desk (HD) and DITR has been receiving reports where emptying the browser cache resolves this particular error
  - Chris reviews the incidents with his team and realizes there is a problem with a specific application they built for OWA
    - Chris creates a problem ticket in Remedy with the correct workaround
      - All support groups have access to the workaround and can communicate this to users
    - His team works on resolving the core problem
      - The team is able to trace it back to a change they put in place over the weekend
      - The team comes up with a revised set of changes to correct the problem
    - Chris creates the necessary change requests
      - The relevant tasks are automatically distributed (with necessary approvals) across IS&T
    - The changes appear in Pipeline (change report) without any other intervention
    - After the changes are put into production, Chris' entire team can monitor incidents to verify the fix by running a report



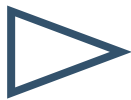
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## 9 Appendix E: Additional Terms

**ADDITIONAL TERMS TO:**  
**SERVICES ORDER FORM -- OR-- STATEMENT OF WORK**



BMC Software, Inc. ("BMC") agrees to render to customer ("Customer") implementation, training or other services ("Services") as described in the Services Order Form or the Statement of Work (each a "SOW") to which these Additional Terms are attached (collectively, this "Agreement"). 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, payment and reimbursement of expense terms if further specified in the SOW. The performance of the Services will not relieve or alter either party's rights, obligations and responsibilities with respect to BMC software products 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.

2. **TERM AND TERMINATION.** This Agreement shall continue in effect until either (i) completion of the SOW, or (ii) termination by a party, for its convenience, upon 30 days' prior written notice. Upon termination, Customer shall promptly pay BMC for Services rendered, and expenses incurred, through the date of termination.

3. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.**

3.1 **License.** Subject to the terms of this 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 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 this Agreement, Customer may not reverse engineer or decompile any Deliverable for the purpose of developing comparable functionality; may not sell, rent, lease, sublicense, timeshare, outsource or otherwise use the Deliverables; and may not export any Deliverable without the appropriate export license exceptions.

3.2 **Mutual Confidentiality.** Each party agrees that at all times during the term of this Agreement, and thereafter, each party will hold in confidence, and will not, other than for purposes of this Agreement, use or disclose to any third party any Confidential Information of the other party. The term "Confidential Information" shall mean all non-public information that each party designates as being confidential, which under the circumstances of disclosure ought to be treated as confidential, and in the case of BMC the Deliverables. "Confidential Information" includes, without limitation, the terms of this Agreement, intellectual property, marketing or promotion of any product or service of either party, business policies or practices of either party, customers or suppliers of either party, or information received from others that either party is obligated to treat as confidential. "Confidential Information" does not include information that was (a) previously known without restriction, (b) received from a third party without restriction, (c) independently developed without use of the Confidential Information, or (d) information that becomes publicly available through no fault of the receiving party.

3.3 **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 this Agreement ("**Customer Property**") remains the property of Customer.

4. **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. THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, OR COSTS OF RECREATING LOST DATA), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR SUCH LOSS OR DAMAGE. IN NO EVENT WILL BMC'S LIABILITY FOR DIRECT DAMAGES EXCEED AMOUNTS PAYABLE BY CUSTOMER UNDER THE SOW. NONE OF THE ABOVE LIMITATIONS AFFECT THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTIONS 3.1 and 3.2.

6. **INFRINGEMENT INDEMNITY.**

6.1 If a third party asserts a claim against Customer asserting that Customer's use of a Deliverable in accordance with this Agreement violates that third-party's patent, trade secret or copyright ("**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 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. BMC's obligations above will not apply if the Customer Infringement Claim is based on (i) the use of the Deliverable in combination with products not supplied or approved by BMC in writing or in the Deliverable's user manuals, (ii) modification of the Deliverable other than by BMC, or (iii) the failure of Customer to use any updates to such Deliverable within a reasonable time after such updates are made available to Customer. 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.



**6.2** If a third party asserts a claim against BMC asserting that BMC's use of Customer Property in accordance with this Agreement violates that third-party's patent, trade secret or copyright ("**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 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.

**6.3** This section contains each party's exclusive remedy and sole liability for Infringement Claims.

**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 gross negligence or willful misconduct of the indemnifying party's employees or contractors arising out of this 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.

**8. NON-SOLICITATION.** During the term of this 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 this Agreement.

**9. INSURANCE.** BMC will provide and maintain the following insurance, but only for losses arising out of BMC's provision of Services under this 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 one million dollars (\$1,000,000) for each occurrence;
- (iii) Commercial General Liability insurance with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for Products Liability and Completed Operations;
- (iv) Automobile Liability insurance, including coverage for Hired and Non-owned vehicles of one million dollars (\$1,000,000) for combined single limit for bodily injury and/or property damage; and
- (v) Professional Liability insurance covering Errors and Omissions in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services performed under this Agreement.

**10. MISCELLANEOUS TERMS.** All of the services performed by BMC will be performed as an independent contractor. If any provision of this 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 laws of the State of Texas. Except for assignments to parent entities or majority owned subsidiaries, neither party may assign or transfer this Agreement, in whole or in part, to any third party without first obtaining the prior written consent of the other party. This 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.

**11. 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)."

**12. 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



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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