



Last Updated: November 9, 2016

BMC ACADEMY AND BMC EDUCATION TERMS AND CONDITIONS

BY CLICKING “I AGREE” THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT ACKNOWLEDGES TO HAVE READ AND UNDERSTAND THE BMC ACADEMY AND BMC EDUCATION SERVICES TERMS AND CONDITIONS (THE “AGREEMENT”) AND AGREES TO BE BOUND BY THE FOLLOWING TERMS. IF YOU ARE AN INDIVIDUAL REGISTERING FOR AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE ENTITY ENTERING INTO THIS AGREEMENT AND HAVE THE REQUISITE AUTHORITY TO ADOPT THE ABOVE AGREEMENT ON ITS BEHALF. DO NOT USE THE BMC ACADEMY APPLICATION IF: (I) YOU DO NOT AGREE WITH ANY OF THESE TERMS, OR (II) YOU DO NOT UNDERSTAND ANY OF THESE TERMS, OR (III) YOU CONSIDER YOURSELF AS A “CONSUMER” (NOT ACTING FOR PURPOSES RELATING TO YOUR TRADE, BUSINESS OR PROFESSION). IF YOU REJECT THIS AGREEMENT, YOU WILL NOT BE PERMITTED TO ACQUIRE BMC EDUCATION SERVICES FROM BMC THROUGH BMC ACADEMY.

These BMC Academy and BMC Education Services Terms and Conditions (the “**Agreement**”) are between the entity or individual entering into this Agreement (“**Customer**”) and the BMC Entity for the applicable Territory as described in Section 24 below (“**BMC**”). This Agreement governs Customer’s (i) purchase and redemption of Learning Pass Credits, and (ii) purchase and delivery of Education Services. Notwithstanding anything to the contrary in this Agreement, if Customer has purchased Learning Pass Credits or Education Services pursuant to a SOW under the terms of a Master Services Agreement (“**MSA**”) or the Additional Terms to: Services Order Form or Statement of Work (“**Additional Terms**”) then in the case of a conflict with this Agreement, the applicable MSA or Additional Terms shall prevail. Capitalized terms are defined in the Agreement or in Section 23 below.

Territory: The country where Customer acquires the Education Services.

1. **SCOPE.**

1.1. SOWs. LPCs are obtained solely by execution of a SOW. Each SOW is deemed to be a discrete contract, separate from each other SOW, unless expressly stated otherwise therein, and in the event of a direct conflict between any SOW and the terms of this Agreement, the terms of the SOW will control only if the SOW is executed by an authorized representative of each party. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any SOWs. In the event a SOW is proposed by BMC and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes a SOW by submitting a purchase order, then regardless of whether BMC acknowledges, accepts or fully or partially performs under such purchase order, **BMC OBJECTS** to any additional or different terms in the purchase order, other than those that establish price in accordance with this Agreement. For the self-purchase of Training Units, please contact BMC Education at education@bmc.com to request assistance with completing such a transaction, which will include the execution of a SOW.

1.2. Learning Pass Credits. Customer may use the LPCs to purchase Education Services and/or Education Materials offered by BMC or an authorized BMC education provider under the terms of this Agreement and a SOW (if applicable); provided, however, LPCs may not be redeemed for Education Subscriptions or an ESA tool license. To redeem LPCs for the purchase of Education Services, Customer, based on the particular Education Service being purchased, shall either: (a) complete and execute a SOW provided by BMC; or (b) utilize Customer’s BMC issued Keycode via BMC Academy. To redeem LPCs for the purchase of Education Materials, Customer shall complete and execute the Education Materials SOW provided by BMC. BMC reserves the right to modify the list or pricing of available Education Services or the terms and conditions of this Agreement at any time.

2. PRODUCT RESTRICTIONS. Any software products and related documentation and/or other confidential or proprietary information delivered to Customer in the course of providing Educational Services (“**Products**”) will be deemed included in the product licensed under, and shall be subject to all the terms and conditions of, the software license agreement (“**SLA**”) to which it relates, including without limitation the provisions concerning title and proprietary information. Neither the execution nor fulfillment of the applicable SOW will relieve or alter BMC’s nor Customer’s obligations and responsibilities with respect to the affected products under the license terms set forth in the SLA.

3. PAYMENTS. Customer will pay each LPC fee upon receipt of invoice. Customer will pay, or reimburse, BMC or when required by law the appropriate governmental agency for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on BMC’s net income) imposed in connection with the LPC fees which are exclusive of these taxes. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.



4. LEARNING PASS CREDIT CONSUMPTION. BMC provides certain Education Services throughout the year. Customer may contact BMC for a schedule of Education Services, and LPCs may be redeemed for Education Services as published on the then current available schedule. BMC is not responsible for any changes to the schedule that may otherwise delay consumption of LPCs. LPCs may not be held for redemption towards Education Services released after the LPC Expiration Date. For any Education Services, LPC usage is determined by dividing the undiscounted price per LPC into the list price of such Education Services. When redeeming LPCs, Customer will be required to either (i) execute a separate SOW for all Education Services, or (ii) utilize its assigned Keycode for use with BMC Academy. The number of LPCs consumed will be based on the LPC fee as determined by the applicable SOW or on BMC Academy (as applicable). When using LPCs, no other Education Services discounts will apply. LPCs are to be used in the country of purchase. Use outside the country of purchase must be pre-approved by BMC. Should LPCs be approved for use outside the country of purchase, all pricing will be based on the country where the Education Services are purchased or attended. BMC will perform currency conversion where applicable based on the then current list price of the Education Services at time of either registration, order or invoicing depending upon the Education Service.

5. LEARNING PASS CREDIT AUTHORIZATION. (a) Authorization for Public Classes: BMC will issue a Keycode to the Customer Contact. Customer will use this Keycode to redeem LPCs when registering Customer's Users in a class via BMC Academy. Customer is responsible for authorizing individuals to use the Keycode and for ensuring proper usage of the Keycode. BMC is not responsible for unauthorized use of the Keycode. (b) Authorization for any non-Public Classes Education Services: Customer shall accept in writing via an SOW the redemption of LPCs for non-Public Classes Education Services. If the non-Public Classes Education Services are provided via BMC Academy, Customer shall redeem said LPCs by utilizing Customer's BMC issued Keycode. Customer's LPC balance will be adjusted accordingly after each LPC redemption authorization.

6. LPC EXPIRATION. Each SOW will state a "LPC Expiration Date", which is the date all LPCs purchased under the applicable SOW must be consumed. Any portion of the LPCs not consumed prior to such date will be forfeited by Customer with no refund. Any Education Service associated with these LPCs must be utilized prior to the LPC Expiration Date. Utilization of LPCs requires that the Education Service associated with said utilization must have begun on or been completed before the LPC Expiration Date.

7. EDUCATION SERVICES. When Customer either redeems LPCs for Education Services or purchases Education Services directly through the execution of a SOW or via BMC Academy, this Agreement, and specifically this Section 7, shall govern the applicable Education Services. In the event of any conflict between the terms of the SOW and this Agreement, this Agreement shall prevail, except for matters of service fees, payment and reimbursement of expense terms if further specified in the SOW.

7.1. Education Services Fees. The fees payable to BMC for Education Services shall either (i) be in the form of redeemable LPCs; and/or (ii) be paid by Customer no more than thirty (30) days after receipt of invoice for Education Services. Customer will pay, or reimburse, BMC or when required by law the appropriate governmental agency for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on BMC's net income) imposed in connection with the Education Services fees which are exclusive of these taxes. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.

7.2. Attendance. Credits used for class attendance are based on the published duration of the class, not the days an individual student attends such class. For example, if a student attends only three (3) days of a published five (5) day class, they will be charged for all five (5) days.

7.3. Cancellation Policy. BMC reserves the right to cancel any Education Services class up to **10 business days** prior to the start of the Education Services class. If this occurs, Customer will receive (i) the LPCs redeemed for the canceled Education Services class returned to Customer's account, and/or (ii) a full refund of any additional amounts paid to BMC for the specific Education Services class canceled, excluding any amounts paid for LPCs. To cancel or reschedule an Education Services class, BMC requires notice **at least 10 business days** prior to the Education Services class start date. If a cancellation or reschedule request is made less than 10 business days prior to the BMC Education Services class start date, Customer will be subject to the full class fee. If Customer fails to attend an Education Services class it has registered for, Customer will be subject to the full class fee. If Customer registers for an Education Services class within the 10 business day period before the start of said Education Services class this cancellation policy will not apply and Customer will be subject to the full class fee regardless of attendance. Notwithstanding the foregoing, Customer shall not be entitled to a refund for cancellation of an ASP or WBT course.



7.4. Education Services Restrictions. Except for the specific rights granted to Customer under the terms of this Agreement, Customer may not (i) modify, copy or create derivative works based on the Education Services or BMC Academy; (ii) create Internet “links” to or reproduce any content forming part of the Education Services; (iii) disassemble, reverse engineer, or decompile BMC Academy, the Education Services or parts thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Education Services or BMC Academy; (iv) distribute, rent, lease, sublicense or provide the Education Services or BMC Academy to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (v) interfere with or disrupt the integrity or performance of the Education Services or BMC Academy (e.g., load, performance, or stress testing); (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, or send or store material in violation of any third party’s privacy rights via the Education Services or BMC Academy; (vii) send or store viruses or malicious code via the Education Services or BMC Academy; (viii) attempt to gain unauthorized access to the Education Services or BMC Academy or its related software, systems, platforms or networks including any form of security and/or penetration testing; or (ix) use any components provided with the Education Services separately from the Education Services.

7.5. Customer Responsibilities. (a) Customer will be responsible for use of the Education Services and BMC Academy by its Users in compliance with this Agreement and the applicable SOW. Customer will use reasonable efforts to prevent unauthorized access to, or use of, the Education Services and BMC Academy, and notify BMC promptly of any such unauthorized access or use. (b) Customer agrees to provide BMC with correct, truthful and complete contact information for all Users, including the legal name of each User, company name, street address, email address, and telephone number. BMC may share information including Customer name and email address and Users’ names and email addresses with WebEx (BMC’s web conferencing provider) and BMC’s underlying service provider of BMC Academy in order to facilitate virtual training. If Customer or its Users provide false contact information, or otherwise breaches any part of this Agreement or the applicable SOW, BMC may suspend or terminate Customer and its Users’ access to the Education Services and/or BMC Academy immediately and without prior written notice. (c) Customer may not transfer usage rights to BMC Academy, including Customer’s User ID and Password, to another entity or individual. Customer will maintain the confidentiality of all authentications and passwords for BMC Academy and immediately notify BMC if it becomes aware that an unauthorized party has gained access to BMC Academy.

7.6. Proprietary Rights. Subject to the terms of this Agreement and the applicable SOW, 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 any Education Services provided under said applicable SOW (“**Deliverables**”) solely for its own internal use. Except as expressly permitted by applicable law, this Agreement and the applicable SOW, Customer (a) may not reverse engineer or decompile any Deliverable for the purpose of developing comparable functionality; and (b) may not sell, rent, lease, sublicense, timeshare, outsource or otherwise use the Deliverables; and (c) may not export any Deliverable without the appropriate export license exceptions.

7.7. 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.

7.8. Education Services Limited Warranty. BMC warrants that it will perform the Education Services in conformance with generally accepted practices within the software services industry and in accordance with any associated SOW. Customer must notify BMC of any breach of this warranty no later than ninety (90) days after completion of the Education Services under the applicable 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 Education 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 Education Services under the applicable 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.**

7.9. U.S. Federal Acquisitions. This Section applies only to acquisitions of the commercial Education Services, Products, Deliverables and/or documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Education Services, Products, Deliverables and/or documentation are delivered to the United States Government, the United States Government hereby agrees that the Education Services, Products, Deliverables and/or documentation qualify as “commercial items” within the meaning of the Federal acquisition



regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government's use and disclosure of the Education Services, Products, Deliverables and/or documentation, and shall supersede any conflicting contractual terms and conditions. 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)."

7.10. Export Controls. Customer represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Education Services is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Education Services under such regulations; d) will not acquire the Education Services for a person who is restricted under such regulations; e) will not use the Education Services in contradiction to such regulations; and f) will not use the Education Services for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Education Services exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that the Education Services are intended for civil purposes only. Therefore, Customer agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in Customer forfeiting all rights to the Education Services.

8. Third Party Content. Customer may be exposed to hyperlinks to Web sites controlled by parties other than BMC. BMC is not responsible for and does not endorse or accept any responsibility over the content or use of these Web sites. Customer should refer to the policies posted by other Web sites regarding privacy and other topics before using them.

9. Customer Content. Customer may upload content to areas of BMC Academy which are accessible to other subscribers (i.e. chat rooms, etc.) ("**Public Areas**"). If Customer uploads such content to a Public Area, in doing so Customer grants BMC a perpetual, royalty-free, irrevocable, nonexclusive license to use, copy, modify, publish, transmit and distribute said content, in whole or in part, in any form, media or technology. If Customer is not the owner of any such content uploaded, then Customer warrants that the owner expressly grants BMC all of those same rights. BMC retains the right (that it may or may not exercise, in its sole discretion) to (i) remove any Customer content or other information or material from BMC Academy, regardless of whether the content is in a Public Area or non-Public Areas of BMC Academy and (ii) make changes to or discontinue any and/or all parts of BMC Academy.

10. Termination. Upon thirty (30) days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on (i) SOWs executed by the parties prior to this Agreement's effective date of termination and such SOWs will remain in full force and effect under the terms of this Agreement, or (ii) purchases Customer has made via BMC Academy prior to this Agreement's effective date of termination and such purchases will remain in full force and effect under the terms of this Agreement. BMC may terminate any or all SOWs, LPCs, Education Services, and/or this Agreement in whole or in part (i) if Customer fails to pay any applicable fees due within thirty (30) days after receipt of written notice from BMC of non-payment; (ii) without notice or cure period, if Customer violates the intellectual property rights of BMC, its affiliates or licensors; or (iii) if Customer commits any other material breach of this Agreement and fails to correct the breach within thirty (30) days after BMC notifies Customer in writing of the breach.

11. 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 or a SOW, 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 and any SOW, 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.

12. Personal Data. BMC may collect and process Personal Data related to Customer in order to provide the Education Services to Customer under this Agreement. BMC undertakes to comply with its Controller and Processor



Binding Corporate Rules Policy found at <http://media.cms.bmc.com/documents/External+Privacy+Binding+Coporate+Rules+Policy+-+Aug+04.pdf> (the “BCR”) with respect to compliance with all relevant data protection legislation and/or regulations where the Customer Personal Data is to be processed. The BCR policy is incorporated into a BMC corporate wide policy, requiring all BMC entities, employees and third party providers to comply with and respect the BCR policy which is governing the collection, use, access, storage and transfer of Personal Data among BMC entities and third-party sub-processors. BMC shall in particular: (a) allow Customer to access, modify, correct or erase Customer Personal Data when necessary; (b) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Personal Data and to prevent its unauthorized access, use, or disclosure; and (c) refrain from using Customer Personal Data for any other purpose than performing its obligations under this Agreement. Further information with regard to BMC’s BCR is published at http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr_cooperation/index_en.htm.

13. Limitation of 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 OF SUCH LOSS OR DAMAGE. IN NO EVENT WILL BMC’S LIABILITY FOR DIRECT DAMAGES EXCEED AMOUNTS PAYABLE BY CUSTOMER UNDER THE APPLICABLE SOW GIVING RISE TO SUCH DAMAGES. NONE OF THE ABOVE LIMITATIONS AFFECT THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTION 7.4, SECTION 7.5, SECTION 7.6, and Section 7.7.

14. Non-Solicitation. During the term of this Agreement, and for a period of six (6) months thereafter, Customer will not solicit for employment any employees of BMC or its affiliates who, within six (6) months prior to such solicitation, directly performed under this Agreement.

15. Headings. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.

16. Non-Exclusivity. Nothing contained in this Agreement shall preclude BMC from offering, developing or delivering Education Services to any other entity who registers directly with BMC.

17. Governing Law and Dispute Resolution. Either party shall provide notice of any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof (“Controversy”). The parties shall seek to resolve the Controversy through good faith negotiations. Only in the event that the Controversy is not resolved within thirty (30) days of the sending of written notice of Controversy, the Controversy may be submitted to litigation or binding arbitration, based on the place of incorporation of the parties, as follows:

(i) If both parties to this Agreement are entities incorporated under the law of any state in the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both sides hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens.

(ii) If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the arbitration shall be held in Amsterdam, Netherlands under the then-applicable rules of the International Chamber of Commerce and the substantive laws of the Netherlands will govern.

(iii) If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the arbitration shall be held in Singapore under the then-applicable rules of the Singapore International Arbitration Centre and the substantive laws of Singapore will govern.

(iv) In all other instances, the arbitration shall be held in New York City, New York, under the then-applicable international rules of the American Arbitration Association and the substantive laws of the State of Texas will govern.

For all arbitrations conducted hereunder: (a) the arbitration shall be conducted in English; (b) the relevant arbitral institution shall determine the number of arbitrators, but any Controversy in which the amount in dispute is greater than \$10 million USD shall be decided by three arbitrators, with each party having the right to select one arbitrator; (c) the costs of such arbitration shall be borne equally, pending the arbitrator’s award; (d) the arbitration award rendered shall be final and binding on the parties, shall not be subject to appeal to any court and shall be enforceable in any court having jurisdiction over the Parties; (e) the arbitration proceedings, award and pleadings shall all be confidential, unless disclosure of particular



information is required for purposes of enforcing/challenging the award or to meet local securities law requirements; and (f) the party prevailing in arbitration shall be entitled to recover its reasonable attorneys' fees and the necessary costs incurred in connection with the arbitration.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute.

18. Compliance with Laws. Each party agrees to comply with all applicable laws and regulations in its performance under this Agreement.

19. No Waiver. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

20. Partial Invalidity. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

21. Updates to Agreement. BMC may modify this Agreement from time to time by posting a revised version at <http://media.cms.bmc.com/documents/BMC+Academy+and+Education+Services+Terms+and+Conditions.pdf>. The modified terms will become effective upon posting. By Customer's logging into BMC Academy and accepting the revised Agreement, Customer agrees to be bound by the current terms then in effect. It is Customer's responsibility to check the URL stated above regularly for modifications to this Agreement. BMC last modified this Agreement on the date listed at the beginning of the document.

22. Miscellaneous Terms. All of the BMC Education Services performed by BMC will be performed as an independent contractor. Customer may not assign or transfer this Agreement, LPCs or the Education Services, except in the event of a merger with or into, or a transfer of all or substantially all of Customer's assets to, a third party who assumes all of Customer's liabilities and obligations under this Agreement, and expressly agrees in writing to be bound by and comply with all of the terms of this Agreement. Except as specifically authorized by applicable law, any attempt to assign or transfer this Agreement in violation of this provision will be null and void and be treated as a violation of BMC's intellectual property rights. This Agreement, together with any applicable SOWs, constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to this subject matter. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

23. Definitions.

"BMC Academy" is BMC's learning management system. By utilizing BMC Academy, customers can: (i) purchase and launch WBT and ODL courses; (ii) view Customer's transactions and/or purchases; and (iii) review Customer's LPCs activity and balance.

"Customer Contact" means the individual authorized by the Customer to have access to the Customer account Keycode and authorize redemption of the LPCs.

"Education Solution Accelerator" or **"ESA"** is a licensed tool that allows customers to create original content as well as revise, edit and add Education Services content. BMC content offerings that can be edited by ESA are considered Education Materials. Customer may acquire a license for the ESA tool separately via a BMC license order.

"Education Materials" means materials created for educational purposes by BMC covering BMC products and offerings. Customer's license of Education Materials from BMC shall be governed by the terms attached to the Education Materials SOW executed by the parties.

"Education Services" are delivered in various formats, including but not limited to: (i) **"Public Classes"** where a customer receives instructor led training onsite at a BMC facility ("**ILT**") or virtually where a customer receives instructor led training via a WebEx environment ("**VILT**"); (ii) **"Private Classes"** (or **"Private ILT"**) where a customer receives instructor led training onsite at a customer's facility; (iii) **"Assisted Self-Paced Learning"** or **"ASP"** where the Customer is given access to online WebEx instructor led recordings, and is given access to a remote lab environment where Customer can practice concepts taught in the course; (iv) Web Based Training which is online Education Services that are self-paced ("**WBT**"); (v) On Demand Learning ("**ODL**") where the customer is given access



to online/web-based course content, and is given access to a remote lab environment where the customer can practice concepts taught in the course; (vi) **“Education Consulting”** where BMC Education Services representatives provide guidance and recommendations on customized learning paths, alignment of education events to your project, skills assessments, and project follow-ups, and BMC architects apply best-practice knowledge and field experience to customize education rollout at a customer’s site; and (vii) **“Education Development”** where a customer requests BMC to assist them in creating or modifying education content for their own internal use. The WBT and ODL (collectively, **“Online Classes”**) are self-paced activities. The time required to complete a WBT or ODL class is based on the pace the customer sets and the time that the customer has available. BMC will provide each WBT or ODL class for a specified period of time during which a customer may take the WBT or ODL class as many times as the Customer likes. At the end of the designated period of availability, Customer will no longer have access to WBT or ODL classes unless the Customer purchases the class again. This designated period of time may vary based on the type of online class selected.

“Education Subscription” is an unlimited pass available for purchase by customers, which grants customers access to BMC’s catalogue of WBTs posted on BMC Academy for a specified period of time.

“Keycode” is an alphanumeric code used by Customer’s Customer Contact to authorize redemption of LPCs through BMC Academy for certain Education Services, as further described in Section 5 above.

“Learning Pass Credits” (or **“LPCs”**) are prepaid credits that may be redeemed for Education Services for one (1) or multiple attendees.

“Personal Data” means any personally identifiable information received by BMC from Customer, relating to a person, which is sufficient to cause such person to be identified, directly or indirectly and shall not include sensitive personal data, i.e. data where processing or transfer of the data is prohibited according to applicable privacy laws or other data requiring the written consent of the data subject prior to processing in accordance with applicable law.

“SOW” is an executed written or electronic document subject to the terms of this Agreement, including but not limited to in the form of a services order form, statement of work, or self-purchases made via BMC Academy.

“Training Units” has the same meaning as LPCs.

“Users” shall include Customer’s employees, consultants, contractors, agents, and affiliates.

24. BMC Entities. The following services entities apply to this Agreement:

Territory	Services Company Name	Address
Australia	BMC Software (Australia) Pty Ltd	Suite 1302, Level 13, 383 Kent Street, Sydney, Australia
China	BMC Software (China) Limited	Room 502, Level 5, Tower W1, The Towers, Oriental Plaza, No. 1 East Chang An Ave., Dong Cheng Dist., Beijing 100738, China
Israel	BMC Software Ltd.	E ² , Eskdale Road, Winnersh, Wokingham, Berkshire, RG41 5TS, UK
Hong Kong	BMC Software (Hong Kong) Limited	Suite 2706, 27th Floor, Devon House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong
New Zealand	BMC Software (New Zealand) Limited	Level 16, 157 Lambton Quay Wellington, 6011 New Zealand
Denmark	BMC Software A/S (Denmark)	Borupvang 2D, 2750 Ballerup, Denmark
Sweden	BMC Software AB	Färögatan 33, Box 1036, 164 21 KISTA, Sweden
Norway	BMC Software AS (Norway)	Karenslyst alle 8b, 3rd Floor, 0278, Skoyen, Oslo, Norway
Singapore, India	BMC Software Asia Pacific Pte Ltd	600 North Bridge Road, #20-01/10 Parkview Square, Singapore 188778
Malaysia	BMC Software Asia Sdn Bhd	Unit E10.27 Menara Melawangi, No. 18 Jalan Persiaran Barat, Pusat Perdagangan Amcorp, 46050 Petaling Jaya, Malaysia
Belgium	BMC Software Belgium N.V	Culliganlaan 2C, 1831 Diegem, Belgium
Canada	BMC Software Canada Inc.	50 Minthorn Boulevard, Suite 200, Markham, Ontario L3T 7X8, Canada

Territory	Services Company Name	Address
Argentina	BMC Software de Argentina S.A.	Ing. Butty 220 – Piso 18, Buenos Aires, Republica Argentina, C1001AFB
Netherlands	BMC Software Distribution B.V.	Boeing Avenue 245, 1119 PD Schipho-Rijk, The Netherlands
Mexico	BMC Software Distribution de Mexico S.A. de C.V.	Torre Esmeralda II Blvd. Manuel Avila, Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.
Brazil	BMC Software do Brasil Ltda.	Av. das Nações Unidas, 8.501 – 22º Andar, Condomínio Eldorado Business Tower, São Paulo, Brasil – 05425-070
France	BMC Software France SAS	World Trade Centre, Les Deux Arcs, 1800, Route des Cretes, Parc de Sophia - Antipolis, Valbonne
Austria	BMC Software GmbH (Austria)	Handelskai 94-96, A1200 Wien Millennium Tower 16. Stock Austria
Germany	BMC Software GmbH (Germany)	Lyoner Strasse 9, Astro Park, Frankfurt, 60528, Germany
Switzerland	BMC Software GmbH (Switzerland)	Bändliweg 20, 8048 Zürich, Switzerland
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