



## 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 25 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 an Order or 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. Orders or SOWs.** LPCs are obtained solely by execution of an Order or SOW. Each Order or SOW is deemed to be a discrete contract, separate from each other Order or SOW, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order or SOW and the terms of this Agreement, the terms of the Order or SOW will control only if the Order or 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 Orders or SOWs. In the event an Order or 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 an Order or 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](mailto:education@bmc.com) to request assistance with completing such a transaction, which will include the execution of an Order or 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 an Order or SOW (if applicable). To redeem LPCs for the purchase of Education Services, Customer, based on the particular Education Service being purchased, shall either: (a) complete and execute an Order or 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 an Order, or 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. When redeeming LPCs for Education Subscriptions, Customer’s Subscription period must begin before the LPC’s expire.

**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 Order or 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 an Order or 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 Order or 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 Order or 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.** The "LPC Expiration Date", which is the date by which all LPCs purchased under the applicable Order or SOW must be spent, is twelve (12) months from the Order or SOW signature date unless the Order or SOW states a specific "LPC Expiration Date". 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, except in the case where the Education Service provided is part of an Education Subscription that extends past the LPC Expiration Date. Education Subscriptions purchased before the LPC Expiration date will remain active for the duration defined by the Education Subscription Terms.

**7. EDUCATION SERVICES.** When Customer either redeems LPCs for Education Services, purchases Education Services directly through the execution of an Order or SOW or via BMC Academy, or obtains Education Services through the purchase of a BMC offering, this Agreement, and specifically this Section 7, shall govern the applicable Education Services. In the event of any conflict between the terms of the Order or 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 Order or SOW.

**7.1. Education Services Fees.** The fees payable to BMC for Education Services (if any) 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 (if any) 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 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. If Customer registers for an instructor-led class using a Subscription, Customer is required to provide BMC notice **at least 10 business days** prior to the Education Services class start date to cancel registration. If a subscription Customer cancels or reschedules a registration less than 10 business days prior to the Education Services class start date, BMC will not allow Customer to register again for the same Education Services class using the Subscription. If Customer fails to attend an Education Services class it has registered for using a Subscription, BMC will not allow Customer to register again for the same Education Services class using the Subscription. Notwithstanding the foregoing, Customer shall not be entitled to a refund for cancellation of ASP courses, WBT courses, or Subscription services.

**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) disclose, whether verbally, in writing or any other media, the contents of Exams published by BMC Education Services; (vi) copy, distribute, forward, or record the Exam questions or responses, by any means which includes the use of screen captures; (vii) interfere with or disrupt the integrity or performance of the Education Services or BMC Academy (e.g., load, performance, or stress testing); (viii) 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; (ix) send or store viruses or malicious code via the Education Services or BMC Academy; (x) 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 (xi) use any components provided with the Education Services separately from the Education Services; (xii) register more than once to each training course included within an Education Services Subscription; (xiii) receive more than one order of lab days or eBooks when a course is available as ASP and instructor-led for the same product and version within an Education Services Subscription. Virtual lab time and eBooks for the same product and version within a Subscription are limited to one copy only available with the first registration onto either the ASP or instructor-led course in a Subscription.

**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 Order or 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 Order or 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. (d) Customer agrees that a Customer or User will neither provide nor accept improper assistance during an Exam. User will not use unauthorized materials in attempting to satisfy Exam requirements. BMC will treat a breach of this Agreement as a violation, and revoke any Accreditations or Certifications conferred to the Customer or User. (e) Should the Customer or User disclose, whether verbally, in writing or any other media, the contents of Exams published by BMC Education Services, Customer may be held liable for the cost of updating the Exam contents.

**7.5. Proprietary Rights.** Subject to the terms of this Agreement and the applicable Order or 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 Order or SOW (“**Deliverables**”) solely for its own internal use. Except as expressly permitted by applicable law, this Agreement and

the applicable Order or 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.

**7.6. 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.

**7.7. 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 Order or 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 Order or 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 (if any) attributable to such non-conforming portion of the Education Services under the applicable Order or 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 will not apply to Education Services that are included at no cost to Customer through Customer's purchase of another BMC offering. **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.**

**7.8. 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)."

**7.9. 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) Orders or SOWs executed by the parties prior to this Agreement's effective date of termination and such Orders or 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 Order or 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 an Order or 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 Order or 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.** The parties may share contact details such as name, mail address, email address, telephone numbers, etc., in connection with the Agreement ("Contact Details"). Such Contact Details may be considered personal data under applicable data protection laws. The parties acknowledge that one party may disclose Personal Data to the other party, and each party shall comply with its obligations as a data controller under applicable data protection laws. In particular, each party shall:

- (a) ensure that it may lawfully transfer Contact Details to the other party;
- (b) inform employees, consultants or potential employees, consultants of the transfer to the other party;
- (c) process the Contact Details only pursuant to the terms of this Agreement and in accordance with applicable data protection laws;
- (d) ensure that it has in place appropriate technical and organizational measures to protect against unauthorized or unlawful processing of Contact Details and against accidental loss or destruction of, or damage to, the Contact Details;
- (e) provide reasonable assistance to the other party in complying with applicable data protection laws; and
- (f) delete or return to the other party upon request all Contact Details, including copies, unless legally prohibited.

As an individual, You expressly acknowledge and agree that information about your certification may be shared by BMC to your employer.

**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 ORDER OR 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 [BMC Academy and Education Services Terms and Conditions](#). 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 Orders or 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. Users must accept the [BMC Academy and Education Services Terms and Conditions](#) upon login to BMC Academy. By utilizing BMC Academy, users can: (i) purchase and launch ASP, WBT, ODL and VILT courses; (ii) view user transactions and transcript; 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 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 [Education Materials License Agreement](#) or the terms attached to the Order or Education Materials SOW executed by the parties.

**"Education Services"** (or **"Services"** for purposes of the Agreement) 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 an Online Meeting 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 a customer is given access to online instructor led recordings for a period of 1 year from the date of registration or if a subscription is used to register, access expires on the expiration date of the subscription, and is given access to a Virtual Lab where a customer can practice concepts taught in the course. The Customer will have a specified amount of time in the Virtual Lab as defined in the ASP course abstract; (iv) Web Based Training which is online Education Services that are self-paced (**"WBT"**); (v) **"Self-Paced Training"** or **"SPT"** where the Customer is given access to online instructor led recordings from the date of registration until the Enterprise Subscription expiration date; (vi) **"Education Lab Voucher"** or **"ELV"** where the Customer is given an eBook and access to a Virtual lab, if lab time is available, for a corresponding Self-Paced Training (SPT) course where the Customer can practice concepts taught in the course. The Customer will have a specified amount of time in the Virtual Lab as defined by the SPT Course Abstract; (vii) **"Video"** which is an online digital training recording that is accessed online; (viii) **"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; (ix) **"Education Development"** where a customer requests BMC to assist them in creating or modifying education content for their own internal use, and (x) **"Exams"** where a User's course knowledge is tested and formal certification may be awarded if a User achieves a certain result. The ASP, SPT, WBT or Videos (collectively, **"Online Classes"**) are self-paced activities. The time required to complete an ASP, SPT, WBT or Video class is based on the pace the customer sets and the time that the customer has available. BMC will provide each ASP, SPT, WBT or Video class for a period of 1 year or if a subscription is used to register, access expires on the expiration date of the subscription (except in the case of WBTs resold by BMC, which shall expire within 90 days) during which a customer may take the ASP, SPT, WBT or Video class as many times as the Customer likes. At the end of the designated period of availability, Customer will no longer have access to ASP, SPT, WBT or Video classes unless the Customer purchases the class again. This designated period may vary based on the type of online class selected. **"Virtual Labs"** where the Customer is given access to a remote lab environment for a set amount of Lab Days (1 Lab Day equals 6 Lab Hours), as defined by the ASP, SPT or ILT course. Lab vouchers are provided for select ASP and SPT offerings. Once issued, a lab voucher is valid for a 90-day period and may not be extended. Redemption of the lab voucher begins a 28-day lab access period where the Customer may use the Lab Days included with the select ASP

or SPT course. The 28-day lab access period may not be extended, and Lab Days may not be refunded. “**eBooks**” where a user is provided with course materials for ASP, SPT or ILT offerings. The eBook is available online through the eBook vendor for a period of 2 years. eBooks may be downloaded within the 2-year period and once downloaded will not expire.

“**Education Enterprise Subscription**” is a pass that may be included in Customer’s purchase of BMC Subscription Services, which grants customers access to BMC’s catalogue of Online Classes associated with the particular Subscription Services offerings purchased by Customer, for the period defined in Customer’s Subscription Services order form. BMC Education Services reserves the right to modify course availability and content within a subscription period. Customer’s Education Enterprise Subscription Services shall be governed by the [Education Enterprise Subscription Terms of Service](#).

“**Education Individual Subscription**” Each subscription is created for a single unique user for mutually agreed on periods of time and is non-transferable. Individual Subscriptions grant access to ASPs, VILT and WBTs associated with BMC Products. BMC Education Services reserves the right to modify course availability and content as well as schedule, reschedule and cancel VILT courses within a subscription period.

“**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.

“**Order**” is an executed written or electronic document subject to the terms of a master license agreement or subscription services agreement.

“**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	<b>BMC Software (Australia) Pty Ltd</b>	Level 13, 383 Kent Street, Sydney, NSW 2000 Australia
China	<b>BMC Software (China) Limited</b>	Room 501-504, Level 5, Tower W1, The Towers, Oriental Plaza, No. 1 East Chang An Ave., Dong Cheng Dist., Beijing 100738, China
Israel	<b>BMC Software Limited</b>	1020 Eskdale Road, Winnersh Triangle, Wokingham, Berkshire, RG41 5TS, United Kingdom
Hong Kong	<b>BMC Software (Hong Kong) Limited</b>	Suite 2706, 27th Floor, Devon House, Taikoo Place, 979 King’s Road, Quarry Bay, Hong Kong
New Zealand	<b>BMC Software (New Zealand) Limited</b>	Level 16, Vodafone on the Quay, 157 Lambton Quay. Wellington 6011 New Zealand.
Denmark	<b>BMC Software A/S (Denmark)</b>	Borupvang 2D, 2750 Ballerup, Denmark
Sweden	<b>BMC Software AB</b>	C/o KG10, Kungsgatan 8, 111 43 Stockholm, Sweden
Norway	<b>BMC Software AS (Norway)</b>	Lysaker Torg 5, 1366 Lysaker, Norway
Singapore, India	<b>BMC Software Asia Pacific Pte Ltd</b>	600 North Bridge Road, #20-01/10 Parkview Square, Singapore 188778



Territory	Services Company Name	Address
Malaysia	<b>BMC Software Asia Sdn Bhd</b>	Unit E10.27 Menara Melawangi, No. 18 Jalan Persiaran Barat, Pusat Perdagangan Amcorp, 46050 Petaling Jaya, Malaysia
Belgium	<b>BMC Software Belgium N.V</b>	Culliganlaan 2C, 1831 Diegem, Belgium
Canada	<b>BMC Software Canada Inc.</b>	50 Minthorn Boulevard, Suite 303, Markham, Ontario L3T 7X8, Canada
Argentina	<b>BMC Software de Argentina S.A.</b>	Ing. Butty 220 – Piso 18, Buenos Aires, Republica Argentina, C1001AFB
Netherlands	<b>BMC Software Distribution B.V.</b>	Vision Plaza West, 2 <sup>nd</sup> Floor, Boeing Avenue 220, 1119 PN Schiphol-Rijk, The Netherlands
Mexico	<b>BMC Software Distribution de Mexico S.A. de C.V.</b>	Volcan 150 Col. Lomas De Chapultepec Del Miguel Hidalgo, Mexico City 11000
Brazil	<b>BMC Software do Brasil Ltda.</b>	Eldorado Business Tower Avenida da, Av. Dra. Ruth Cardoso, 8.501 - 22° Andar - Pinheiros, São Paulo - SP, 05425-070, Brazil
France	<b>BMC Software France SAS</b>	Cœur Défense Tour A, Sis 100 Esplanade du Général de Gaulle, 92931 PARIS LA
Austria	<b>BMC Software GmbH (Austria)</b>	Handelskai 94-96, A1200 Wien Millennium Tower 16. Stock Austria
Germany	<b>BMC Software GmbH (Germany)</b>	Lyoner Strasse 9, Astro Park, Frankfurt, 60528, Germany
Switzerland	<b>BMC Software GmbH (Switzerland)</b>	Saegereistrasse 10, 8152 Glattbrugg, Switzerland
United States	<b>BMC Software Inc.</b>	2103 CityWest Blvd, Houston TX, USA 77042
Japan	<b>BMC Software K.K.</b>	1-32-2 Honcho 24th Floor Harmony Tower, Nakano-ku, Tokyo, 164-8721
Korea, Republic of	<b>BMC Software Korea Limited</b>	9 FL Two IFC, 10 Gukjekeumyung-ro, Youngdeungpogu, Seoul 07326, Korea, Republic of
United Kingdom	<b>BMC Software Limited</b>	1020 Eskdale Road, Winnersh Triangle, Wokingham, Berkshire, RG41 5TS, United Kingdom
South Africa	<b>BMC Software Ltd, South Africa Branch</b>	1 <sup>st</sup> Floor, 61 Katherine Street, Sandton, 2146, South Africa
Finland	<b>BMC Software Oy</b>	Äyritie 12 C, 5 krs, 01510 Vantaa, Finland
Spain	<b>BMC Software, S.A., Sociedad Unipersonal (Spain)</b>	Parque Empresarial La Finca Paseo del Club Deportivo 1, Edificio 17, Planta Baja Izquierda (28223) Pozuelo de Alarcón, Madrid, Spain
Italy	<b>BMC Software S.r.l.</b>	Via Scarsellini, 14 20161 Milano, Italy
Portugal	<b>BMC Software Portugal, Sociedade Unipessoal, LDA</b>	Lagoas Park – edificio 7, 1º andar sul 2740 244 Porto Salvo, Lisbon, Portugal
Saudi Arabia	<b>The Branch of BMC Software in Saudi Arabia</b>	Tahliya Str., Office # 109, P.O. Box 2267, Riyadh, 11451, Kingdom of Saudi Arabia
United Arab Emirates	<b>BMC Software Limited, Dubai Branch</b>	Ubor Tower Business Bay, floor 40 office 4003 P.O. Box 123148, Dubai, United Arab Emirates
Countries in Europe, Middle East and Africa not specifically mentioned above	<b>BMC Software Limited</b>	1020 Eskdale Road, Winnersh Triangle, Wokingham, Berkshire, RG41 5TS, United Kingdom