

Education Program Guide

This Education Program Guide (the “**Guide**”) is between BMC and Customer, and is effective upon execution of the SOW referencing this Guide. This Guide along with the terms and conditions of the applicable SOW and either (i) the BMC Master Services Agreement (“**MSA**”) or (ii) the Additional Terms to: Services Order Form or Statement of Work (whichever may be the case) (the “**Additional Terms**”) shall govern the purchase and use of Learning Pass Credits and Education Services. Capitalized terms are defined in Section 12 of this Guide or in either the MSA or Additional Terms (as set forth in the applicable SOW).

1. **SCOPE.**
 - 1.1. **SOWs.** LPCs are obtained solely by execution of a SOW. 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 the Agreement.
 - 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 the Agreement, this Guide and 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 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 Guide 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 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. **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 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.
4. **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.
5. **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, 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.
6. **EDUCATION SERVICES.** When Customer either redeems LPCs for Education Services, purchases Education Services directly through the execution of a SOW or via BMC Academy, or obtains Education Services through the purchase of a BMC offering, this Guide, and specifically this Section 6, and the Agreement shall govern the applicable Education Services. In the event of any conflict between the terms of the SOW, the Agreement, and this Guide, this Guide shall prevail, except for matters of service fees, payment and reimbursement of expense terms if further specified in the SOW.
 - 6.1. **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 in accordance with the Agreement.
 - 6.2. **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.
 - a. **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 cancellation or reschedule request is made for a Subscription 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.
- 6.3. **Education Services Restrictions.** Except for the specific proprietary rights granted to Customer under the terms of the 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 part 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 Education Services separately from the Education Services. (xii) 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.

6.4. Customer Responsibilities. (a) Customer will be responsible for use of the Education Services and BMC Academy by its Users in compliance with the Agreement, this Guide 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 the Agreement, this Guide, 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. (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. 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.

8. 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.

9. Limitation on Liability. For purposes of this Guide, the parties hereby agree that Section 6.4 and Section 6.5 of the Guide are excluded from any limitations on liability set forth in the Agreement.

10. 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 <https://www.bmc.com/content/dam/bmc/corporate/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.html.

11. Updates to Guide. BMC may modify this Guide from time to time by posting a revised version at <https://www.bmc.com/content/dam/bmc/education/education-program-guide.pdf>. The modified terms will become effective upon posting. By Customer's purchase of LPCs after the effective date of any modifications to this Guide, 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 Guide. BMC last modified this Guide on the date listed at the beginning of the document.

12. DEFINITIONS.

"**BMC Academy**" is BMC's learning management system. 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 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**" (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 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 for a period of 1 year from the date of registration, and is given access to a remote lab environment where Customer can practice concepts taught in the course. The Customer will have a specified amount of time in the remote lab environment as defined in the ASP course abstract.; (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; (vii) "**Education Development**" where a customer requests BMC to assist them in creating or modifying education

content for their own internal use; (viii) “**Exams**” where a User’s course knowledge is tested and formal certification may be awarded if a User achieves a certain result. 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 period of 1 year (except in the case of WBTs resold by BMC, which shall expire within 90 days 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 a pass that may be included in Customer’s purchase of BMC subscription Services, which grants customers access to BMC’s catalogue of WBTs associated with the particular Subscription Services offerings purchased by Customer, posted on BMC Academy for a period of 1 year. Each subscription is created for a single unique user and is non-transferable. Customer may also separately purchase non-transferable Education Subscriptions for access to ASPs, ILT, VILT and WBTs associated with other offerings and for mutually agreed on periods of time. BMC Education Services reserves the right to schedule, reschedule and cancel ILT and 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 4 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.

“**Training Units**” has the same meaning as LPCs.

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