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31808

Amendment to Enterprise License Order (Perpetual)

Amendment Date: April 30, 2016 **Territory: USA only** **Customer: City of Long Beach**	**BMC Software, Inc.** **2103 CityWest Boulevard** **Houston, Texas 77042** **Attn: Order Services**

Web: www.bmc.com

1. **SCOPE**. This amendment ("**Amendment**") is made to that certain Enterprise License Order (Perpetual) dated December 19, 2014 (the "**Order**") made to the Software License Agreement (BMC No. 523) dated January 07, 1987 ("**SLA**"), and the license agreement provided with the Products ("**End User License Agreement**") (collectively, the "**Agreement**"), between BMC and Customer, the terms of which are incorporated into this Amendment and the Order. In the event of conflict or omission between the SLA and the End User License Agreement, the End User License Agreement will prevail. Customer and BMC desire to amend the Order in order to add additional Product capacity.

2. **ATTACHMENT A**. Attachment A is modified to reflect the changes pursuant to the Section entitled "Scope" and supersedes and replaces Attachment A of the Order. Revised Attachment A is attached to this Amendment and made a part of the Order.

3. **FEE**. The fee for the items in the Scope is $54,330.65 (USD) (the "**Fee**"). BMC will invoice and Customer agrees to pay such Fee, plus applicable taxes subject to the laws where the Products are installed.

3.1 **Payment Absolute**. The Fee set forth in Section 3 above is in addition to and not in place of the scheduled Fees set forth in Enterprise License Order, Section 2.2 Fee, and is separate and independent of the Master Extended Payment Agreement dated December 19, 2014 and the Extended Payment Agreement dated December 19, 2014. Nothing in this Amendment shall reduce the amounts payable by BMC as set forth in Enterprise License Order, Section 2.2 Fee.

4. **SUPPORT.** The fee for enrollment of the additional Product capacity in Support (as further described at www.bmc.com/support/review-policies) is included in the Fee through the Expiration Date of the Order. Customer may not cancel the Products' enrollment in Support. Any Support adjustments due will be in accordance with Section 2.6 of the Order.

5. **MISCELLANEOUS**. The Product performance warranty applies only to Products licensed by Customer for the first time. The Products are accepted on the date BMC delivers the Product to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the Product Performance Warranty provided in the Agreement. The Product may contain hyperlinks to websites controlled by parties other than BMC. BMC is not responsible for and does not endorse the content or accept any responsibility for Customer's use of these websites. Customer should refer to the policies posted by other websites regarding data privacy and other topics before using them. In the event of any inconsistency or conflict between this Order and the Agreement, this Order will control. Any additional or conflicting terms of Customer's purchase order are rejected by BMC. Capitalized terms are defined in this Order, its Attachments, or in the Agreement. Neither party may terminate this Order for its convenience.

6. **ENTIRE AGREEMENT AND MODIFICATIONS.** The parties acknowledge they have read this Amendment and agree that it, the Agreement and the Order, as modified hereby, are the complete and exclusive statements of the agreement between the parties relating to the subject matter of this Amendment (including without limitation the Products in this Amendment). This Amendment may not be modified or rescinded except in writing signed by both parties.

CUSTOMER INFORMATION:

Company Name:	City of Long Beach
Address:	333 W Ocean Blvd
	Long Beach CA USA 90802
Contact:	Howard Ross
e-mail address:	howard.ross@longbeach.gov
Other:	

BILL TO INFORMATION

Company Name:	City of Long Beach
Address:	333 W Ocean Blvd
	Long Beach CA USA 90802
Contact:	Howard Ross
e-mail address:	howard.ross@longbeach.gov

ATTACHMENTS INCORPORATED INTO ORDER	'X'
Attachment A – Product Table	X

Each party hereto warrants and represents that a duly authorized representative of such party has executed this Order and this Order constitutes the legal, valid and binding obligation of such party. Where a party has executed this Agreement using an electronic or digital signature, such party warrants and represents that the signature is legally binding and satisfies all legal requirements.

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("BMC") BMC Software, Inc.

By: *Judy Schafer*

Name: Judy Schafer

Title: Sr. Manager of Order Services

Date: SEP 19 2016

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> FINAL - LEGAL
> REVIEWED- NK

Assistant City Manager

("Customer") City of Long Beach EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

By: *[signature]*

Name: Patrick H. West

Title: City Manager

Date: 4/29/16

APPROVED AS TO FORM
4-20 , 20 16
CHARLES PARKIN, City Attorney

By *[signature]*
AMY R. WEBBER
DEPUTY CITY ATTORNEY

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ATTACHMENT A
Enterprise License Order
Revised April 30, 2016

Product Table:

PRODUCTS	LICENSED CAPACITY			UNIT COST (IN USD)	SUPPORT UNIT COST (IN USD) (PER YEAR	PREVIOUS LICENSED CAPACITY
	UNIT OF MEASUREMENT	CLASSIFICATION	BASELINE CAPACITY			
BMC Control-M Workload Automation (Base)	per enterprise	MSM Other	1	8,848.13	1,769.63	1
BMC Control-M Workload Automation Suite (Task)	per task	MSM Other	1600	139.28	27.86	1300
BMC Control-M Workload Automation Suite (MIPS)	per MIPS	MSM Other	150	501.80	100.36	150
BMC Control-M Output Management (MIPS)	per MIPS	MSM Other	150	265.44	53.09	150
BMC Control-M Output Management WebAccess	per named user	MSM Other	100	53.25	10.65	100
BMC Control-M Workload Automation Mainframe Extension Pack (MIPS)	per MIPS	MSM Other	150	221.20	44.24	150