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31808

Enterprise License Order (Perpetual)

Order Date: December 19, 2014	BMC Software, Inc.	Phone: 1-800-841-2031
Territory: USA only	2101 CityWest Boulevard	Web: www.bmc.com
Customer: City of Long Beach	Houston, Texas 77042	
	Attn: Order Services	

1. **SCOPE**. This enterprise license order (the "**Order**") governs Customer's use of the products referenced in the Product Table set forth on Attachment A (the "**Products**"). This Order is 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**"), the terms of which are incorporated into this Order. In the event of conflict or omission between the SLA and the End User License Agreement, the End User License Agreement will prevail. The period from the September 30, 2014 through September 29, 2017 (the "**Expiration Date**") is defined as the "**Term**".

2. **ENTERPRISE LICENSE DURING THE TERM**.

2.1 **License Grant**. Subject to the terms, conditions, payment requirements and restrictions set forth in this Order and the Agreement, BMC grants Customer a perpetual, nontransferable, nonexclusive, non-sub-licensable license to install the Products in the Territory and to access and use the Products in accordance with the Documentation solely for Customer's and its Affiliates own internal operations. Upon the Expiration Date, Customer may install and operate the Products in accordance with the section entitled "License Rights after the Term" of this Order.

2.2 **Fee**. The fee for use of the Products up to the Baseline Capacity during the Term is 458,000.00 (USD) (the "**Fee**"). The Fee will be paid under the terms of the Master Extended Payment Agreement dated December 19, 2014 and Extended Payment Agreement dated December 19, 2014.

2.3 **Statement of Capacity**.

    2.3.1 **Statement of Capacity Requirements**. Customer will deliver to BMC a statement, signed by an authorized representative of Customer, containing the information described in Attachment B for the relevant Measured Period (a "**Statement of Capacity**") 30 days prior to the first anniversary of the Order Date and each subsequent anniversary date, (each an "**Anniversary Date**"). The "**Measured Period**" is the 1-year period ending 40 days prior to the Anniversary Date, with the first Measured Period being a 1-year period less 40 days from the Order Date. A final Statement of Capacity is also due 30 days prior to the Expiration Date.

    2.3.2 **Delay in Delivery of Statement of Capacity**. If Customer fails to deliver a Statement of Capacity in accordance with the section entitled "Statement of Capacity Requirements" above, BMC will provide Customer with written notice of such failure. If BMC has not received the Statement of Capacity within 15 days of Customer's receipt of this written notice, BMC will be entitled to receive the outstanding Adjustments (as defined below), if any, owed for that Statement of Capacity plus interest equal to the lesser of 1% of such Adjustment per month of delay of delivery of such Statement of Capacity or the maximum interest rate permitted by applicable law.

2.4 **Basis of Calculating Adjustments through the Expiration Date**. For purposes of calculating Adjustments to the Fee for a Product, the Unit Cost and the Support Unit Cost for that Product will be used. For each Product, the "**Unit Cost**" and the "**Support Unit Cost**" equal the amounts set forth in the Product Table, increased by the aggregate percentage price increases, if any, in the then current BMC Product price list and/or BMC Support price list, as applicable, for such Product between the Order Date and the date on which the payment is owed.

2.5 **License Fee Adjustments**. For each Product, beginning with the Statement of Capacity required as of the first Anniversary Date and annually thereafter, including the Expiration Date, if the Reported Capacity (defined on Attachment B) of such Product is in excess of the Baseline Capacity, Customer will pay to BMC an adjustment (the "**Adjustment**") equal to: (a) the Unit Cost for that Product multiplied by (b) the difference between the Reported Capacity and Baseline Capacity. The Baseline Capacity for each applicable Product will be redefined after the payment of any Adjustment.

2.6 **Prepaid Support Fees and Adjustments**. The fee for enrollment of the Products in BMC's support services program (the "**Support**") is included in the Fee through the Expiration Date. Customer may not cancel the Products' enrollment in Support during the Term of this Order. The Support terms that govern this Order are located at www.bmc.com/support/review-policies. If, at an Anniversary Date, the Reported Capacity of a Product exceeds the Baseline Capacity for such Product, then Customer will pay an adjustment equal to:

    (a) the difference between the Reported Capacity and the Baseline Capacity, multiplied by

    (b) the Support Unit Cost as of such Anniversary Date, multiplied by

    (c) the number of years remaining through the Expiration Date.

2.7 **Audit Rights**. If requested by BMC not more than once a year, Customer agrees to deliver to BMC, within 30 days of such request, periodic product usage reports generated from specific products (when available) or written reports, whether generated manually or electronically, specifying Customer's use of the Product. Additionally, if requested by BMC not more than once a year, Customer agrees to allow BMC to perform an audit at Customer's facilities during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such audit and to provide reasonable access to information and systems. If an audit reveals that Customer has exceeded the Reported Capacity for a Product, Customer agrees to pay the

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applicable fees for additional capacity upon receipt of an invoice. If the understated capacity exceeds 5% of the Reported Capacity of the applicable Product, then Customer agrees to also pay BMC's reasonable costs of conducting the audit.

3. **LICENSE RIGHTS AFTER THE TERM.** Prior to the Expiration Date, BMC will make commercially reasonable efforts to provide to Customer a proposal that determines fees for the Products after the Expiration Date. If the parties fail to reach an agreement for any reason, Customer will have a perpetual license for the Products based on the greater of the Reported Capacity (as stated in the final Statement of Capacity, after payment of applicable Adjustments) or the Baseline Capacity, and Customer may only use the Products as follows:

   (a) Products will maintain their Unit of Measurement and Classification;

   (b) Notwithstanding anything in the Agreement to the contrary, Customer will be automatically re-enrolled in annual Support (BMC Continuous) unless Customer provides written notice of termination at least thirty (30) days prior to the Expiration Date of this Order or any subsequent renewal Support period; and

   (c) The Support fee for the Licensed Capacity of the Products for the first year after the Expiration Date will not exceed: (the Support Unit Costs compounded 10% annually beginning on the Order Date), multiplied by (the then current Licensed Capacity of the Products). For the second year and each year thereafter, the Support fee will be calculated in accordance with the Agreement governing the use of the Products; and

   (d) any additional capacity must be acquired and paid for at the time the Licensed Capacity of a Product is exceeded, as may be further provided in the Agreement.

4. **NON-DISCLOSURE.** Customer may not, without securing the prior written consent of BMC, divulge the terms of this Order, including without limitation any pricing information, to any third party or publicly announce the existence of this Order, or advertise or release any publicity related to this Order.

5. **NON-ASSIGNMENT.** Customer may not assign this Order or any rights granted in this Order to any third party, whether by merger, sale of substantially all the assets, or otherwise.

6. **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. 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.

7. **ENTIRE AGREEMENT AND MODIFICATIONS.** The parties acknowledge they have read this Order and agree that it is the complete and exclusive statement of the agreement between the parties, and replaces and supersedes all prior and contemporaneous addenda, proposals, understandings, product order forms, enterprise orders, and any other ordering document between the parties, oral or written, relating to the subject matter of this Order (including without limitation the Products in this Order). This Order may not be modified or rescinded except in writing signed by both parties.

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CUSTOMER INFORMATION:		BILL TO INFORMATION (if different from Customer Information)	
Company Name:	City of Long Beach	**Company Name:**	
Address:	333 W Ocean Blvd	**Address:**	333 W Ocean Blvd
	Long Beach CA USA 90802		Long Beach CA USA 90802
Contact:	Howard Ross	**Contact:**	Howard Ross
e-mail address:	howard.ross@longbeach.gov	**e-mail address:**	howard.ross@longbeach.gov
Other:			

ATTACHMENTS INCORPORATED INTO ORDER	'X'
Attachment A – Product Table	X
Attachment B – Additional Terms	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.

("BMC") BMC Software, Inc. ,

By: _Judy Schafer_

Name: _Judy Schafer_

Title: _Sr Manager of Order Services_

Date: _NOV 4 2014_

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FINAL – Reviewed by Contracts - NK

Assistant City Manager

("Customer") City of Long Beach

By: _RB W_

Name: _Patrick H. West_

Title: _City Manager_

Date: _12-16-14_ EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM
December 3 , 20 _14_
CHARLES PARKIN, City Attorney

By _____
KENDRA L. CARNEY
DEPUTY CITY ATTORNEY

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Product Table:

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

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ATTACHMENT B
ADDITIONAL TERMS

I. **GENERAL DEFINITIONS**: The following definitions apply to the Order and this Attachment B.

"**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

"**Baseline Capacity**" is each Product's specific number of units of Licensed Capacity set forth on Attachment A.

"**Computer**" or "**Server**" has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.

"**Documentation**" means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"**Enterprise**" is the environment consisting of all hardware owned or leased by a Customer or by a Client respectively, in the Territory.

"**Licensed Capacity**" is the amount of each Product licensed as established in the Order. For licenses based on the power of a computer, Customer agrees to use BMC's then current computer classification scheme, which will be provided upon request.

II. **LICENSE RESTRICTIONS.** The following restrictions apply to certain Products.

BMC Application Automation – License Add-on: Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks

BMC Atrium Orchestrator Automation Pack – Device Endpoint License Add-on: Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Network Automation and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

BMC Atrium Orchestrator Automation Pack – Server Endpoint License Add-on: Restricts license rights to up to five (5) peers in the orchestration environment; and allows use of the following runbooks (Continuous Compliance for Server Automation, Discovery Synch, and NetApp Solutions) and supporting base Adapters only for the Licensed Capacity.

BMC Atrium Orchestrator - Peer License Add-on: Restricts license rights to deploy one peer for every unit licensed; a peer can either be a Configuration Distribution Peer or an Application Peer; test and development license are provided at no additional cost.
*   **Application Peer** – Server that executes workflows.
*   **Configuration Distribution Peer** – Master application that controls all workflows, including load balancing across the grid of Peers.

BMC BladeLogic Application Release Automation: Excludes use of BMC BladeLogic agent for server compliance, remediation, configuration, patching, and provisioning tasks.

BMC Decision Support – Server Automation (5 Viewer, 1 Query License): Excludes use of Report Authoring module which must be licensed separately.

BMC Decision Support – Network Automation (5 Viewer/Query Licenses): Excludes use of Report Authoring module which must be licensed separately.

BMC Decision Support – Database Automation (5 Viewer/Query Licenses): Excludes use of Report Authoring module which must be licensed separately.

CONTROL-M/Assist: Control-M/Assist may only be used to interface with the third party scheduler and may not be used to schedule or manage batch processes outside of the cross-scheduler dependencies.

Enterprise License Order   *Page 5 of 7*   *Confidential.*

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III. **UNITS OF MEASUREMENT AND STATEMENT OF CAPACITY INFORMATION**:

In accordance with the section entitled "Statement of Capacity Requirements" of the Order, the Statement of Capacity must list the following information for each Product using the applicable Unit of Measurement. The information in the Statement of Capacity will be used to determine the Reported Capacity for each Product.

UNIT OF MEASUREMENT	LICENSE DEFINITION AND STATEMENT OF CAPACITY INFORMATION
per enterprise	LICENSE DEFINITION: A license is required per Customer and per Client each, regardless of the number of times Customer installs the Product in its Enterprise or its Client's Enterprise. "**Client**" means a third party whose data is processed by Customer and is only permitted if Customer is an authorized BMC service provider. STATEMENT OF CAPACITY INFORMATION: No Statement of Capacity is required unless Customer is an authorized BMC service provider. If Customer is an outsourcer, list all the Customer's Clients (including Customer) for which the Product is used during the Measured Period, with the total number of Clients referred to as the "**Reported Capacity**".
per MIPS	LICENSE DEFINITION: A license is required for the total aggregate number of MIPS for each Computer as defined in the Statement of Capacity Information below STATEMENT OF CAPACITY INFORMATION: List all the Computers (by location, model, type and serial number), including all Computers coupled in a parallel sysplex environment, and the MIPS Rating for these Computers, upon which (i) each OS/390 or z/OS subsystem (e.g.IMS, DB2, CICS or VSAM) for which a Product is licensed to operate (a "**Subsystem**") or (ii) each OS/390 or z/OS operating system for which a Product is licensed to operate ("**Operating System**"), has been installed, managed or has operated during the Measured Period. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. (1) For each Subsystem MIPS-based Product, the "**Reported Capacity**" equals the highest aggregate MIPS Rating of all the Computers on which a Subsystem has been installed or has operated at any time during the Measured Period. *Example*: If a Product is licensed to operate with the DB2 Subsystem, then the Statement of Capacity must specify the highest aggregate MIPS Ratings of all the Computers upon which the DB2 Subsystem has been installed or operated. (2) For each Operating System MIPS-based Product, the "**Reported Capacity**" equals the highest aggregate MIPS Rating of all the Computers on which a Operating System has been installed or has operated at any time during the Measured Period. *Example*: If a Product is licensed to operate with the OS/390 Operating System, then the Statement of Capacity must specify the highest aggregate MIPS Ratings of all the Computers upon which the OS/390 Operating System has been installed or operated.
per named user	LICENSE DEFINITION: A license (with a Classification at the appropriate Level, if applicable) is required for all individual employees or contractors or clients of Customer to whom access has been granted to the Product on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product at any given time. STATEMENT OF CAPACITY INFORMATION: List the maximum number of named users and, if applicable, the Level per user, who were granted access to the Product at any time during the Measured Period, with the highest aggregate number of named users, if applicable, per Level (defined above), referred to as the "**Reported Capacity**".

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UNIT OF MEASUREMENT	LICENSE DEFINITION AND STATEMENT OF CAPACITY INFORMATION
per task	LICENSE DEFINITION: For all Control-M Products, except those that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in the Control-M "Active Jobs" databases in any 24-hour period, regardless of whether the Tasks execute or not. For the Control- M Products that run exclusively in the Mainframe environment, a license is required for the maximum number of Tasks (as defined below) present in solely the Mainframe environment's Control-M "Active Jobs" database. Tasks in the Control-M "Active Jobs" databases include all Tasks in all Distributed Systems and/or Mainframe environments in any 24-hour period (including but not limited to development, staging, QA, pre-production, production, and test environments), except that, (i) SMART folders/table and sub-folders/tables which contain scheduling definitions and are listed as tasks in the "Active Jobs" databases are not counted as Tasks, (ii) Tasks that have time zone settings may remain in the "Active Jobs" databases for up to three consecutive days, but are only counted as one Task, (iii) a Task that runs more than once during the day (with the same Order ID) is counted as one Task – this includes Tasks that are rerun and cyclic Tasks, and (iv) Tasks that are provided for by licenses under alternative Units of Measurement (i.e.tier or MIPS) are not considered Tasks under this "per task" unit of measurement. The number of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed. "**Task**" is interchangeable with "job" and means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that is scheduled to execute, as well as the scheduling criteria, flow control, and resource usage. STATEMENT OF CAPACITY INFORMATION: List the highest aggregate number of Tasks present in the Control-M "Active jobs" databases in any 24-hour period during the Measured Period, with the highest aggregate number of Tasks per Product referred to as the "**Reported Capacity**".

MASTER EXTENDED PAYMENT AGREEMENT

CUSTOMER ("Customer"): City of Long Beach **Customer Address: 333 W. Ocean Blvd.** **Long Beach, CA 90802**	**MASTER AGREEMENT NUMBER:** **DATE: December 19, 2014** **LICENSOR ("Licensor"): BMC Software, Inc.**
Customer Contact: Howard Ross **Customer Phone: (562) 570-6637** **Customer Fax: (562) 570-5270**	**PAYEE ("Payee"): BMC Financial Services Co.** **Payee Address: 2101 CityWest Blvd.** **Houston, Texas 77042**

The parties hereto have entered or anticipate entering into one or more transactions (each, a "**Transaction**") that are or will be governed by an Extended Payment Agreement (such agreement, as it may be modified or amended by the parties hereto, the "**EPA**") which incorporates, with respect to each Transaction, this Master Extended Payment Agreement (as it may be modified or amended by the parties hereto, the "**Master Agreement**"). The term "**Payee**" includes, where the context permits, its assignees. With respect to each Transaction: (i) "**Agreement**" means this Master Agreement and the EPA pertaining to such Transaction (and "**Agreements**" refers to this Master Agreement and all EPA's pertaining to all Transactions); (ii) "**Specified License Documents**" means the specified license documents described as such in the EPA pertaining to such Transaction; (iii) "**Licenses**" means the Specified License Documents and all other licenses, amendments, addenda and other documents or agreements (other than the Agreements) pertaining to the Software or the Support Services; (iv) "**Transaction Documents**" means the Agreement and the Licenses pertaining to such Transaction; (v) "**Software**" means the software licensed under or subject to the provisions of the Specified License Documents; (vi) "**Support Services**" means the support and maintenance services provided by Licensor with respect to the Software; (vii) "**Fixed Payment Obligations**" means the fixed payment(s) described as such (either individually or by total amount) in the EPA and which on the date of such Transaction are due or scheduled to become due under the Specified License Documents for Software and Support Services (excluding any fees with respect to upgrades or additional software or services that are incurred after the date of such Transaction) and (viii) "**Payee Funded Amount**" means the amount paid by Payee to Licensor pursuant to Section 1 and the EPA pertaining to such Transaction, plus any Transaction Taxes funded by Payee under Section 6 and the EPA pertaining to such Transaction.

1. **PAYMENTS.** On or as of the date of each Transaction, Payee shall pay to Licensor for the account of Customer the Payee Funded Amount. With respect to each Transaction, in consideration of the Payee Funded Amount, Customer agrees to pay Payee the amounts and on the dates set forth under the heading "Payments due under EPA" in the EPA pertaining to such Transaction (the "**Payments**"). With respect to each Transaction, Payments shall be made to Payee's address set forth above until Payee designates another address for payment or until receipt of a notice of an Assignment of Receivables pursuant to Section 4. The unpaid amount of each Payment (or in the event of acceleration, the accelerated balance, adjusted pursuant to Section 3) shall automatically bear interest at a rate equal to the lesser of 1 % per month or the maximum amount allowed by law from the date when such Payment is due (whether on the installment due date, by acceleration, or otherwise) until paid. Payee shall send to Customer invoices 90 days in advance of Payment due dates, but the failure to send, or of Customer to receive, an invoice shall not operate to postpone any Payment due date.

2. **CUSTOMER REPRESENTATIONS.** Customer represents and warrants to Payee that the following will be correct on and as of the date of each Transaction: (a) Customer is duly incorporated or organized, validly existing and in good standing under applicable law; (b) the Transaction Documents pertaining to such Transaction have been duly authorized, executed and delivered by Customer; (c) such Transaction Documents are legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms (subject to bankruptcy and similar laws affecting creditors' rights generally); (d) the execution, delivery and performance of the Transaction Documents will not violate or create a default under any law, regulation, judgment, order

or agreement to which Customer or any of its property is subject, or the charter, bylaws, memorandum and articles of incorporation or association, or other constituent documents of Customer; (e) Customer is not in default under any Transaction Documents related to any Transactions; and (f) the financial statements and other information now or hereafter delivered by Customer pursuant to the Agreements are and will be materially correct.

3. **DEFAULT; REMEDIES.** A "**Default**" under the Agreements shall occur if: (i) Customer fails for more than ten days to pay any sums due under any Agreement; (ii) Customer breaches any representation or warranty made in or pursuant to any Agreement in any material respect; (iii) Customer fails to perform when due any obligation under any Agreement and such failure remains unremedied for 30 days after written notice thereof shall have been given to Customer by Payee; (iv) Customer becomes insolvent or has appointed for it or any substantial part of its property any receiver, trustee or other similar official, (v) any proceeding is instituted by or against Customer seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee or other similar official for it or any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), such proceeding shall remain undismissed or unstayed for a period of 60 days, or Customer takes any corporate or other organizational action to authorize any of the actions set forth in this clause (v), or (vi) Customer assigns substantially all of its assets or ceases doing business as a going concern, ceases to be in good standing or files with any applicable authority a statement of intent to liquidate or dissolve. In the event of a Default, Payee may: (a) by written notice declare immediately due and payable, or in the case of (v) above there shall automatically become due and payable, all unpaid Payments and other sums payable under each Agreement discounted, in the case of amounts otherwise to become due in the future, from the date any such amount would be due at 3 % per annum simple interest (subject to the limitation on amounts due stated in Section 7), and (b) pursue any other rights or remedies available at law or in equity. No failure or delay on the part of Payee to exercise any right or remedy hereunder shall operate as a waiver thereof, or as a waiver of any subsequent breach. Except as stated herein, Customer hereby waives notice of Default, notice of intent to accelerate and notice of acceleration. Customer shall pay all reasonable costs and expenses of collection and enforcement of each Agreement, including reasonable legal fees, attributable to Customer's Default.

4. **ASSIGNMENT;.** Customer agrees that Payee may, at any time and without requiring Customer's consent, assign Payee's right to receive the Payments from Customer under an Agreement pertaining to a Transaction together with Payee's other rights and entitlements under such Agreement (an "**Assignment of Receivables**"). Each assignee Payee shall exclusively have all the rights, powers and remedies of the assignor Payee with respect to such Transaction but shall in no event be obligated to perform any duty, obligation or covenant under the Licenses. Customer shall upon receipt of notice of an Assignment of Receivables, or upon such later date as may be specified in such notice, comply with payment instructions therein that Payments under the EPA pertaining to such Transaction are to be made to the.assignee Payee and (if requested) acknowledge in writing such instructions. Although an Assignment of Receivables may be effective immediately, Customer shall have a reasonable administrative period not to exceed 30 days from the date of its receipt of notice of an Assignment of

Receivables in which to redirect its Payments in accordance with such notice. Any assigned Payments received by the assignor Payee during that period (or, for any reason, subsequently) shall be forwarded by the assignor to the assignee Payee within two business days. The transfer of any Payee's rights and entitlements under an Agreement to an Assignee shall not require the delivery of any original counterpart(s) of such Agreement to such Assignee, but rather may be made by separate written assignment without any such delivery.

5. CUSTOMER AGREEMENTS.

(a) Customer will provide copies of its balance sheet and income statement promptly after each fiscal period, except to the extent that such information is publicly available.

(b) Customer will look solely to Licensor for performance of the Licenses. Customer's obligation to pay in full all amounts when due under each Agreement is independent from the Licenses and is absolute, unconditional, irrevocable and free from any right of netting, set-off, counterclaim, abatement or reduction for any reason whatsoever, including any existing or future act, omission or default by Licensor under, or any amendment, replacement, invalidity, unenforceability or termination of, the Licenses or any provision thereof. In the event of any breach or default by Licensor, Customer agrees and warrants that it will not assert against Payee any claim, defense or right which Customer may at any time have against Licensor. The Agreements do not diminish or impair any rights or remedies that Customer may at anytime have against Licensor.

(c) Customer further agrees that PAYEE MAKES NO WARRANTIES, EXPRESS OR IMPLIED (STATUTORY OR OTHERWISE), RELATED TO THE SOFTWARE OR SUPPORT SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF TITLE, OR AGAINST INFRINGEMENT. CUSTOMER WAIVES TO THE FULL EXTENT PERMITTED BY LAW ANY CLAIM (INCLUDING ANY CLAIM BASED IN CONTRACT, UNDER ANY STATUTE OR ON STRICT OR ABSOLUTE LIABILITY IN TORT) THAT IT MAY HAVE AGAINST PAYEE FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGE) OR EXPENSE CAUSED BY THE SOFTWARE (INCLUDING CLAIMS CAUSED BY THE MALFUNCTION OR DEFECT OF THE SOFTWARE) OR ANY SUPPORT SERVICES, EVEN IF PAYEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST. Effective as of the date of each Transaction, Customer acknowledges that Payee did not select, manufacture, distribute or license the Software related to such Transaction and that Customer shall have made the selection of the Software based upon its own judgment and expressly disclaims any reliance on statements made by Payee or its agents.

6. TAXES. Unless stated otherwise in an EPA, (i) the Payments thereunder exclude applicable value added, sales, use, property, stamp or other taxes or duties in respect of the Licenses, Software or Support Services, an Agreement, or a transfer or assignment of such Agreement (collectively, excluding income or franchise taxes imposed on Licensor or Payee, "Transaction Taxes"), and (ii) at the time requested by Payee, Customer agrees to pay to Payee Transaction Taxes imposed on or required to be collected by Payee. Customer further agrees that should the due date of any such Transaction Taxes, including those set

forth in an EPA, be accelerated due to a transfer or assignment of an Agreement, Customer shall pay such Transaction Taxes to Payee upon Payee's request to comply with the accelerated due date. If the Payments are stated in an EPA to include any Transaction Taxes, then the amount of Payments may be determined based on the Payee's estimate of applicable Transaction Taxes. On Customer's request after Transaction Taxes are finally determined, Payee shall send a statement thereof in reasonable detail. Any differences between the estimated and final amounts may alter the actual Payee Funded Amount (insofar as it includes Transaction Taxes) from that stated in the EPA but shall not (subject to Section 7) alter the Payments. If any tax of any nature is required to be withheld with respect to a Payment (a "Withholding Tax"), the amount of such Payment shall be increased such that the net amount received by Payee after deducting all Withholding Taxes equals the amount Payee would have received if no Withholding Taxes had been required with respect to such Payment.

7. MISCELLANEOUS. Notices shall be in writing, at the respective addresses stated above or at such other address as notified to the other party in writing. All remedies under each Agreement are cumulative and not exclusive. If there is a conflict between the Master Agreement and an EPA, the EPA shall control. No term or provision of any Agreement may be amended, waived, discharged or terminated except by a written instrument signed by the relevant parties. Any Agreement may be assigned, amended, waived, terminated or discharged as provides herein, without thereby constituting an assignment, amendment, waiver, termination or discharge of any other Agreement. Each of the Agreements constitutes separately the entire agreement of the parties thereto with respect to a Transaction and shall not be affected by the other Transaction Documents or the performance or non-performance by any party of the other Transaction Documents, except as expressly stated herein. Each Agreement shall be governed by and construed in accordance with the laws of the State of Texas or, if a different jurisdiction is stated in an EPA, the laws of such other jurisdiction. The parties agree to the non-exclusive jurisdiction of the state and federal courts located in Texas (or such other jurisdiction) for any matters relating to any Agreement. Upon request of Payee, Customer will appoint an agent for service of process in such jurisdiction in a manner reasonably satisfactory to Payee. Payee and Customer intend to comply with all laws applicable to each Agreement limiting the rate or amount of interest that can lawfully be contracted for, charged, taken, reserved or received in connection with the Transactions contemplated hereby. If the law applicable to any Agreement is ever judicially interpreted to render usurious or otherwise illegal or unenforceable any amount contracted for, charged, taken, reserved or received (based on a principal amount equal to the Payee Funded Amount remaining outstanding from time to time), or if any acceleration of the maturity of payment obligations under such Agreement, or if any prepayment by Customer (if permitted or required), results in Customer's having paid, or demand having been made on Customer to pay, any interest in excess of that permitted by or recoverable under applicable law, then all excess amounts theretofore collected by Payee shall be credited to Customer's payment obligations to Payee, or if such obligations have been repaid in full, refunded by Payee to Customer, and the provisions of such Agreement and any demand on Customer thereunder shall immediately be deemed re-formed and the amounts thereafter collectible thereunder shall be reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder.

This Master Agreement is executed as of the date first above stated and may be executed in multiple counterparts with not all signature being on the same counterpart but all counterparts collectively constituting one agreement.

<u>CUSTOMER</u>   <u>BMC Financial Services Co.</u>

<u>City of Long Beach</u>

By: _____   By: _____

Name: Patrick H. West   EXECUTED PURSUANT   Name: Michael W. Kubas
                        TO SECTION 301 OF   Managing Director
Title: City Manager   THE CITY CHARTER.   Title:
                                          APPROVED AS TO FORM
Assistant City Manager
                        December 3 _____, 2014
BMC (ML) rev. 01 Feb 03.DOC
                        CHARLES PARKIN, City Attorney

                        By _____
                              KENDRA L. CARNEY
                           DEPUTY CITY ATTORNEY

EXTENDED PAYMENT AGREEMENT ("EPA")

Customer: City of Long Beach

Master Agreement No.

EPA No.

Licensor: BMC Software, Inc.

Date of EPA: December 19, 2014

SPECIFIED LICENSE DOCUMENT(S): Enterprise License Order Dated December 19, 2014;

Product Order Form - BAP Term Dated September 30, 2014

This EPA incorporates by reference the Master Extended Payment Agreement ("**Master Agreement**") among the parties hereto dated December 19, 2014. All capitalized terms that are not otherwise defined herein have the same meanings as defined in the Master Agreement. Customer has entered into the Specified License Documents with Licensor and has requested Payee to pay to Licensor for the account of Customer the Payee Funded Amount. Customer agrees to pay Payee the amounts and on the dates shown in the table of Payments immediately below, plus applicable Transaction Taxes. All such taxes are due on the date of this EPA or on request in accordance with the Master Agreement.

PAYEE FUNDED AMOUNT $ 675,169

PAYMENTS DUE UNDER EPA

Due Date	Payment in [U.S. Dollars]
December 19, 2014	$ 234,216
October 1, 2015	$ 234,216
October 1, 2016	$ 234,216

(A) Total of Payments	(B) Fixed Payment Obligations	(C) Interest = (A) - (B)
$ 702,648	$ 675,169	$ 27,479

Acknowledgments and agreements:

(1) By Customer: This EPA correctly sets forth the schedule of Payments. (2) By Customer and Licensor: (a) This EPA correctly sets forth the Specified License Documents and Fixed Payment Obligations. (b) This EPA correctly sets forth the Payee Funded Amount, and Licensor's receipt thereof will discharge Customer from the Fixed Payment Obligations under the Specified License Documents. (c) A Default under this EPA shall also constitute a default under the Specified License Documents.
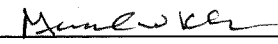
This EPA is executed as of the date first above stated and may be executed in multiple counterparts with not all signatures being on the same counterpart but all counterparts collectively constituting one agreement.

CUSTOMER: City of Long Beach

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

By: _____

Name: Patrick H. West Assistant City Manager
Title: City Manager

LICENSOR: BMC Software, Inc.

By: _____

Name: _____
Title: _____

PAYEE: BMC Financial Services Co.

By: _____

Name: _____
Title: _____
Michael W. Kubes
Managing Director

APPROVED AS TO FORM

December 3 , 20 14
CHARLES PARKIN, City Attorney

By _____
/KENDRA L. CARNEY
DEPUTY CITY ATTORNEY

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Product Order Form - BAP Term

Order Date: September 30, 2014

Territory: USA

Customer: City of Long Beach

BMC Software, Inc.
2101 CityWest Boulevard
Houston, Texas 77042
Attn: Order Services

Web: www.bmc.com

Product Table:

Product Families*	Licensed Capacity			Unit Price for Additional Capacity and Extensions	
	Unit of Measurement	Subsystem or Operating System	Number of Units	Annual Unit Cost	Extension Unit Cost
BMC System Performance Family for IMS	per MIPS	IMS	150	67.04	67.04
BMC Database Performance Family for IMS	per MIPS	IMS	150	131.66	131.66
BMC Database Administration Family for DB2 z/OS	per MIPS	DB2	150	153.10	153.10
BMC Database Advisor Family for DB2 z/OS	per MIPS	DB2	150	50.13	50.13
BMC MainView Performance Manager Family for Mainframe Operating Systems	per MIPS	z/OS	150	60.39	60.39
BMC System Performance Family for DB2 z/OS	per MIPS	DB2	150	39.26	39.26
BMC MainView Performance Manager Family for CICS	per MIPS	CICS	150	29.29	29.29
			Total Fee (in USD) exclusive of applicable taxes		217,169.00

*For a complete list of all products included in the Product Family, refer to Attachment B

1. **Scope.** This order (the "**Order**") governs Customer's term use of the product families referenced in the Product Table (the "**Products**" or "**Product Family**"). This Order is 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**"), the terms of which are incorporated into this Order. In the event of conflict or omission between the SLA and the End User License Agreement, the End User License Agreement will prevail.

    1.1 **Term.** The Term of this Order is from the Order Date through September 29, 2017 (the "**Term**").

    1.2 **Additional Capacity for the Product Family(s).** During the Term of this Order, if Customer exceeds its Licensed Capacity, Customer must license additional Capacity for the Product Family(s) under this Order based upon the Annual Unit Cost defined in this Order and by exercising a separate order. The calculation will be as follows: (i) the additional Capacity multiplied by (ii) the Annual Unit Cost divided by 12 multiplied by (iii) the remaining months in the Term.

2. **Fee.** The fee for use of the Products up to the Licensed Capacity is the Total Fee indicated in the Product Table (the "**Fee**"). The Fee will be paid under the terms of the Master Extended Payment Agreement dated December 19, 2014 and Extended Payment Agreement dated December 19, 2014.

3. **Support.** The fee for BMC support ("**Support**") is included in the Fee during the Term of this Order. The Support terms that govern this Order are located at www.bmc.com/support/review-policies.

4. **License Rights After the Term.** Unless Customer notifies BMC in writing 30 days prior to the end of the Term of either: (i) its intent to extend its use of the Product Family for an additional 1-year period in accordance with the terms of this Order, or (ii) a request to BMC to provide a proposal for a new multi-year order based upon Customer's current requirements, Customer will be deemed to have elected to terminate the use of the Product Family for the next year.

    a) **Extended Term.** If the Customer elects to extend the use of the Product Family for an additional 1-year after the Term (the "**Extended Term**"), the fee associated with the extension (the "**Extension Fee**") will equal: (a) the Licensed Capacity for each Product Family multiplied by (b) the Extension Unit Cost. For any Term

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extended beyond the Extended Term, the "**Extension Unit Cost**" will be the Extension Unit Cost, under this Order, subject to: (i) a maximum 10% annual increase for the two years after the Extended Term of this Order, and thereafter (ii) a maximum 10% annual increase for each year this Order is extended. The Extension Fee will be invoiced prior to the start of the one-year extension.

b) **Termination of the Order**. If this Order terminates for any reason or the licenses are not renewed, Customer's right to use the Product Family(s) terminates and Customer must immediately de-install the Products, destroy the media and all documentation associated with the Products, and, if requested by BMC, certify its destruction in writing.

5. **Usage Reports**. If requested by BMC not more than once a year, Customer agrees to deliver to BMC within 30 days of such request, periodic product usage reports generated from specific products (when available) or written reports, whether generated manually or electronically, specifying Customer's use of the Product. If Customer is found to have exceeded its Licensed Capacity for a Product based on such reports, then Customer agrees to pay the applicable fees for the additional capacity upon receipt of an invoice from BMC.

6. **Miscellaneous**. The Product performance warranty applies only to Product Family licensed by Customer for the first time. The Products are accepted on the date BMC delivers the Product Family 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. 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.

7. **Entire Agreement and Modifications**. The parties acknowledge they have read this Order and agree that it is the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Order. This Order 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:	Accounts Payable
E-mail Address:	
Other:	

ATTACHMENTS INCORPORATED INTO ORDER	'X'
Attachment A – Additional Terms	X
Attachment B – Product Family Components	X

APPROVED AS TO FORM

December 3 , 20 14

CHARLES PARKIN, City Attorney

By _____

KENDRA L. CARNE
DEPUTY CITY ATTORNEY

(BMC) BMC Software, Inc.

By: _Judy Schafer_

Name: _Judy Schafer_
Sr Manager of Order Services

Title: _____
OCT 20 2014

Date: _____

(Customer) City of Long Beach

By: _____

Name: _Patrick H. West_

Title: _City Manager_

Date: _Dec. 16, 2014_

Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

bmc software
FINAL – Reviewed by Contracts - NK

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ATTACHMENT A
ADDITIONAL TERMS

This Attachment A is made to that certain Order dated **September 30, 2014** between BMC and Customer.

I. **GENERAL DEFINITIONS**: The following definitions apply to the Order and this Attachment A.

"**Computer**" or "**Server**" has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines. For purposes of distributed systems machines a Computer or Server may be physical or virtual.

"**Documentation**" means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

"**Enterprise**" is the environment consisting of all hardware owned or leased by a Customer, or by a Client respectively, in the Territory.

"**Licensed Capacity**" is the amount of each Product licensed as established in the Order. For licenses based on the power of a computer, Customer agrees to use BMC's then current computer classification scheme, which will be provided upon request.

BMC Product Family. For any BMC Product Family which has the capability of being installed on one Computer but can manage or monitor other Computers or data managed by other Computers through its technology and functionality, the Product Family must be licensed for all Computers: (i) for which the Product Family is installed, managed, or monitored and (ii) for which the Product Family or one of its components will process data or execute functionality on behalf of, regardless of whether the Product Family or one of its components is specifically installed on that Computer. The Product Family may be installed on or moved to any Computer(s) included in the licensed environment.

II. **UNITS OF MEASUREMENT**: For the purposes of this Order, Product is equivalent to Product Family in the following units of measurement that apply to certain Products.

UNIT OF MEASUREMENT	UNIT OF MEASUREMENT DEFINITIONS
per MIPS	A license is required for the total aggregate number of MIPS for each Computer, including all Computers coupled in a parallel Sysplex environment, upon which i) each OS/390 or z/OS subsystem (e.g. IMS, DB2, CICS or VSAM) for which a Product Family is licensed to operate (a "**Subsystem**") or (ii) each OS/390 or z/OS operating system for which a Product Family is licensed to operate ("**Operating System**"), has been installed, managed (Computer or data), monitored, or has operated during the Term. MIPS Rating is the aggregate computing power (expressed in millions of instructions per second) of a Computer, using the MIPS rating set forth in the then current Gartner Group Rating Guide. Computer-specific passwords will be issued for the Product.

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ATTACHMENT B

PRODUCT FAMILY COMPONENTS

This Attachment B is made to that certain Order dated **September 30, 2014** between BMC and Customer.

*The Product Family includes the following:

Product Family	Product Name
BMC System Performance Family for IMS	MAINVIEW AutoOperator for IMS MAINVIEW for DBCTL MAINVIEW for IMS Online MAINVIEW for IMS Offline
BMC Database Performance Family for IMS	MAXM Database Advisor for IMS MAXM Reorg/EP Express for IMS MAXM Reorg/EP for IMS MAXM Reorg/EP for IMS with Online/Defrag Feature MAXM Reorg/Online for IMS
BMC Database Administration Family for DB2 z/OS	CATALOG MANAGER for DB2 CHANGE MANAGER for DB2 COPY PLUS for DB2 LOADPLUS for DB2 SNAPSHOT UPGRADE FEATURE for DB2 UNLOAD PLUS for DB2
BMC Database Advisor Family for DB2 z/OS	DASD MANAGER PLUS for DB2 REORG PLUS for DB2 SNAPSHOT UPGRADE FEATURE for DB2
BMC MainView Performance Manager Family for Mainframe Operating Systems	CMF MONITOR MAINVIEW for z/OS MAINVIEW for Linux - Servers MAINVIEW for UNIX System Services MAINVIEW SYSPROG Services MAINVIEW AutoOPERATOR for z/OS MAINVIEW FOCAL POINT MAINVIEW AutoOPERATOR TapeSHARE
BMC System Performance Family for DB2 z/OS	MAINVIEW for DB2 BMC System Performance for DB2
BMC MainView Performance Manager Family for CICS	MAINVIEW for CICS Energizer for CICS MAINVIEW AutoOPERATOR for CICS