



31808

System Management Product Order Form (BMC Advantage Pricing) (Term)

Order Date: September 30, 2010
 Territory: United States only
 Customer: City of Long Beach

BMC Software, Inc.
 2101 CityWest Boulevard
 Houston, Texas 77042
 Attn: Customer Financial Operations

Phone: 1-800-841-2031
 Web: www.bmc.com

Product Table:

| PRODUCT FAMILY | Licensed Capacity | | | Unit Price for Additional Capacity and Extensions | | Computer Information and Location | |
|---|---------------------|--------------------------------|-----------------|---|------------------------------|---|----------|
| | Unit of Measurement | Subsystem or Operating System | Number of Units | Annual Unit Cost (in USD) | Extension Unit Cost (in USD) | Computer Information Manufacturer & Model | Location |
| | Per MIPS | DB2, CICS, etc. or OS/390, ZOS | | | | | |
| BMC System Performance Family for IMS | per MIPS | IMS | 150 | 77.02 | 88.58 | | |
| BMC Database Performance Family for IMS | per MIPS | IMS | 150 | 151.49 | 174.22 | | |
| BMC Database Administration Family for DB2 z/OS | per MIPS | DB2 | 150 | 167.92 | 193.11 | | |
| BMC Database Advisor Family for DB2 z/OS | per MIPS | DB2 | 150 | 55.12 | 63.39 | | |
| BMC Control-M Family for Mainframe | per MIPS | z/OS | 150 | 129.96 | 149.45 | | |
| BMC Control-M Family for Enterprise (Task) | per Task | n/a | 400 | 39.06 | 44.92 | | |
| BMC Control-D Family | per MIPS | z/OS | 150 | 123.75 | 142.31 | | |
| BMC MainView Performance Manager Family for Mainframe Operating Systems | per MIPS | z/OS | 150 | 69.72 | 80.18 | | |
| BMC System Performance Family for DB2 z/OS | per MIPS | DB2 | 150 | 43.08 | 49.54 | | |
| BMC MainView Performance Manager Family for CICS | per MIPS | CICS | 150 | 33.95 | 39.04 | | |
| BMC Control-M Family for Mainframe Extended Solutions (MIPS) | per MIPS | z/OS | 150 | 111.70 | 128.46 | | |
| BMC Control-M Family for Data Management (Task) | per Task | n/a | 400 | 2.19 | 2.52 | | |
| BMC Control-M Family for Service Management (Task) | per Task | n/a | 400 | 4.38 | 5.04 | | |
| BMC Control-M Family for Data Management (MIPS) | per MIPS | z/OS | 150 | 6.94 | 7.98 | | |
| BMC Control-M Family for Service Management (MIPS) | per MIPS | z/os | 150 | 13.14 | 15.11 | | |
| BMC Control-D Family for Web Access | per User | n/a | 100 | 16.79 | 19.31 | | |
| | | | | | | | |
| TOTAL | | | | \$ | \$ | | |

*The Product Family includes the following:

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 Control-M Family for Mainframe

CONTROL-M for z/OS
CONTROL-M/Restart

BMC Control-M Family for Enterprise (Task)

CONTROL-M/Task
CONTROL-M/Enterprise Manager
CONTROL-M/Web and Planning User
CONTROL-M/Full admin user
CONTROL-M/Restart
CONTROL-M for Monitoring Applications
Patrol Knowledge Module for CONTROL-M

BMC Control-D Family for Web Access

CONTROL-D/WebAccess Server

BMC Control-D Family

CONTROL-D
CONTROL-D/Image
CONTROL-D/Page On Demand
CONTROL-V
BMC Reports Impact Manager
CONTROL-D/Distribution Server
CONTROL-D/Agent for iSeries
CONTROL-D/Agent for OpenVMS Alpha
CONTROL-D/Agent for OpenVMS Vax
CONTROL-D/Agent for Tandem
CONTROL-D/Agent for Unix
CONTROL-D/Agent for Windows NT

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

BMC Control-M Family for Mainframe Extended Solutions (MIPS)

CONTROL-M/Tape
CONTROL-O

BMC Control-M Family for Data Management (Task) & (MIPS)

BMC CONTROL-M Business Process Integration Suite
CONTROL-M/CM for Advanced File Transfer

BMC Control-M Family for Service Management (Task) & (MIPS)

BMC Batch Impact Mgr
CONTROL-M/Forecast

1. **Scope.** This order (the "**Order**") governs Customer's term use of the products 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 7, 1987 (the "**Agreement**").
2. **Term.** The Term of this Order is from the Order Date through September 29, 2013 (the "**Term**").



- 2.1 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.
- 3. Fee.** The fee for use of the Product Family up to the Licensed Capacity during the Term is \$335,634 (the "**Fee**"). BMC will invoice and Customer agrees to pay such Fee in annual payments, plus applicable taxes subject to the laws where the Products are installed, as follows:

| Annual Payments (in USD) | Due Date |
|-----------------------------|--------------------|
| \$ 111,878 | September 30, 2010 |
| \$ 111,878 | September 30, 2011 |
| \$ 111,878 | September 30, 2012 |

- 3.1 Non-appropriation.** Notwithstanding any other provisions of this Order or the Agreement, Customer will have the right to terminate this Order at no additional cost and with no penalty, if funds necessary for the continued fulfillment of this Order are not appropriated by the City of Long Beach. Prior to such termination, Customer must provide written notice documenting the lack of funding, and this Order will be terminated as of the last Anniversary Date for which funding was available, that date then becoming the Expiration Date for purposes of this Order. Upon any termination for non-appropriation, Customer will immediately uninstall and stop using the terminated Products, and upon BMC's request, Customer will immediately return such Products to BMC at Customer's expense, together with all related documentation and copies, or certify their destruction in writing.
- 4. Support.** The fee for BMC support ("**Support**") is included in the Fee during the Term of this Order.
- 5. License Rights After the Term for Non-Perpetual Licenses.** Unless Customer notifies BMC in writing 30 days prior to the Expiration Date 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.
- 5.1 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 extended beyond the Extended Term, the "**Extension Unit Cost**" will be the Extension Unit Cost, under this Order, subject to: (i) a maximum 5% 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.
- 5.2 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.
- 6. Miscellaneous.** Except as expressly modified in this Order, the terms of the Agreement are incorporated in this Order. To the extent the BMC Product Family includes third party code: if (a) such third party code is provided for use with a Product Family, it may be used only with that Product Family unless otherwise provided for in the Documentation; and (b) the Documentation contains terms that pertain to such third party code, those terms govern the third party code in place of the terms of this Order and the Agreement; except that the third party terms will not (i) negate or amend the rights granted by BMC to Customer or the obligations undertaken by BMC in this Order or the Agreement with respect to a Product Family; or (ii) impose any additional restrictions on Customer's use of the Product Family. In some circumstances, usually either for the convenience of its customers or in order to comply with the obligation to make source code available under specific license terms, BMC distributes to customers, without charge, products that are not governed by an Order or this Agreement. Such products are distributed separately from the BMC Products, are governed by the license terms that and included with them, and are provided by BMC AS IS, WHERE IS AND WITHOUT WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, AND EXCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. The Product Family is 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, if any, are rejected by BMC. Capitalized terms are defined in this Order, its Attachments, or in the Agreement. With respect to this Order, neither party may terminate this Order or the Agreement 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:

BILL TO INFORMATION (if different from Customer Information)

| | | | |
|-----------------|---|-----------------|--|
| Company Name: | City of Long Beach | Address: | |
| Address: | 333 W. Ocean Blvd, 12 th Floor | Address: | |
| | Long Beach, CA 90802 | | |
| Contact: | Ginger Shugart | Contact: | |
| E-mail Address: | Ginger.shugart@longbeach.gov | E-mail Address: | |
| Other: | 562-570-6650 | | |

ATTACHMENTS INCORPORATED INTO ORDER

| | |
|---------------------------------|------------|
| | 'X' |
| Attachment A - 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. o

("BMC") BMC Software, Inc.

By: Judy Chapar
 Name: Judy Chapar
 Title: City Manager
 Date: SEP 10 2010

("Customer") City of Long Beach Assistant City Manager

By: Patrick H. West
 Name: Patrick H. West
 Title: City Manager
 Date: 9.7.2010
 EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

APPROVED AS TO FORM

September 16, 2010
 ROBERT E. SHANNON, City Attorney
 By: Gary J. Anderson
 GARY J. ANDERSON
 DEPUTY CITY ATTORNEY



**ATTACHMENT A
ADDITIONAL TERMS**

This Attachment A is made to that certain Order dated September 30, 2010 between BMC and Customer.

I. **TERMS.** The following additional terms are incorporated into this Order.

a. **DEFINITIONS:** Terms set forth below have the indicated meaning regardless of whether they are capitalized.

“**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 (excluding Control-M and Mainview product(s), a Computer or Server may be physical or virtual.

“**CPU**” means a physical processor or central unit in a designated Computer containing the logic circuitry that performs the instructions of a Computer’s programs. A CPU may contain one or more processor cores.

“**Enterprise**” is the environment consisting of all hardware owned or leased by Customer in the Territory.

“**Licensed Capacity**” is the amount of Product licensed as established in the Product Table, incorporating the Unit of Measurement and the Classification.

“**Task**” means an executable command containing the name of the JCL, CL, DCL, ECL, script or dummy processes that will execute as well as the scheduling criteria, flow control, resource usage.

b. **LICENSE RESTRICTIONS:** The following restrictions apply to certain Product Family(s) as they are named today or may be named in the future.

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.

c. **UNITS OF MEASUREMENT:** The following units of measurement apply to certain Product Family(s).

| UNIT OF MEASUREMENT | UNIT OF MEASUREMENT DEFINITION |
|-------------------------|--|
| per CPU – Full Capacity | A license is required for the total number of active, physical CPUs in each Computer upon which the Product Family is installed or which the Product Family manages, either remotely or locally. A CPU is defined as a “socket” and may contain one or more processor cores. |
| 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 Family. |
| per named user | 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 Family on a computer or multiple computers typically via the issuance of a unique ID regardless of whether the individual is actively using the Product Family at any given time. |
| per task | A license is required for the maximum number of Tasks loaded into the daily CONTROL-M active environment in a 24-hour period excluding any tasks that are provided for by licenses under alternative Units of Measure (i.e. tier or MIPS). The numbers of steps or scripts executed within the named Task shall have no bearing upon the number of Tasks licensed – the sum total of the commands constitutes a single Task. For CONTROL-M: Licensed tasks equal the maximum number of tasks (as described above) loaded into the daily CONTROL-M active environment. For Mainframe Task-Based Product Family: |

| UNIT OF MEASUREMENT | UNIT OF MEASUREMENT DEFINITION |
|---------------------|---|
| | Licensed tasks equal the maximum number of tasks (as described above) licensed for or managed by Control-M for z/OS as defined in the Control-M active environment. For all other task based Product Families, the maximum number of tasks that the Product Family is priced against, is measured as the maximum number of CONTROL-M tasks. |