



AMENDMENT TO
PARTNER NETWORK AGREEMENT
between

BMC Software, Inc. ("BMC")

and

Four Points Technology LLC ("SOLUTION PROVIDER")

This Amendment is made to that certain Partner Network Agreement ("PNA") dated July 1, 2012, and all applicable amendment thereto, between BMC and Solution Provider.

Whereas, Solution Provider and BMC desire to amend the terms and conditions of the PNA referenced above. In the event of a conflict in terms between the PNA and the terms of this Amendment, the terms of this Amendment shall prevail; and

Whereas, BMC and Solution Provider wish to grant resell right to Solution Provider of certain BMC secured services that will be added to Solution Provider GSA schedule # GS-35F-0553P dated May 25, 2004 ("Solution Provider GSA Schedule").

Whereas, BMC Software Federal LLC. ("BMC Federal"), as wholly owned subsidiary of BMC, will be offering the certain BMC secured services to be added to Solution Provider GSA Schedule.

Whereas, the effective date of this Amendment shall be September 15, 2014;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. That BMC Software Federal LLC is a wholly owned subsidiary of BMC Software Inc.
2. That BMC agrees to provide Solution Provider with the right to resell BMC Software Federal LLC secured services ("BMC Services") under the terms of the PNA, this Amendment and any attachments hereto.
3. That this Amendment a Letter of Supply ("LOS") issued by BMC Federal will serve as authorization for Solution Provider to offer for sale BMC Services on Solution Provider's GSA schedule
4. That Solution Provider will only resell BMC Services under the terms provided for in this Amendment and any attachments here to.
5. That a description of BMC Services along with pricing are listed in Attachment A hereto.
6. That Solution Provider shall receive their established Partner Discount for the resale of services provided for in Attachment C
7. That on a limited basis BMC may permit limited BMC Resellers to resell BMC Services sourced from Solution Provider's GSA schedule.
8. That the Parties agree that neither Solution Provider nor a limited BMC Reseller shall be permitted to resell BMC Services without first meeting the following criteria. BMC reserves the right, at its sole discretion, to reject any order place by Solution Provider or Reseller if the following criteria have not been follow.
 - Staff Augmentation Services – the Services provided under a staff augmentation engagement is limited to the number of days or hours of general assistance sold. All Services will be rendered on a time and materials basis under the direction of Customer. As a consequence, BMC's sole responsibility



under this SOW is to provide the resources for the number of days/hours sold. BMC is not responsible for any specified or implied deliverables resulting from Services performed.

- BMC certified offerings – the Services provided under a BMC certified offering are limited to the detailed scope of work provided with the offering. BMC certified offerings are published in BMC's Reseller catalog posted on BMC's Communities website.
- Custom project based proposals. Before a BMC Limited Reseller or BMC Authorized Master Aggregators can offer a custom project based proposal, they must first receive a detailed proposal with estimates from BMC.

9. Terms used herein with their first letter capitalized that are not defined herein shall have the meaning ascribed thereto in the PNA. Except as specifically set forth herein, all terms and conditions of the PNA shall remain in full force and effect.

10. Solution Provider shall not, without securing the written consent of BMC, divulge the terms of this Amendment to any third party or publicly announce the existence of this Amendment, or advertise or release any publicity hereto.

All other terms and conditions of the PNA not specifically revised hereby shall remain in full force and effect.

Both parties acknowledge they have read this Amendment and agree that it is the complete and exclusive statement of the agreement between the parties, and supersedes all prior proposals and understandings, oral and written, relating to the subject matter of this Amendment. This Amendment shall not be modified or rescinded except in writing signed by the parties.

IN WITNESS WHEREOF, each Party hereto warrants and represents that this Amendment and the PNA have been executed by a duly authorized representative of such Party, and this Amendment and the PNA as modified by this Amendment with respect to the Products covered by the Amendment, constitutes the legal, valid and binding obligation of such Party.

ATTACHMENTS INCORPORATED INTO AGREEMENT		'X'
Attachment A – Pricing and Services Descriptions		X
Attachment B - Master Services Agreement		X
Attachment C – Customer and Partner Discounts		X
Attachment D – BMC CSP Table I CS Discount Policy		X

Accepted by: BMC Software, Inc.
 By: Judy Schaefer
 Judy Schaefer
 Sr. Manager of Order Services

Accepted by: Four Points Technology, LLC
 By: Amy Moss
 Name: Amy Moss



JUL 2 2015



Title: _____ Title: Director of Contracts
Date: _____ Date: 7/1/15



ATTACHMENT A
Pricing and Service Description

IT PROFESSIONAL SERVICES LABOR DESCRIPTIONS AND PRICELIST

Note: Travel and expenses are additional costs and comply with Contractor' per diem rates established by each ordering activity, or as negotiated with the Contracts Officer. BMC Consulting Services applies a flat discount of 10% across BMC Consulting Services commercial rates. In addition to the GSA Discount, BMC Consulting Services Standard (structured) Discounts, or BMC Partner Discounts or BMC Limited Reseller Discount apply.

Part Number	Job Title	Item Description	Job Level
BMC-CS-GSD-S	Cleared Global Services Delivery (GSD) / Off Shore	A resource holding a level of classified performance and who has the following technical capabilities. Consultant working on a defined solution design, specific to solution configuration. Work must be performed from a remote (non-onsite) location, usually outside of North America, thus passing on reduced rates to the customer. (Offshore Model) Global Service Delivery resource qualifications are equivalent or above that of BMC-CS-L3 Consultant. Dollar Volume Discounts (SIN 132-51 (IT PROFESSIONAL SERVICES) do not apply to GSD resources.	GSD
BMC-CS-L2-S	Cleared Associate Consultant	A resource holding a level of classified performance and who has the following technical capabilities. Basic installation and configuration of the out-of-the-box (OTB) product, no customizations and very little experience required. May also be part of a large implementation coupled with a Level 3, Level 4, or large team of consultants. ITIL Foundation Certified. Typically holds (4) year degree in computer science or related field or equivalent education and experience.	Level-2

BMC-CS-L3-S	Cleared Consultant	Level-3
		<p>A resource holding a level of classified performance and who has the following technical capabilities. Expert in particular IT disciplines. Responsible for analyzing client IT operations and environment and designing a specific solution that includes BMC products and non-BMC technology. Interacts with client executives on a routine basis. ITIL Foundation Certified. Typically holds (4) year degree in computer science or related field or equivalent education and experience.</p>
BMC-CS-L4-1-S	Cleared Sr. Consultant	Level-4
		<p>A resource holding a level of classified performance and who has the following technical capabilities. Responsible for configuring BMC solutions to address specific client needs and objectives. Can design project approach and tailor BMC methodology to client's needs and priorities. Expert in particular BMC products and solutions. Leads teams of consultants to plan, execute, and deliver project phases. Can train client personnel on proper use of BMC products and/or BMC solutions. Interacts with client project leads and client management. ITIL Foundation Certified. Typically holds (4) year degree in computer science or related field or equivalent education and experience.</p>
BMC-CS-L4-2-S	Cleared Project Manager	Level-4
		<p>A resource holding a level of classified performance and who has the following technical capabilities. Responsible for managing large-scale implementations of BMC Software products. Duties include planning, distributed architectural design, contract and financial reporting, technical resource assessment, consultant task management, and analysis of training and support requirements. Facilitates the implementation and team communication required to provide services to address customer objectives. Provides coordination and management required for the delivery of solutions, monitors and reports financial status and contract necessities to the client. ITIL Foundation Certified. PMP Certification. Typically holds (4) year degree in computer science or related field or equivalent education and experience.</p>



BMC-CS-L5-1-S	Cleared Sr. Project Manager	Level-5	<p>A resource holding a level of classified performance and who has the following technical capabilities. A BMC Sr. Project Manager is responsible for managing enterprise-scale implementations of BMC Software products, including designing the implementation to facilitate the capabilities of new and existing IT infrastructures. This individual has knowledge of all aspects of operations management, and provides technical leadership and architectural direction for project objectives. This individual effectively leads large teams of multi-disciplined personnel to implement complex, business-centric IT solutions. This individual is effective at performing customer briefings, is articulate and communicates to diverse levels the intricacies of IT architectures and their applicability to solving business solutions. ITIL Foundation Certified. PMP Certification. Typically holds (4) year degree or advanced degree in computer science or related field or equivalent education and experience.</p>
BMC-CS-L5-2-S	Cleared Solutions Architect	Level-5	<p>A resource holding a level of classified performance and who has the following technical capabilities. Leads highly complex and uncommon solution design when required. Tasks and document deliverables are highly complex and architectural in nature (i.e. functional requirements, solution design, database design, high-availability and disaster recovery planning.) Management of a large project or program (multiple projects) with complex planning required. Multiple deliverables and a large resource team to deliver. ITIL Foundation Certified. Typically holds (4) year degree in computer science or related field or equivalent education and experience.</p>



BMC-CS-L5-3-S

Cleared Principal
Consultant

Level-5

A resource holding a level of classified performance and who has the following technical capabilities. Expert in particular IT disciplines. Responsible for analyzing client IT operations and environment and designing a specific solution that includes BMC products and non-BMC technology. Interacts with client executives on a routine basis. Provides subject matter expertise in the design and management of enterprise systems and architectures for large complex environments. He/she has industry and/or customer recognition as an experienced IT architect and capable of implementing complex IT solutions. Experience and knowledge of key systems disciplines that include customer service and support, Service level management, problem management, network management, capacity/performance management, configuration management. ITIL Foundation Certified. Typically holds (4) year degree in computer science or related field or equivalent education and experience.



ATTACHMENT B

MASTER SERVICES AGREEMENT

This **MASTER SERVICES AGREEMENT** ("**Agreement**") is effective as of .20 ("**Effective Date**") between:

BMC: BMC Software Federal, LLC, a Delaware corporation, located at 2101 CityWest Blvd., Houston, Texas 77042-2827 ("**BMC**"); and
CUSTOMER: ("**Customer**")

1. **SCOPE.** BMC agrees to render to Customer consulting, implementation, training or other services ("**Services**") under the terms of this Agreement and as further described in a signed Services Order Form or Statement of Work (each an "**SOW**"). SOWs may be entered under this Agreement by and between (a) BMC or an Affiliate of BMC and (b) the Customer or an Affiliate of Customer. With respect to an SOW, the terms "BMC" and "Customer" as used in this Agreement will be deemed to refer to the entities that execute that SOW, and the SOW will be considered a two party agreement between such entities which fully incorporates the terms of this Agreement. If an SOW is being entered into in a foreign jurisdiction by an Affiliate of BMC and/or Customer certain terms of this Agreement may need to be modified to accommodate local laws and practices. In such case, an Attachment A Country Specific Provisions will be attached to the SOW and will modify this Agreement as incorporated into that SOW. An "**Affiliate**" is an entity that controls, is controlled by or shares common control with a party, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (ii) 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%. BMC will render the Services in the location(s) as set forth in the SOW. In the event of any conflict between the terms of the SOW and this Agreement, the Agreement shall prevail except for matters of service fees, payment and reimbursement of expense terms if further specified in the SOW. BMC rejects all additional or conflicting terms of a Customer form purchasing document. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into an SOW. The performance of the Services will not relieve or alter the rights, obligations and responsibilities of Customer and of the licensing BMC affiliate with respect to BMC software products under the applicable software license agreement.

2. **SERVICE FEES AND EXPENSES.** The fees payable to BMC for the Services to be rendered will be detailed in the SOW. BMC will submit invoices to Customer for such fees and incurred expenses either upon completion of the Services, or at stated intervals, in any case in accordance with the applicable SOW. Customer shall pay amounts invoiced within 30 days following receipt of the invoice. The unpaid balance of each late payment bears interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law. Customer will pay or reimburse BMC or, when required by law, the appropriate governmental agency, for taxes of any kind, including sales, use, VAT, excise, customs duties, withholding, property, and other similar taxes (other than taxes based on BMC's net income or arising from the employment relationship between BMC and its personnel) imposed in connection with the Services, which are exclusive of these taxes.

3. **TERM AND TERMINATION.** This Agreement will have an initial term of three years and will automatically renew for successive one year terms thereafter. Either party may terminate this Agreement or an SOW for its convenience, upon 30 days' prior written notice. Any SOW that is in effect at the time of termination of the Agreement will continue until completion unless specifically terminated and the terms of the Agreement will continue to apply. Upon termination, Customer shall promptly pay BMC for Services rendered, and expenses incurred, through the date of termination.

4. **CONFIDENTIALITY.**

4.1 "**Confidential Information**" means all proprietary or confidential information that is disclosed to the recipient ("**Recipient**") by the discloser ("**Discloser**"), and includes, among other things (i) any and all information relating Discloser's financial information, customers, employees, Personal Data, products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, the Type II Deliverables; and (iii) the terms of this Agreement, including without limitation, pricing information. Confidential information does



not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees, contractors and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. Notification Obligation. If the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. Notwithstanding the foregoing, Customer agrees that BMC may include Customer's name on customer lists.

4.2 Personal Data. The parties will cooperate to properly address data protection and privacy legal requirements relating to Personal Data if either party is to receive, collect, store, process, or transfer under an SOW. "Personal Data" means any personally identifiable information received by Recipient from, or on behalf of Discloser, relating to a person, which is sufficient to cause such person to be identified, directly or indirectly. BMC has self-certified with the U.S./EU Safe Harbor Privacy Principles published by the U.S. Department of Commerce ("Safe Harbor Principles") to protect Personal Data about individuals in the European Union. In order to fulfill the obligations under the Safe Harbor Principles, a party shall disclose Personal Data to the other party only as necessary for the Recipient to perform its obligations under this Agreement and any applicable Statement of Work.

5. PROPRIETARY RIGHTS AND RIGHTS IN DELIVERABLES.

5.1 Ownership Of Materials Used In the Services. Unless specifically provided in an SOW, Customer shall supply all of the facilities; equipment; supplies; computer programs; information about Customer's business, systems, software and needs; and other materials necessary for completion of the Services ("Customer Property"), and BMC shall supply the people described in the SOW, the know-how and the tools necessary to provide the Services, which may include, among other things, software, templates, questionnaires, graphs, methodologies, models, charts and reports ("BMC Property"). Customer Property and copies and modifications of Customer Property will remain the sole property of Customer or if applicable, Customer's licensors, and BMC Property and copies and modifications of BMC Property will remain the sole property of BMC or if applicable, BMC's licensors. Customer hereby grants to BMC a royalty-free, paid-up, non-exclusive, non-sublicensable and non-transferable license to use the Customer Property for the purpose of providing the Services.

5.2 Ownership of Deliverables. "Deliverables" are materials and other items described as such in an SOW that are to be delivered to, and left with, Customer as a result of the Services. Each Deliverable will be identified in the SOW as either a Type I or a Type II Deliverable. In the event an SOW is silent as to the type of a Deliverable, the parties agree that the Deliverable shall be a Type II Deliverable. Affiliates may use and access the Deliverables under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

5.3 Type I Deliverables. Type I Deliverables are those identified as such in, and created exclusively and specifically for Customer under, the SOW. Provided Customer has paid in full for the Services that resulted in the Type I Deliverables and subject to BMC's or its licensor's ownership of any BMC Property included therein, (a) Customer will own all right, title, and interest in Type I Deliverables, including all proprietary and intellectual property rights embodied therein, (b) the Type I Deliverables shall be considered "works made for hire" of Customer, and (c) to the extent a Type I Deliverable may not, by operation of law, be considered a work made for hire, BMC hereby assigns to Customer all right, title and interest in such Type I Deliverable. With respect to the BMC Property, if any, included in a Type I Deliverable, subject to Customer's compliance with the terms of this Agreement and the applicable SOW, BMC hereby grants Customer a royalty-free, paid-up, non-



exclusive, non-sublicensable, and non-transferable license to use such BMC Property solely as incorporated in such Type I Deliverable and solely for Customer's internal business operations.

5.4 Type II Deliverables. Type II Deliverables are all materials and other items delivered to, and left with, Customer as a result of the Services that are not Type I Deliverables. Subject to Customer's ownership of any Customer Property included therein, BMC owns all right, title and interest in Type II Deliverables, including all proprietary and intellectual property rights embodied therein. Subject to Customer's compliance with the terms of this Agreement and the applicable SOW, BMC hereby grants Customer a royalty-free, paid-up, non-exclusive, non-sublicensable and non-transferable license to use the Type II Deliverables solely for Customer's internal business operations; and subject to BMC's compliance with the terms of this Agreement, Customer hereby grants BMC a royalty-free, paid-up, non-exclusive, non-sublicensable and non-transferable license to use the Customer Property as incorporated in the Type II Deliverables for the benefit of Customer. Notwithstanding the foregoing, in the event that Customer is a contractor engaging BMC for the benefit of a third party ("Client"), then provided that the Client is properly identified in the SOW and that Customer is responsible for such Client's compliance with the provisions of this Agreement, Customer may assign the rights provided to it in Sections 5.3 and 5.4 of this Agreement.

5.5 Copyright notice. Each party agrees to reproduce the copyright notice and any other legend or ownership notice on any copies made under the licenses granted pursuant to this Section 5.

5.6 Retention. Customer acknowledges that BMC is in the business of providing services similar to the Services to other customers and that nothing in this Agreement shall be construed as operating to prevent BMC from carrying on such business. The primary purposes of the provisions of this Section 5 are to ensure that Customer retains ownership and control over Customer's Confidential Information and Customer Property and that BMC retains ownership and control over BMC Confidential Information and BMC Property. As an example, if BMC provides a questionnaire to Customer and Customer fills out the questionnaire, the intent of this Section 5 is that the questions, methodology and other information embodied in the blank questionnaire remains BMC's Property and the information provided by Customer remains Customer's Property. In no event will any of the provisions of this Section 5 be construed to give one party the right to distribute or disclose any of the other party's Confidential Information in violation of Section 4, or to limit BMC's right to use any general knowledge, ideas, concepts, or know-how developed or acquired by BMC during performance of the Services.

6. LIMITED WARRANTY. BMC warrants that it will perform the Services in conformance with generally accepted practices within the software services industry and in accordance with the SOW. Customer must notify BMC of any breach of this warranty no later than 90 days after completion of the Services under the SOW. Customer's exclusive remedy and BMC's entire liability under this warranty shall be for BMC to re-perform any non-conforming portion of the Services within a reasonable period of time, or if BMC cannot remedy the breach during such time period then refund the portion of the fee attributable to such non-conforming portion of the Services under the SOW. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by BMC in writing.

THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. INFRINGEMENT INDEMNITY.

7.1 If a third party asserts a claim against Customer asserting that Customer's use of a Deliverable in accordance with this Agreement violates that third-party's patent, trade secret or copyright ("Customer Infringement Claim"), then BMC will, at its own expense: (a) defend or settle the Customer Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if: Customer promptly notifies BMC of the Customer Infringement Claim, BMC retains sole control of the defense of the Customer Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by BMC. BMC's obligations above will not apply if the Customer Infringement Claim is based on (i) the use of the Deliverable in combination with products not supplied or approved by BMC in writing or in the Deliverable's user manuals, (ii) modification of the Deliverable other than by BMC, or (iii) the failure of Customer to use any updates to such Deliverable within a reasonable time after such updates are made available to Customer. If BMC believes a Deliverable may violate a right, then BMC will, at its expense: (a) modify the Deliverable, or (b) procure the right to continue using the Deliverable, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Deliverable and issue a refund prorated over five years from the completion date of the related SOW.



7.2 If a third party asserts a claim against BMC asserting that BMC's use of Customer Property in accordance with this Agreement violates that third-party's patent, trade secret or copyright ("BMC Infringement Claim"), then Customer will, at its own expense: (a) defend or settle the BMC Infringement Claim; and (b) indemnify BMC for any damages finally awarded against BMC, but only if: BMC promptly notifies Customer of the BMC Infringement Claim, Customer retains sole control of the defense of the BMC Infringement Claim and all negotiations for its settlement or compromise, and BMC provides all reasonable assistance requested by Customer.

7.3 This section contains each party's exclusive remedy and sole liability for Infringement Claims.

8. **MUTUAL INDEMNITY.** Each party shall indemnify and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the gross negligence or willful misconduct of the indemnifying party's employees or contractors arising out of this Agreement and while at the Customer's premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action.

9. **LIMITATION ON LIABILITY. EXCEPT FOR BREACH OF CONFIDENTIALITY AND PROPRIETARY RIGHTS AS OUTLINED IN SECTIONS 4 AND 5, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, OR COSTS OF RECREATING LOST DATA), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EXCEPT FOR BREACH OF CONFIDENTIALITY AND PROPRIETARY RIGHTS AS OUTLINED IN SECTIONS 4 AND 5 AND INDEMNITY AS OUTLINED IN SECTIONS 7 AND 8, IN NO EVENT WILL BMC'S LIABILITY FOR DIRECT DAMAGES EXCEED AMOUNTS PAYABLE BY CUSTOMER UNDER THE APPLICABLE SOW.**

10. **INSURANCE.** BMC will provide and maintain the following insurance, but only for losses arising out of BMC's provision of Services under this Agreement:

- (i) Worker's Compensation insurance as prescribed by the law of the state applicable to the employees performing the Services;
- (ii) Employer's Liability insurance with a limit of one million dollars (\$1,000,000) for each occurrence;
- (iii) Commercial General Liability insurance with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for Products Liability and Completed Operations;
- (iv) Automobile Liability insurance, including coverage for Hired and Non-owned vehicles of one million dollars (\$1,000,000) for combined single limit for bodily injury and/or property damage; and
- (v) Professional Liability insurance covering Errors and Omissions in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services performed under this Agreement.

11. **NON-SOLICITATION.** During the term of the applicable SOW, and for a period of six months thereafter, neither party will solicit for employment any employees, agents, or subcontractors of the other party or its affiliates who, within six months prior to such solicitation, had contact with the soliciting party based in whole or in part upon Services provided under this Agreement. The restrictions in this Section shall be deemed not to apply to general solicitations for employment posted on Internet job sites or printed in newspapers or trade or professional journals.

12. **MISCELLANEOUS TERMS.**

12.1 **Independent Contractor.** All of the services performed by BMC will be performed as an independent contractor.

12.2 **Enforceability/Severability.** If any provision of this Agreement is held to be unenforceable, the remaining provisions shall nonetheless be enforceable.

12.3 **No Waiver.** No failure by either party in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of a right.

12.4 **Force Majeure.** Except for provisions of this Agreement relating to protection of Confidential Information and the obligation of payment, neither party will be liable for non-performance caused by circumstances beyond their reasonable control, including, but not limited to (i) Acts of God, explosion, flood, lightning, tempest, fire or accident; (ii) war, hostilities (whether war is declared or not), invasion, acts of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil



war, (iv) riot, civil commotion or disorder, (v) acts, restrictions, regulations, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any local, state, national, governmental or supra-governmental authority; (vi) import or export regulations or embargos; (vii) defaults of subcontractors where such default is itself caused by force majeure.

12.5 Export Controls. By using the Technology (as this term is defined below), Customer acknowledges that it is responsible for complying with the applicable laws and regulations of the United States and all other relevant countries relating to exports and re-exports. Customer agrees that it will not download, access, license or otherwise export or re-export, directly or indirectly, any software code (delivered as a BMC Product, through support/maintenance, or through other services), any technical publications relating to the software code, such as release notes, reference, user, installation, systems administrator and technical guidelines, or services (collectively, "**Technology**") in violation of any such laws and regulations, including regulations prohibiting export to certain restricted countries ("**Restricted Countries**"), or without any written governmental authorization required by such applicable laws. The list of Restricted Countries can and does change from time to time. It currently includes Cuba, Iran, North Korea, Sudan and Syria. In particular, but without limitation, the Technology may not be downloaded, licensed, transferred or otherwise exported or re-exported, directly or indirectly, including via remote access (a) into a Restricted Country or to a national or resident of a Restricted Country; (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or Other Blocked Persons, the U.S. Commerce Department's Denied Parties List, Entity List, or Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use. By downloading, licensing and/or using the Technology, Customer represents and warrants that (w) it is not located in, under the control of, acting on behalf of, or a national or resident of any Restricted Country; (x) Customer is not on any list in (b) above; (y) Customer is not involved in any end use listed in (c) above; and (z) no U.S. federal agency has suspended, revoked, or denied its export privileges. Customer agrees that all rights to use the Technology are granted on the condition that such rights are forfeited if it fails to comply with these terms.

EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Technology is intended for civil purposes only. Therefore, Customer agrees not to license, download or transfer, directly or indirectly any Technology controlled by it to any military entity or to any other entity for military purposes, including any State Security Forces pursuant to this Agreement, nor to knowingly transfer any Technology to end-users for use in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons. Customer also agrees, (a) not to export or re-export any Technology to an entity that is based in China and describe themselves as "Institute(s)" or "Academy(ies)"; or (b) not to knowingly export or re-export any Technology to any country that is subject to European Union, United Nations or Organizations for Security and Co-operation in Europe sanctions without first obtaining a validated license.

12.6 U.S. Federal Acquisitions. This Article applies to all acquisitions of the commercial Services subject to this Agreement by or on behalf of the US Federal Government ("Government"), or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Government. By accepting delivery of the Services, the Government hereby agrees that the Services qualify as "commercial" within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the Government's use and disclosure of any Deliverables, and shall supersede any conflicting contractual terms and conditions. If the license granted by this Agreement fails to meet the Government's needs or is inconsistent in any respect with Federal law, the Government agrees to return the Deliverables, unused, to BMC. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights – Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988)."

12.7 Governing Law. This Agreement shall be governed by the substantive laws of the State of Texas without regard to conflict of laws principles.

12.8 Assignment. Except for assignments to parent entities or Affiliates neither party may assign or transfer this Agreement, in whole or in part, to any third party without first obtaining the prior written consent of the other party.

12.9 Entire Agreement. This Agreement together with the applicable SOW constitute the entire agreement between the parties, and supersede all prior agreements and understandings, relating to this subject matter. Any additional documents presented to a BMC employee or consultant by Customer for signature will be governed by this Agreement and to the extent that such document conflicts with this Agreement, it shall be considered null and void. Any amendment or change to this Agreement or an SOW must be in writing and signed by the parties.

IN WITNESS WHEREOF, each party hereto warrants and represents that this Agreement has been executed by a duly authorized representative of such party, and this Agreement constitutes the legal, valid and binding obligation of such party.



BMC Software Federal, LLC.

By: Judy Schafer

Name: _____

Title: Judy Schafer
Sr. Manager of Order Services.

Date: JUL 2 2015

Four Points Technology, LLC

By: Amy Moss

Name: Amy Moss

Title: Director of Contracts

Date: 7/1/15