

## END USER LICENSE AGREEMENT

BY OPENING THE PACKAGE, INSTALLING, PRESSING "AGREE" OR "YES" OR USING THE PRODUCT, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS. IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, DO NOT INSTALL OR USE THE PRODUCT, PROMPTLY RETURN THE PRODUCT TO BMC OR YOUR BMC RESELLER, AND IF YOU ACQUIRED THE LICENSE WITHIN 15 DAYS OF THE DATE OF YOUR ORDER CONTACT BMC OR YOUR BMC RESELLER FOR A REFUND OF LICENSE FEES PAID. IF YOU REJECT THIS AGREEMENT, YOU WILL NOT ACQUIRE ANY LICENSE TO USE THE PRODUCT.

This Agreement ("**Agreement**") is between the entity or individual entering into this Agreement ("**Customer**") and the BMC Entity for the applicable Territory as described in Section 19 ("**BMC**"). In addition to the restrictions imposed under this Agreement, any other usage restrictions contained in the Product installation instructions or release notes shall apply to your use of the Product.

**Territory:** The country where Customer acquired the license.

### 1. **GENERAL DEFINITIONS.**

"**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC or Customer, with more than 50% ownership interest.

"**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.

"**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.

"**Order**" is an agreed written or electronic document identifying the Products to be licensed, subject to the terms of this Agreement.

"**Product**" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by BMC to Customer under Support.

"**Support**" is the support services program as further specified in this Agreement.

2. **LICENSE.** Subject to the terms of this Agreement, BMC grants Customer a non-exclusive, non-transferable, perpetual (unless a non-perpetual license is provided on an Order) license, as specified in the relevant Order, to exercise the following rights to the Product up to the Licensed Capacity: (a) install on Customer's owned or leased hardware at a facility owned or controlled by Customer in the Territory; (b) operate solely for processing Customer's own data in Customer's business operations, and (c) make one copy of the Product for archival purposes only (collectively a "**License**"). If the Product design permits modification, then Customer may only use such modifications or new software programs for its internal purposes and otherwise consistent with the License. Affiliates may use and access the Products and Support under the terms of this Agreement, and Customer is responsible for its Affiliates compliance with the terms of this Agreement.

3. **RESTRICTIONS.** Customer agrees to not: (a) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation; (b) distribute or provide the Product to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data, or for rental, lease, or sublicense; (c) provide a third party with the results of any functional evaluation, or performance tests, without BMC's prior written approval; (d) attempt to disable or circumvent any of the licensing mechanisms within the Product; or (e) violate any other usage restrictions contained in the Documentation.

4. **PRODUCT PERFORMANCE WARRANTY.** Except for a trial license as described below, BMC warrants that the Product will perform in substantial accordance with its Documentation for a period of one year from the date of the Order. This warranty will not apply to any problems caused by software other than the Product, hardware not supplied by BMC, or misuse of the Product. No warranty is provided for additional Licensed Capacity.

5. **LIMITED REMEDIES.** BMC's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: BMC's use of commercially reasonable efforts to remedy defects covered by the warranty or replacement of the defective Product within a reasonable period of time, or if BMC cannot remedy or replace such defective Product within such time period, then BMC will refund the amount paid by Customer for the License for that Product. BMC's obligations in this section are conditioned upon Customer's providing BMC written notice of the claim during the warranty period and full cooperation and access to the Product in resolving any claim.

6. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE PRODUCT IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

7. **PAYMENTS AND DELIVERY.** Customer will pay each License fee and/or Support fee upon receipt of invoice. 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) imposed in connection with the License and/or the Support fees which are exclusive of these taxes. For Products that are delivered electronically, upon request from BMC, Customer agrees to provide BMC with Documentation supporting that the designated Product was received electronically. If Customer accepts any Product in a non-electronic format, there may be an additional charge and it is the sole responsibility of Customer to bear any sales/use tax obligation, penalties, and interest. 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. All Products are licensed FCA ("Free

Carrier” as per Incoterms 2000) shipping point. The Products are accepted on the date of the Order, however, such acceptance will not affect the Product Performance Warranty provided in this Agreement.

8. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** BMC, its Affiliates or licensors retain all right, title and interest to the Product and all related intellectual property and proprietary rights. The Product and any third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. Customer may not remove any product identification, copyright, trademark or other notice from the Product. BMC reserves any rights not expressly granted to Customer. **“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 to products or services provided by a Discloser, its financial information, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to BMC, and its licensors, the Product and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product 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; (d) is independently developed by or for Recipient; or (e) is required to be disclosed by applicable law or court order. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement.

9. **DISCLAIMER OF DAMAGES.** EXCEPT FOR VIOLATION OF PROPRIETARY RIGHTS AND CONFIDENTIALITY (SECTION 8) AND INFRINGEMENT CLAIMS (SECTION 12), NEITHER PARTY, ITS AFFILIATES OR BMC’S LICENSORS ARE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, SUPPORT, THE PRODUCT OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE PRODUCT (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.

10. **LIMITS ON LIABILITY.** EXCEPT IN THE CASE OF INFRINGEMENT (SECTION 12), OR BREACH OF CONFIDENTIALITY (SECTION 8), BMC’S TOTAL LIABILITY FOR DAMAGES OF ANY KIND IS LIMITED TO THE GREATER OF AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THE LICENSE TO THE APPLICABLE PRODUCT GIVING RISE TO SUCH DAMAGES.

11. **TRIAL LICENSE.** For Products provided without an Order and without charge Customer may only operate the Product on a trial basis for 30 days or longer time period if agreed to by BMC in writing, for purposes of evaluating whether Customer will acquire a license to the Product for a fee; and the Product is provided “AS IS” and without any warranty. BMC may terminate a trial license for its convenience upon notice to Customer.

12. **INFRINGEMENT CLAIMS.** If a third party asserts a claim against Customer asserting that Customer’s use of a Product in accordance with this Agreement violates that third-party’s patent, trade secret or copyright (**“Infringement Claim”**), then BMC will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if: Customer promptly notifies BMC of any Infringement Claim, BMC retains sole control of the defense of any 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 Infringement Claim is based on (i) the use of Product in combination with products not supplied or approved by BMC in writing or in the Product’s user manuals, or (ii) the failure of Customer to use any updates to such Product within a reasonable time after such updates are made available to Customer. If BMC determines in BMC’s reasonable discretion that use of the Product should be stopped because of an Infringement Claim or potential Infringement Claim, if a court of competent jurisdiction enjoins Customer from using a Product as a result of an Infringement Claim and BMC is unable to have such injunction stayed or overturned, or if BMC settles an Infringement Claim on terms that would require Customer to stop using the Product, then BMC will, at its expense and election: (a) modify or replace the Product, (b) procure the right to continue using the Product, or (c) if in BMC’s reasonable judgment, neither (a) or (b) is commercially reasonable, terminate Customer’s License to the Product and (i) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Order under which the Products were initially licensed; and (ii) for any non-perpetual licenses, release Customer from its obligation to make future payments for the Product or issue a pro rata refund for any fees paid in advance. This Section contains Customer’s exclusive remedies and BMC’s sole liability for Infringement Claims.

13. **TERMINATION.** BMC may: (i) terminate an Order and the Licenses to the Products on that Order if Customer fails to pay any applicable fees due under that Order within 30 days after receipt of written notice from BMC of non-payment; or (ii) terminate all Licenses and this Agreement in whole or in part if Customer commits any other material breach of this Agreement and fails to correct the breach within 30 days after BMC notifies Customer in writing of the breach. Upon any termination of a License, Customer will immediately deinstall and stop using the relevant Product, and upon BMC’s request, Customer will immediately return such Product to BMC, together with all related Documentation and copies, or certify its destruction in writing.

14. **AUDIT.** If requested by BMC not more than once a year, Customer agrees to deliver to BMC periodic written reports, whether generated manually or electronically, specifying Customer’s use of the Product, and 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 audit and to provide reasonable access to information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for a Product, Customer agrees to pay the applicable fees for additional capacity. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Product, then Customer agrees to also pay BMC’s reasonable costs of conducting the audit.

15. **EXPORT CONTROLS.** Customer will cooperate with BMC as reasonably necessary to ensure compliance with the laws and regulations of the United States and all the relevant countries, relating to exports (including “deemed” exports and “deemed” re-exports

as defined by the Export Administration Regulations) and re-exports (“Export Laws”). Customer may not import, export, re-export or transfer, directly or indirectly, including via remote access, any part of the BMC Products, or any other BMC information or technology in violation of any such laws and regulations, or without any written governmental authorization required under applicable laws. In particular, but without limitation, none of the Software or the underlying information or technology may be downloaded or otherwise exported or re-exported, directly or indirectly, (a) into (or to a national or resident of) Cuba, Iran, North Korea, Syria or Sudan; (b) to anyone on the US Treasury Department’s list of Specially Designated Nationals or Other Blocked Persons, the US Commerce Department’s Denied Parties List, the US Commerce Department’s Entity List, or the US Commerce Department’s Unverified List; or (c) to or for any proliferation-related (nuclear weapons, missile technology, or chemical/biological weapons) end use.

16. **GOVERNING LAW.** This Agreement is governed by the substantive laws in force, without regard to conflict of laws principles: (a) in the State of Texas, if you acquired the License in the United States, Puerto Rico, or any country in Central or South America; (b) in the Province of Ontario, if you acquired the License in Canada (subsections (a) and (b) collectively referred to as the “**Americas Region**”); (c) in Singapore, if you acquired the License in Japan, South Korea, Peoples Republic of China, Special Administrative Regions of Hong Kong or Macau, Taiwan, Philippines, Indonesia, Malaysia, Myanmar, Singapore, Brunei, Vietnam, Cambodia, Laos, Thailand, India, Pakistan, Australia, New Zealand, Papua New Guinea or any of the pacific island states (collectively, “**Asia Pacific Region**”); or (d) in the Netherlands, if you acquired the License in any other country not described above. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed in its entirety.

17. **ARBITRATION.** ANY DISPUTE BETWEEN CUSTOMER AND BMC ARISING OUT OF THIS AGREEMENT OR THE BREACH OR ALLEGED BREACH, SHALL BE DETERMINED BY BINDING ARBITRATION CONDUCTED IN ENGLISH. IF THE DISPUTE IS INITIATED IN THE AMERICAS REGION, THE ARBITRATION SHALL BE HELD IN NEW YORK, U.S.A., UNDER THE CURRENT COMMERCIAL OR INTERNATIONAL, AS APPLICABLE, RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IF THE DISPUTE IS INITIATED IN A COUNTRY IN THE ASIA PACIFIC REGION, THE ARBITRATION SHALL BE HELD IN SINGAPORE, SINGAPORE UNDER THE CURRENT UNCITRAL ARBITRATION RULES. IF THE DISPUTE IS INITIATED IN A COUNTRY OUTSIDE OF THE AMERICAS REGION OR ASIA PACIFIC REGION, THE ARBITRATION SHALL BE HELD IN AMSTERDAM, NETHERLANDS UNDER THE CURRENT UNCITRAL ARBITRATION RULES. THE COSTS OF THE ARBITRATION SHALL BE BORNE EQUALLY PENDING THE ARBITRATOR’S AWARD. THE AWARD RENDERED SHALL BE FINAL AND BINDING UPON THE PARTIES AND SHALL NOT BE SUBJECT TO APPEAL TO ANY COURT, AND MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION. NOTHING IN THIS AGREEMENT SHALL BE DEEMED AS PREVENTING EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THE DISPUTE AS NECESSARY TO PROTECT EITHER PARTY’S CONFIDENTIAL INFORMATION, OWNERSHIP, OR ANY OTHER PROPRIETARY RIGHTS. ALL ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN CONFIDENCE, AND THE PARTY PREVAILING IN ARBITRATION SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS’ FEES AND NECESSARY COSTS INCURRED RELATED THERETO FROM THE OTHER PARTY.

18. **U.S. FEDERAL ACQUISITIONS.** This Article applies to all acquisitions of the commercial Product subject to this Agreement by or on behalf of the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. By accepting delivery of the Product, the government hereby agrees that the Product qualifies 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 the Product, 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 Product, 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).”

19. **BMC ENTITIES.** The following licensing entities apply to this Agreement:

<b>Territory</b>	<b>Licensing Entity</b>	<b>Address of Licensing Entity</b>
United States and Latin America South (not a specified Central or South America country below)	BMC Software, Inc.	2101 CityWest Boulevard, Houston, Texas 77042
Canada	BMC Software Canada Inc.	50 Minthorn Boulevard, Suite 200 Markham, Ontario L3T 7X8 Canada
EMEA (Europe, Middle East and Africa)	BMC Software Distribution B.V.	Boeing Avenue 245, 1119 PE Schiphol Rijk, The Netherlands
Brazil	BMC Software do Brasil Ltda.	Rua Leopoldo Couto de Magalhães Jr, 758 - 14º andar, São Paulo – SP – Brazil
Mexico	BMC Software Distribution de México, S.A. de C.V.	Torre Esmeralda II Blvd. Manuel Avila, Camacho #36, Piso 23 Lomas de Chapultepec, CP11000, México D.F.
Argentina	BMC Software de Argentina S.A.	Ing. Butty 220 – Piso 14, Buenos Aires, Republica Argentina, C1001AFB
S.E.A (Southeast Asia), Australia, New Zealand, Korea, Hong Kong, Taiwan	BMC Software Asia Pacific Pte Ltd	One Temasek Avenue, #17-01 Millenia Tower, Singapore 039192
China	BMC Software (China) Limited	Suite 501-504, Level 5, Tower W1, The Towers, Oriental Plaza, #1 East Chang An Ave., Dong Cheng, Beijing 100738, China

Territory	Licensing Entity	Address of Licensing Entity
Japan	BMC Software K.K.	Harmony Tower 24th Floor, 1-32-2 Honcho, Nakano-ku, Tokyo, 164-8721

20. **MISCELLANEOUS TERMS.** BMC is not liable for its failure to perform any obligation under this Agreement during any period in which performance is delayed by circumstances beyond BMC's reasonable control. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Customer may not assign or transfer this Agreement or a License to a third party, whether by merger or otherwise. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. BMC rejects all additional or conflicting terms of a Customer form purchasing document. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements, between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. The prevailing party in any litigation is entitled to recover its attorney's fees and costs from the other party. BMC's Products may consist of software components owned by BMC and components owned by BMC's licensors ("TPS"). Notices and licenses regarding TPS ("TPS Licenses") are included in the Documentation if they are required by BMC's licensor. Certain TPS may be included on the same medium or as part of the download of the Software. When TPS is included in Software, such inclusion does not change any of the rights and licenses provided under this Agreement with respect to the Software, including, without limitation, warranties, indemnification, license grants and support services. In addition, with respect to the TPS itself, this Agreement does not modify or abridge any rights or obligations Customer may have under the TPS License. Any use of TPS outside of Customer's License to the Software is permitted only if, and to the extent, the TPS License expressly provides for it and is subject to the rights and obligations set forth in such TPS License. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

21. **SUPPORT.** Customer may acquire BMC support services ("Support") on an Order. Once Support is acquired for a Product, Customer is automatically enrolled in Support on an annual basis for all Licensed Capacity of that Product, unless either party terminates Support on all Licensed Capacity of a Product upon at least 30 days written notice prior to the next Support anniversary date. The annual fee for Support will be agreed upon at the time of each Order. For a description of Support go to [www.bmc.com/support](http://www.bmc.com/support). BMC may change its Support terms, to be effective upon Customer's support anniversary date. BMC reserves the right to discontinue Support for a Product where BMC generally discontinues such services to all licensees of that Product. If Customer terminates Support and then re-enrolls in Support, BMC may charge Customer a reinstatement fee.

22. **ADDITIONAL TERMS.** The following additional terms are incorporated into this Agreement.

a. **GENERAL DEFINITIONS.**

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

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

**Additional Restriction for BMC Service Desk Express Products:** No terms in any business objects license agreement embedded in the Product apply to the Product.

**Additional Restriction for BMC Remedy Products:** Customer may not bypass, in any way, the use of a concurrent or named user license to manage an update (including, without limitation, submitting a ticket to a parallel form and then using workflow to perform the update without a license).

**Additional License for BMC Service Desk Express Products:** Customer may make and operate 2 additional copies of the Product solely for internal pre-production configuration and testing purposes.

**Asset Management Product Restriction for BMC Configuration Management Products:** Each "Foundation Express" License is limited for use with one Client Endpoint, Device Endpoint, Server Endpoint, or Other Endpoint, as the case may be.

**BMC Performance Assurance Suite for Mainframes.** Any BMC Performance Assurance Suite for Mainframes Product and/or any BMC Performance Analyzer for Mainframes, BMC Performance Predictor for Mainframes, BMC Performance Perceiver for Mainframes, BMC Performance Analyzer for Mainframe Applications and other related products that may be released as part of the BMC Performance Assurance Suite for Mainframes must be licensed for all Computer(s) within the mainframe environment for which the Product or one of its components will process data or execute functionality on behalf of, regardless of whether the Product or one of its components is specifically installed on that Computer. The Products may be installed on or moved to any Computer(s) included in the licensed environment.

**BMC Performance Assurance for Servers and Virtual Servers.** Any BMC Performance Assurance Product and/or any BMC Performance Analyzer, BMC Performance Predictor, BMC Performance Perceiver, and other related products that may be released as part of the BMC Performance Assurance for distributed systems environments are licensed to the Computer(s) for which the Products are initially assigned and may not be reassigned to another Computer(s) unless the original Computer(s) has been removed from service. A license is required for all Computers for which the Product or one of its components is installed and/or executes functionality on behalf of, regardless of whether the Product or one of its components is specifically installed on that Computer.

**Client Endpoint:** Is a non-Server Computer.

**Desktop/Mobile Management Product Restrictions for BMC Configuration Management Products:** Each "Desktop/Mobile Management" License is limited for use with one Client Endpoint.

- **Desktop/Mobile Patch Management Restriction:** A "Desktop/Mobile Patch Management" License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one Client Endpoint.

- **Desktop/Mobile Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Desktop/Mobile Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on one licensed Client Endpoint, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose.

- **BMC Configuration Management Desktop OS Management Restriction:** A “BMC CM Desktop OS Management” License may only be used to manage operating system migration activities on one Client Endpoint. Each BMC CM Desktop OS Management License: (a) may only be used on a licensed Client Endpoint that is licensed for use with both a Desktop/Mobile Application Management License and a Desktop/Mobile Configuration Discovery License; and (b) may not be redeployed or harvested to a different Client Endpoint.

- **Extranet Application Management Restriction:** An “Extranet Application Management” License may only be used on one Client Endpoint. The parties must mutually agree on the name of each Single Application and its primary function at the time of Order. Single Application is defined as a Tuner channel containing one application with one primary function, and Tuner is defined as is the client component of the Product configured by Customer for deployment on licensed Endpoints.

**Development License Restriction for BMC Remedy Products:** Customer will restrict this license to a server dedicated to development and testing only, and will not allow any production or commercial activity on that server.

**Device Endpoint:** Is a personal digital assistant or similar computing device.

**Device Management Product Restriction for BMC Configuration Management Products:** Each “Device Management” License is limited for use with one Device Endpoint.

**Endpoint:** Is a Client Endpoint, a Device Endpoint, a Server Endpoint, or Other Endpoint, as the case may be.

**Hot Backup License Definition and Restriction for BMC Remedy Products:** A hot backup license is a replicate of the Remedy production licenses on a backup server (“**Backup Server**”). Customer may access the Backup Server only when the customary server on which the AR System is installed fails or only in preparation of the Backup Server for such situation.

**Load Balanced System Restriction for BMC Remedy Products:** If Customer has multiple servers in a single logical environment pointing to a single AR System database instance, only one Instance of Remedy “per Instance” licenses is required for installation on these servers (except for the AR System, which must be licensed for each server).

**BMC Service Desk Express Suite Restriction for BMC Service Desk Express Products:** When purchasing Concurrent User licenses for the “Service Desk Express” Product, regardless of the number of such licenses purchased and regardless of the number of purchases made (including future purchases), Customer is restricted via license keys to a total of (i) five Concurrent Users conducting a process in the report environment of the Crystal Reports “Web Server” product which is embedded in the “Service Desk Express” Product and (ii) two named users accessing the “Crystal Reports Professional” product which is bundled with the “Service Desk Express” Product.

**BMC Configuration Management Control Center Module Restriction for BMC Configuration Management Products:** Each “BMC CM Control Center” License may be used by Administrators for the project for which it was licensed. An Administrator is defined as an employee with access to or the right to use the administrative components of the Product.

**BMC Configuration Management Developers Kit Definition and Restriction for BMC Configuration Management Products:** A “BMC CM Developers Kit” license allows Customer to embed the SDK Run Time Code, in unmodified object code form, into a single software application developed by Customer to create an “SDK Client.” An SDK Client may only be used on or distributed to licensed Endpoints that are licensed separately by Customer. Each SDK Client must have a principal purpose and functionality substantially different than that of the SDK Run Time Code. Use of any software other than a Desktop/Mobile Management Product, a Device Management Product and/or a Server Management Product, as applicable, to invoke the update functionality of the SDK Run Time Code is expressly prohibited. SDK Run Time Code is defined as is the unmodified object code files in the BMC CM Product that are designated as re-distributable.

**Other Endpoint:** Is a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be.

**Server Endpoint:** Is a Computer or other device that provides a service for other Computers or devices connected to it via the Internet, an extranet, an intranet, another network, or otherwise.

**QuickPass** licenses do not include CONTROL-SA’s Enterprise User Administration functionality.

**Server Management Product Restrictions for BMC Configuration Management Products:** Each “Server Management” License is limited for use per CPU - Subcapacity.

- **Server Patch Management Restriction:** A “Server Patch Management” License may only be used to manage, deploy, update and inventory anti-virus software and security patches per CPU - Subcapacity.

- **Server Patch Management Pack Restriction:** The Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product that are shipped with the Server Patch Management Pack License may only be used to manage, deploy, update and inventory anti-virus software and security patches on licensed Server Endpoints, unless Customer has separately licensed the Desktop/Mobile Application Management Product and the Desktop/Mobile Configuration Discovery Product. Customer may not use the functionality of such Products for any other purpose. With respect to the above Server Management Licenses, Customer must comply with any restrictions designated at the time of Order on the maximum number of CPUs that may be included in each Server Endpoint.

c. **UNITS OF MEASUREMENT.** The following units of measurement apply to certain Products.

**per adapter:** A license is required for each installation of an adapter that interfaces with the Product.

**per agent:** A unit of software with the official name of Remote Sys Call Daemon or RSCD Agent that can be deployed on a physical or virtual operating system.

**per application:** A unique collection of application component templates and configuration objects used to form a single logical platform defined by the Customer.

**per asset:** A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint or Other Endpoint monitored, managed or discovered by the Product.

**per Client Endpoint:** Is a non-Server Computer.

**per component:** A license is required for all objects that represent a physical or logical part of the service model.

**per concurrent access license:** A license is required for the maximum number of simultaneous sessions accessing the Product. Sessions are counted in packs of 5.

**per concurrent session:** A license is required for the maximum number of simultaneous sessions accessing the Product.

**per concurrent user/Floating License:** A license is required for the maximum number of individual employees or contractors of Customer to whom simultaneous access has been granted to the Product on a computer or multiple computers.

**per CPU – Full Capacity:** A “CPU” is 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. For each Computer upon which the Product is installed or managed, a license is required for the total number of CPUs in each Computer.

**per CPU – Subcapacity:** A “CPU” is 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. A license is required for all CPUs on which the Product is installed or managed.

**per database:** A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges.

**per deployed robot:** A license is required for all PATROL End-to-End Response Timer robots deployed.

**per Device Endpoint:** Is a personal digital assistant or similar computing device.

**per engine:** A license is required for each mainframe general purpose engine on the server upon which the Product is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

**per enterprise:** A license is required per Customer or Client, or both, for its internal use only, regardless of the number of times Customer installs the Product in its Enterprise or its Client's Enterprise. A “Client” is a third party whose data is processed by Customer, provided Customer is an authorized BMC service provider.

**per gigabyte range:** A license is required for the total allocated database space per host ID or physical Computer which the Product is managing. The Product may not be moved to another Computer unless the current Computer is taken out of service. The total allocated database capacity cannot be segregated or aggregated into lower or higher ranges among different Computers. For example: if Customer licenses 26-50 gigabytes, the Customer is only licensed for a maximum of 50 gigabytes in total across all the databases of the licensed Product on one particular Computer.

**per installed server:** A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) upon which the Product or any of its components is installed.

**per instance:** A license is required for all named occurrences of the Product created or installed in the Enterprise.

**per Linux engine:** A license is required for all engines of a mainframe Computer on which Customer is running Linux, classified by Linux Group using BMC's standard Computer classification.

**per managed component:** A license is required for all objects that represent a physical or logical part of the service model managed by the Product.

**per managed network device:** A standalone or chassis-based network device/card/processor that is managed using a unique IP-address.

**per managed server:** A license is required for each server managed by the Product or one of its components, regardless of whether the Product or one of its components is installed on that server. When applicable that license must be computed at the appropriate tier level based on the cumulative count of managed servers.

For this unit of measurement, server shall mean a Computer System, a Virtual System or another System that provides a service for other Systems connected to it via the Internet, an extranet, an intranet, another network, or otherwise and is a single logical operating system image. Examples of servers which are distinguished by the nature of the service they provide include (but are not limited to) file servers, database servers, transaction servers, application servers, object servers, middleware servers, print servers and web servers. Network devices are not servers under this unit of measurement.

**per monitored element:** A license is required for all remotely monitored elements, such as a Server, database, operating system, URL, firewall, storage, or network device.

**per monitored server:** A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) which the Product or one of its components is monitoring regardless of whether the Product is monitoring it locally or remotely.

**per named user/Fixed License:** 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. **Internal User:** Refers to all employees (full time and part time) and contractors within a company whose information is being managed using the BMC IdM tools. Information on these users will typically be found in the HR database.

**External User:** Refers to business partners and customers/ prospects whose information is being managed using the BMC IdM tools or employees (full or part time)/contractors of an organization who are licensed to use one or more of the following BMC Identity Management Tools: (1) BMC Identity User Administration (2) BMC Identity Password Management (3) BMC Identity Compliance Manager, provided the users have no more than 2 logons (access points) being managed by the IdM tools. **Archive User:** Refers to all users whose identity information is stored within the IdM system but is not being actively managed; the information could be stored for the purpose of audit/ forensics etc. **Developer User:** Users who create or modify applications using the BMC Directory Management Studio.

**per node:** A license is required for the maximum number of Nodes which the Product manages and/or monitors. A “Node” is a network device (IP or non-IP) such as a router, switch or Computer.

**per port:** A license is required for the total port capacity of a managed storage networking device regardless of whether the port is in service. Storage networking devices typically include HBAs (Host Bus Adapters), Storage Switches and Directors. The total port capacity cannot be segregated or aggregated into lower or higher ranges.

**per project:** Is the specific project, facility or business unit, as the case may be, for which the relevant Product was licensed at the time of order.

**per Server Endpoint:** Is a Computer or other device that provides a service for other Computers or devices connected to it via the Internet, an extranet, an intranet, another network, or otherwise.

**per Service Management 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 the Product is installed, managed or monitored. 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.

**per site:** A license is required for the physical site at which the Product is installed regardless of the number of times the Product is installed.

**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). A "Task" contains 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. 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**

**CONTROL-M/Assist:** Licensed tasks equal the maximum number of tasks (as described above) that will interface a third party scheduler with the CONTROL-M active environment. 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.

Control-M/Tape, Control-M Restart, Control-O: 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 Products, the maximum number of tasks that the Product is priced against, is measured as the maximum number of CONTROL-M tasks.

**per terabyte:** A license is required for the total aggregate storage capacity in the Enterprise.

**per third-party software:** A license is required for each installation of the third-party software product that interfaces with the Product.

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**YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.**