

Master Education Agreement

This Master Education Agreement ("**Agreement**") is between Click here to enter text., a Click here to enter text., located at Click here to enter text. Click here to enter text. Click here to enter text. Click here to enter text., Click here to enter text., Click here to enter text. Click here to enter text. ("**Customer**") and Click here to enter text., a Delaware corporation, located at Click here to enter text., Click here to enter text., or its local services affiliate ("**BMC**"). This Agreement is effective as of Click here to enter text. ("**Effective Date**").

1. **DEFINITIONS.**

"**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC or Customer, where such control arises from either (i) 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 Academy**" is BMC's learning management system. By utilizing BMC Academy, customers can: (i) purchase and launch WBT and ODL courses (as defined below); (ii) view Customer's transactions and/or purchases; and (iii) review Customer's LPCs (as defined below) activity and balance. Customer's use of BMC Academy is governed by the BMC Academy and Education Services Terms and Conditions provided and agreed to by Customer during registration for BMC Academy, a copy of which may be viewed at <http://media.cms.bmc.com/documents/BMC+Academy+and+Education+Services+Terms+and+Conditions.pdf>.

"**Customer Contact**" means the individual authorized by the Customer to have access to the Customer account Keycode (as defined below) and authorize redemption of the LPCs.

"**Education Solution Accelerator**" or "**ESA**" is a licensed tool that allows customers to create original content as well as revise, edit and add Education Services content. BMC content offerings that can be edited by ESA are considered Education Materials (as defined below). Customer may acquire a license for the ESA tool separately via a BMC license order.

"**Education Materials**" means materials created for educational purposes by BMC covering BMC products and offerings. Customer's license of Education Materials from BMC shall be governed by the terms attached to the Education Materials Order Form executed by the parties.

"**Education Order Form**" or "**EOF**" means the form used to redeem LPCs for Education Services. It may be in the form of an Education Order Form, Education Statement of Work, or LPC Redemption Authorization Form. Customer and BMC shall agree on an EOF that sets forth in detail the Education Services to be provided as well as LPC consumption, pricing, period of performance, and location, if applicable.

"**Education Services**" are delivered in various formats, including but not limited to: (i) "**Public Classes**" where a customer receives instructor led training onsite at a BMC facility ("**ILT**") or virtually where a customer receives instructor led training via a WebEx environment ("**VILT**"); (ii) "**Private Classes**" (or "**Private ILT**") where a customer receives instructor led training onsite at a customer's facility; (iii) Web Based Training which is online Education Services that are self-paced ("**WBT**"); (iv) On Demand Learning ("**ODL**") where the customer is given access to online/web-based course content, and is given access to a remote lab environment where the customer can practice concepts taught in the course; and (v) "**Education Consulting**" where a customer requests BMC to assist them in creating or modifying education content for their own internal use. The WBT and ODL (collectively, "**Online Classes**") are self-paced activities. The time required to complete a WBT or ODL class is based on the pace the customer sets and the time that the customer has available. BMC will provide each WBT or ODL class for a specified period of time during which a customer may take the WBT or ODL class as many times as the Customer likes. At the end of the designated period of availability, Customer will no longer have access to WBT or ODL classes unless the Customer purchases the class again. This designated period of time may vary based on the type of online class selected.

"**Education Subscription**" is an unlimited pass available for purchase by customers, which grants customers access to BMC's catalogue of WBTs posted on BMC Academy for a specified period of time.

"**Keycode**" is an alphanumeric personal identification number (PIN) code used by Customer's Customer Contact to authorize redemption of LPCs through BMC Academy for certain Education Services, as further described in Section 6 below.

"**Learning Pass Credits**" (or "**LPCs**") are prepaid tokens that may be redeemed for Education Services for one (1) or multiple attendees.

“**Order**” is an agreed written or electronic document subject to the terms of this Agreement that identifies the number of LPCs to be purchased and the fees to be paid.

“**Training Units**” has the same meaning as LPCs.

2. **SCOPE.**

- 2.1. Orders.** LPCs are obtained solely by execution of Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein, and in the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is executed by an authorized representative of each party. Orders 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 Order, the terms “BMC” and “Customer” as used in this Agreement will be deemed to refer to the entities that execute that Order, the Order will be considered a two party agreement between such entities, and BMC will separately invoice the Customer named in the Order for the associated fees. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by BMC and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether BMC acknowledges, accepts or fully or partially performs under such purchase order, **BMC OBJECTS** to any additional or different terms in the purchase order, other than those that establish price in accordance with this Agreement.
- 2.2. Learning Pass Credits.** Customer may use the LPCs to purchase Education Services and/or Education Materials offered by BMC or an authorized BMC education provider under the terms of this Agreement; provided, however, LPCs may not be redeemed for Education Subscriptions or an ESA. To redeem LPCs for the purchase of Education Services, Customer, based on the particular Education Service being purchased, shall either: (a) complete and execute the EOF provided by BMC; or (b) utilize Customer’s BMC issued Keycode. To redeem LPCs for the purchase of Education Materials, Customer shall complete and execute the Education Materials Order Form provided by BMC. BMC reserves the right to modify the list or pricing of available Education Services at any time.
- 3. RESTRICTIONS.** Any software products and related documentation and/or other confidential or proprietary information delivered to Customer in the course of providing Educational Services (“**Products**”) will be deemed included in the product licensed under, and shall be subject to all the terms and conditions of, the software license agreement (“**SLA**”) to which it relates, including without limitation the provisions concerning title and proprietary information. Neither the execution nor fulfillment of this Agreement will relieve or alter BMC’s nor Customer’s obligations and responsibilities with respect to the affected products under the license terms set forth in the SLA.
- 4. PAYMENTS.** Customer will pay each LPC 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 LPC fees which are exclusive of these taxes. 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.
- 5. LEARNING PASS CREDIT CONSUMPTION.** BMC provides certain Education Services throughout the year. Customer may contact BMC for a schedule of Education Services, and LPCs may be redeemed for Education Services as published on the then current available schedule. BMC is not responsible for any changes to the schedule that may otherwise delay consumption of LPCs. LPCs may not be held for redemption towards Education Services released after the LPC Expiration Date (as defined below). For any Education Services, LPC usage is determined by dividing the undiscounted price per LPC into the list price of such Education Services. When redeeming LPCs, Customer will be required to either (i) execute a separate EOF for all Education Services, or (ii) utilize its assigned Keycode for use with BMC Academy. The number of LPCs consumed will be based on the LPC fee as determined by the applicable EOF or BMC Academy (as applicable). When using LPCs, no other Education Services discounts will apply. LPCs are to be used in the country of purchase. Use outside the country of purchase must be pre-approved by BMC. Should LPCs be approved for use outside the country of purchase, all pricing will be based on the country where the Education Services are purchased or attended. BMC will perform currency conversion where applicable based on the then current list price of the Education Services at time of either registration, order or invoicing depending upon the Education Service.
- 6. LEARNING PASS CREDIT AUTHORIZATION.** (a) Authorization for Public Classes: BMC will issue a Keycode to the Customer Contact. Customer will use this Keycode when enrolling Customer’s Users in a class as a means of redemption via BMC Academy. “**Users**” shall include Customer’s employees, consultants, contractors, agents, and affiliates. Customer is responsible for authorizing individuals to use the Keycode and for ensuring proper usage of the Keycode. BMC is not responsible for unauthorized use of the Keycode. (b) Authorization for any non-Public Classes Education Services: Customer shall accept in writing via an EOF the redemption of LPCs for

non-Public Classes Education Services. If the non-Public Classes Education Services are provided via BMC Academy, Customer shall redeem said LPCs by utilizing Customer's BMC issued Keycode. Customer's LPC balance will be adjusted accordingly after each LPC redemption authorization.

7. **LPC EXPIRATION.** Each Order will state a "**LPC Expiration Date**", which is the date all LPCs purchased under the applicable Order must be consumed. Any portion of the LPCs not consumed prior to such date will be forfeited by Customer with no refund. Any Education Service associated with these LPCs must be utilized prior to the LPC Expiration Date, unless an extension is executed according to the terms set forth in Section 8 below. Utilization of LPCs requires that the Education Service associated with said utilization must have begun on or been completed before the LPC Expiration Date.
8. **LPC EXTENSION.** BMC and Customer, upon mutual agreement, may extend an individual Order's LPC Expiration Date through the execution of an addendum to said Order prior to the LPC Expiration Date, which must include additional consideration.
9. **EDUCATION SERVICES.** When Customer either purchases or redeems LPCs for Education Services through the execution of an EOF, this Agreement, and specifically this Section 9, shall govern the applicable Education Services. In the event of any conflict between the terms of the EOF and this Agreement, this Agreement shall prevail, except for matters of service fees, payment and reimbursement of expense terms if further specified in the EOF.
- 9.1. **Education Services Fees.** The fees payable to BMC for Education Services shall either (i) be in the form of redeemable LPCs purchased according to the terms of this Agreement; and/or (ii) be paid by Customer no more than thirty (30) days after receipt of invoice for Education Services. 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 Education Services fees which are exclusive of these taxes. 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.
- 9.2. **Attendance.** Credits used for class attendance are based on the published duration of the class, not the days an individual student attends such class. For example, if a student attends only three (3) days of a published five (5) day class, they will be charged for all five (5) days.
- 9.3. **Location of Education Services.** Public Classes will take place in a facility normally used by BMC for that purpose at a regularly scheduled time. BMC will provide Customer with adequate classroom facilities for Public Classes and all instructional materials for such classes. Private Classes will take place at a Customer provided location following set up guidelines provided at the time of scheduling.
- 9.4. **Cancellation Policy.** BMC reserves the right to cancel any Education Services class up to **10 business days** prior to the start of the Education Services class. If this occurs, Customer will receive (i) the LPCs redeemed for the canceled Education Services class returned to Customer's account, and/or (ii) a full refund of any additional amounts paid to BMC for the specific Education Services class canceled, excluding any amounts paid for LPCs. To cancel or reschedule an Education Services class, BMC requires notice **at least 10 business days** prior to the Education Services class start date. If a cancellation or reschedule request is made less than 10 business days prior to the Education Services class start date, Customer will be subject to the full class fee. If Customer fails to attend an Education Services class it has registered for, Customer will be subject to the full class fee. If Customer registers for an Education Services class within the 10 business day period before the start of said Education Services class this cancellation policy will not apply and Customer will be subject to the full class fee regardless of attendance.
- 9.5. **Education Services Restrictions.** Except for the specific rights granted to Customer under Section 9.7 below, Customer may not (i) modify, copy or create derivative works based on the Education Services; (ii) create Internet "links" to or reproduce any content forming part of the Education Services; (iii) disassemble, reverse engineer, or decompile the Education Services or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the Education Services; (iv) distribute, rent, lease, sublicense or provide the Education Services to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (v) interfere with or disrupt the integrity or performance of the Education Services (e.g., load, performance, or stress testing); (vi) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, or send or store material in violation of any third party's privacy rights via the Education Services; (vii) send or store viruses or malicious code via the Education Services; (viii) attempt to gain unauthorized access to the Education Services or its related software, systems, platforms or networks including any form of security and/or penetration testing; or (ix) use any components provided with Education Services separately from the Education Services.

- 9.6. Customer Responsibilities.** (a) Customer will be responsible for use of the Education Services by its Users in compliance with this Agreement and the applicable EOF. Customer will use reasonable efforts to prevent unauthorized access to, or use of, the Education Services, and notify BMC promptly of any such unauthorized access or use. (b) Customer agrees to provide BMC with correct, truthful and complete contact information for all Users, including the legal name of each User, company name, street address, email address, and telephone number. BMC may share information including Customer name and email address and Users' names and email addresses with WebEx (BMC's web conferencing provider) in order to facilitate virtual training. If Customer or its Users provide false contact information, or otherwise breaches any part of this Agreement or the applicable EOF, BMC may suspend or terminate Customer and its Users' access to the Education Services immediately and without prior written notice.
- 9.7. Proprietary Rights.** Subject to the terms of this Agreement and the applicable EOF, BMC grants Customer a perpetual, non-exclusive, non-transferable, non-sublicense license to use and modify all programming, documentation, reports, and any other deliverables delivered as a result of any Education Consulting provided under said applicable EOF ("**Deliverables**") solely for its own internal use. Except as expressly permitted by applicable law, this Agreement and the applicable EOF, Customer (a) may not reverse engineer or decompile any Deliverable for the purpose of developing comparable functionality; and (b) may not sell, rent, lease, sublicense, timeshare, outsource or otherwise use the Deliverables. BMC owns all right, title and interest in the Deliverables, *including* all intellectual property rights embodied therein.
- 9.8. Personal Data.** BMC may collect and process personal data related to Customer in order to provide the Education Services to Customer under this Agreement and the applicable EOF. "**Personal Data**" means any personally identifiable information received by BMC from Customer, relating to a person, which is sufficient to cause such person to be identified, directly or indirectly and shall not include sensitive personal data, i.e. data where processing or transfer of the data is prohibited according to applicable privacy laws or other data requiring the written consent of the data subject prior to processing in accordance with applicable law. BMC undertakes to comply with all the relevant data protection legislation and/or regulations where Customer Personal Data is to be processed. BMC shall in particular: (a) allow Customer to access, modify, correct or erase Customer Personal Data when necessary; (b) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Customer Personal Data and to prevent its unauthorized access, use, or disclosure; (c) refrain from transferring any Customer Personal Data to any third party without obtaining the express consent of the person to whom Customer Personal Data relates to unless such transfer is required for the purpose of the Education Services under this Agreement; and (d) from using Customer Personal Data for any other purpose than performing its obligations under this Agreement and the applicable EOF. 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 the applicable EOF. Further information with regard to BMC's processing of data is published at www.bmc.com/legal/privacy.
- 9.9. Education Services Limited Warranty.** BMC warrants that it will perform the Education Services in conformance with generally accepted practices within the software services industry and in accordance with any associated EOF. Customer must notify BMC of any breach of this warranty no later than fifteen (15) days after completion of the Education Services under the EOF. 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 Education 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 Education Services under the applicable EOF. 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.**
- 9.10. U.S. Federal Acquisitions.** This Section applies only to acquisitions of the commercial Education Services, Products, Deliverables and/or Documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Education Services, Products, Deliverables and/or Documentation are delivered to the United States Government, the United States Government hereby agrees that the Education Services, Products, Deliverables and/or Documentation qualify as "commercial items" within the meaning of the Federal acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government's use and disclosure of the Education Services, Products, Deliverables and/or Documentation, and shall supersede any conflicting contractual terms and conditions. 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).”

- 9.11. Export Controls.** Customer represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Education Services is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Education Services under such regulations; d) will not acquire the Education Services for a person who is restricted under such regulations; e) will not use the Education Services in contradiction to such regulations; and f) will not use the Education Services for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Education Services exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that the Education Services are intended for civil purposes only. Therefore, Customer agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in Customer forfeiting all rights to the Education Services.
- 10. TERMINATION.** Upon thirty (30) days advance written notice, either party may terminate this Agreement for its convenience on a prospective basis; however, such termination will have no effect on Orders executed by the parties prior to its effective date and such Orders will remain in full force and effect under the terms of this Agreement. BMC may: (i) terminate an Order, the LPCs on said Order, and/or any Education Services those LPCs may have been redeemed for, if Customer fails to pay any applicable fees due under that Order within thirty (30) days after receipt of written notice from BMC of non-payment; (ii) terminate any or all Orders, LPCs, Education Services, and/or this Agreement, without notice or cure period, if Customer violates the intellectual property rights of BMC, its Affiliates or licensors; or (iii) terminate all LPCs, Education Services, 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 thirty (30) days after BMC notifies Customer in writing of the breach.
- 11. MUTUAL CONFIDENTIALITY.** Each party agrees that at all times during the term of this Agreement, and thereafter, each party will hold in confidence, and will not, other than for purposes of this Agreement, an Order, or an EOF, use or disclose to any third party any Confidential Information of the other party. The term “**Confidential Information**” shall mean all non-public information that each party designates as being confidential, which under the circumstances of disclosure ought to be treated as confidential, and in the case of BMC the Deliverables. “**Confidential Information**” includes, without limitation, the terms of this Agreement, any Order, and any EOF, intellectual property, marketing or promotion of any product or service of either party, business policies or practices of either party, customers or suppliers of either party, or information received from others that either party is obligated to treat as confidential. “**Confidential Information**” does not include information that was (a) previously known without restriction, (b) received from a third party without restriction, (c) independently developed without use of the Confidential Information, or (d) information that becomes publicly available through no fault of the receiving party.
- 12. LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, THE APPLICABLE ORDER, OR THE APPLICABLE EOF (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. IN NO EVENT WILL BMC’S LIABILITY FOR DIRECT DAMAGES EXCEED AMOUNTS PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER OR THE APPLICABLE EOF. NONE OF THE ABOVE LIMITATIONS AFFECT THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTION 9.5, SECTION 9.6, SECTION 9.7, OR SECTION 11.
- 13. NON-SOLICITATION.** During the term of this Agreement, the applicable Order and the applicable EOF, and for a period of six (6) months thereafter, Customer will not solicit for employment any employees of BMC or its affiliates who, within six (6) months prior to such solicitation, directly performed under this Agreement or the applicable EOF.
- 14. MISCELLANEOUS.** All of the Education Services performed by BMC will be performed as an independent contractor. Except for assignments to parent entities or majority owned subsidiaries, neither party may assign or transfer this Agreement or any applicable EOF, in whole or in part, to any third party without first obtaining the prior written consent of the other party. This Agreement, together with the applicable Order and the applicable EOF, constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to this subject matter. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement. Any changes to this Agreement must be mutually agreed upon in writing by both Customer and BMC. The prevailing party in any litigation is entitled to recover its attorney’s fees and costs from the other party. Nothing contained in this Agreement shall preclude BMC from offering, developing or delivering Education Services to any other entity who registers directly with BMC. This Agreement is governed by and construed under the



substantive laws, without regard to conflict of laws principles, in the State of Texas. Each party agrees to comply with all applicable laws and regulations in its performance under this Agreement. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. If any portion of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. Notices under this Agreement shall be sufficient only if personally delivered, delivered by a major commercial rapid delivery courier service, or mailed by certified or registered mail, return receipt requested to a party at its address first set forth herein, which may be amended by providing notice to the other party. If not received sooner, notice by mail shall be deemed received five (5) days after deposit in a national mail service.

This Agreement is effective only upon execution by duly-authorized representatives of BMC and Customer. The individual executing this Agreement represents that he or she is duly authorized to execute this Agreement on behalf of the party. The signatures below indicate that BMC and Customer agree to the terms and intend to be bound by this Agreement as of the Effective Date. Please sign two (2) copies of this document and return them to BMC.

BMC: [Click here to enter text.](#)

CUSTOMER: [Click here to enter text.](#)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

