



Assuring Business Availability™

Federal Acquisition Service

*Authorized Information Technology
Schedule Pricelist*

GS-35F-5237H

Period Covered by Contract: March 30, 1998 THROUGH December 29, 2009

Pricelist current through Modification #PS-0099, dated April 8, 2009.

Federal Supply Service
U.S. General Services Administration



**GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT,
SOFTWARE AND SERVICES**

SIN 132-3 LEASING OF PRODUCT

No Code or Class

SIN 132-33 Perpetual Software Licenses

FSC Class 7030 INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

- + Operating System Software
- + Application Software
- + Electronic Commerce (EC) Software
- + Utility Software
- + Communications Software
- + Core Financial Management Software
- + Ancillary Financial Systems Software

Microcomputers

- + Operating System Software
- + Application Software
- + Electronic Commerce (EC) Software
- + Utility Software
- + Communications Software
- + Core Financial Management Software
- + Ancillary Financial Systems Software

SIN 132-34 Maintenance of Software

No Code or Class See FSC Class for basic software

SIN 132-50 - TRAINING COURSES FOR INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE

FPDS Code U012

SIN 132-51 Information Technology Professional Services

- FPDS Code D306.....IT Systems Analysis Services
- FPDS Code D307.....Automated Information Systems Design and Integration Services
- FPDS Code D399.....Other Information Technology Services, Not Elsewhere Classified

Note 1: All non-professional labor categories must be incidental to and used solely to support hardware, software and/or professional services, and cannot be purchased separately.

Note 2: Offerors and Agencies are advised that the Group 70 – Information Technology Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes between mapping services of an A/E nature and mapping services which are not connected

nor incidental to the traditionally accepted A/E Services.

Note 3: This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performed by the publisher or manufacturer or one of their authorized agents.

Contractor:

**BMC Software Distribution, Inc.
2101 CityWest Boulevard
Houston, TX 77042
800-841-2031
www.bmc.com**

Contract Number: GS-35F-5237H

Period Covered By Contract:

March 30, 1998 through December 29, 2009

**General Services Administration
Federal Acquisition Service**

This Schedule Contract Pricelist includes Modifications through Number **PS-0099** effective **April 8, 2009**.

Products and ordering information in this Authorized Information Technology Schedule Pricelist is also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing GSA's Home Page via Internet at www.gsa.gov.

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**INFORMATION FOR ORDERING ACTIVITIES
APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

**SPECIAL NOTICE TO AGENCIES
Small Business Participation**

SBA strongly supports the participation of small business concerns in the Federal Acquisition Schedules Program. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micro-purchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service (www.fss.gsa.gov). The catalogs/pricelists, GSA Advantage!™ and the Federal Acquisition Service Home Page (www.fss.gsa.gov) contains information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micro-purchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

1. GEOGRAPHIC SCOPE OF CONTRACT:

Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

Overseas delivery is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

The Geographic Scope of Contract will be domestic and overseas delivery.

2. CONTRACTOR ORDERING ADDRESS AND PAYMENT INFORMATION:

a. ORDERING ADDRESS FOR ALL PRODUCTS

BMC Software Distribution, Inc.
2101 CityWest Blvd.
Houston, TX 77042

or

Authorized Government Reseller
See Listing

ORDERING ADDRESS FOR ALL SERVICES

BMC Software Services, Inc.
2101 CityWest Blvd.
Houston, TX 77042

b. PAYMENT ADDRESS FOR ALL PRODUCTS

BMC Software Distribution, Inc.
P.O. Box 201040
Houston, TX 77216-1040

PAYMENT ADDRESS FOR ALL SERVICES

BMC Software Services, Inc.
2101 CityWest Blvd.
Houston, TX 77042

c. GOVERNMENT CREDIT CARDS. Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer will be printed on the invoice.

d. TECHNICAL AND/OR ORDERING ASSISTANCE FOR ALL PRODUCTS. Below are the telephone number(s) that can be used by ordering activities to obtain technical and/or ordering assistance.

Phone (713) 918-2621
Fax (713) 918-1605
E-Mail..... Kelly_Stouffer@bmc.com

3. LIABILITY FOR INJURY OR DAMAGE:

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

4. STATISTICAL DATA FOR GOVERNMENT ORDERING OFFICE COMPLETION OF STANDARD FORM 279:

a. Information for Field Buying Offices to Complete Standard Form 279, Federal Procurement Data System (FPDS) Individual Contract Action Report.

Block 9: G (Order/Modification Under Federal Schedule).
Block 16: Contractor Establishment Code (DUNS) is 17-1969405 for BMC Software Distribution, Inc.; and 00-4160706 for BMC Software Services, Inc.
Block 30: Type of Contractor is (C) Large Business.
Block 31: Woman-Owned Small Business (No).
Block 36: Contractor's Tax Identification Number (TIN) is 76-0494252 for BMC Software Distribution, Inc.; and 76-0453066 for BMC Software Services, Inc.

b. CAGE CODE: 1BEJ6 for BMC Software Distribution Inc.
1QZK8 for BMC Software Services, Inc.
(for DD Form 350)

c. Contractor has registered with the Central Contractor Registration Database.

5. F.O.B. POINT:

a. Destination for the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

- b. Point of Exportation for all other overseas locations. In place of a delivery/installation date for software, a shipping date shall be specified on the order. The Contractor shall pay for shipment to a CONUS APO/FPO. At the option of the ordering activity, F.O.B. will be Point of Origin, with freight prepaid and invoiced. Authorization for all shipping, export, and other charges must be included on the ordering activity order.

6. COMMERCIAL DELIVERY SCHEDULE (MULTIPLE AWARD SCHEDULES):

- a. TIME OF DELIVERY. The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below.

| Items or Groups of Items SIN or Nomenclature | Delivery Time (Days ARO) |
|---|-----------------------------|
| 132-3..... | 30 |
| 132-33..... | 30 |

- b. EXPEDITED DELIVERY TIMES. Quicker delivery times than those set forth in paragraph (a) above are available from the Contractor or its Authorized Government Reseller based on the availability of product inventory. Delivery times of 1-30 days after receipt of order (ARO) are available, as negotiated between the Ordering Activity and the Contractor.
- c. OVERNIGHT AND 2-DAY DELIVERY TIMES. When schedule customers require overnight or 2-day delivery, activities are encouraged to contact the Contractor or Authorized Government Resellers for the purpose of obtaining accelerated delivery. The Contractor provides overnight and 2-day delivery times subject to the availability of product inventory. The Contractor shall pay for shipment, with freight prepaid and invoiced. Authorization must be included on the ordering activity order for products.
- d. URGENT REQUIREMENTS. When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.
- e. Electronic Software Distribution (ESD) is also a method of delivery when ordering Remedy products. When ordering Remedy products, ESD or Physical Shipment **must** be specified.

7. DISCOUNTS:

- a. PROMPT PAYMENT. Prompt payment is 0%, Net 30 days from receipt of invoice or date of acceptance, whichever is later.
- b. QUANTITY. None.
- c. DOLLAR VOLUME.

SIN 132-33 (PERPETUAL SOFTWARE LICENSE)

DISTRIBUTED SYSTEMS PRODUCTS
DISTRIBUTED SYSTEMS MANAGEMENT (DSM)

Dollar volume discounts are afforded to the ordering activity on a per order basis (mix and match). The discounts below are exclusive of the .75% Industrial Funding Fee (IFF). Dollar volume discounts are as follows:

| | |
|-----------------------------|-----|
| \$1 - \$200,000 | 31% |
| \$200,001 - \$500,000 | 41% |
| \$500,001+ | 51% |

MAINFRAME PRODUCTS

MAINFRAME SERVICE MANAGEMENT (MSM)

| | |
|--------------------|-----|
| DB2 OS prods | 60% |
| All other MF prods | 50% |

Pricing is as shown in the GSA pricelist. NO VOLUME DISCOUNTS APPLY.

REMEDY, MAGIC, MARIMBA, IDENTITY AND IDENTIFY PRODUCTS

ENTERPRISE SERVICE MANAGEMENT (ESM)

Dollar volume discounts are afforded on a per order basis (mix and match). The discounts below are exclusive of the .75% Industrial Funding Fee (IFF). Dollar volume discounts are as follows:

| | |
|------------------|-----|
| \$0-\$100K | 20% |
| \$100,001-\$250K | 22% |
| \$250,001-\$500K | 27% |
| \$500,001-\$1M | 32% |

Pricing is as shown in the GSA pricelist. NO VOLUME DISCOUNTS APPLY.

SIN 132-34 SOFTWARE MAINTENANCE.

DISTRIBUTED SYSTEM PRODUCTS

DISTRIBUTED SYSTEMS MANAGEMENT (DSM)

The maintenance pricing being offered is as contained in the maintenance pricelist. For all ordering activity customers the BMC earned revenue based discount of record applicable to the original license purchase (see below) is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

For all ordering activity customers the BMC earned discount of record applicable to the original **distributed** license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

BMC also offers ordering activities the following additional discounts for an annual payment in advance option:

| | |
|-----------------------------------|-----|
| Prepay 2 nd Year | 5% |
| Prepay 3 rd Year | 10% |

Note: Discounts are exclusive of the IFF requirement.

Reinstatement of Maintenance: The fee will equal the amount they would have paid if maintenance had not lapsed plus one year forward support. For customers that have not renewed maintenance for 2 or more years, the customer will have the right to buy new licenses or be subject to the same policy as the rest of the customer base (as listed below). Customers that have not renewed maintenance for under 2 years will be charged for all lapsed support at the originally contracted rate times the current list price + one year forward support.

For Distributed Systems Management (DSM) Customers, the lapsed support would be calculated at the Customer's Discount Of Record (DOR) x the current List Price x 20% + one year forward support.

MAINFRAME PRODUCTS

MAINFRAME SERVICE MANAGEMENT (MSM)

The maintenance pricing is as contained in the maintenance pricelist.

For all ordering activity customers the BMC earned discount of record applicable to the original MVS license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

BMC also offers ordering activities the following discounts for an annual payment in advance option:

Prepay 2nd Year 5%
Prepay 3rd Year..... 10%

Note: Discounts are exclusive of the IFF requirement.

Reinstatement of Maintenance. The fee will equal the amount they would have paid if maintenance had not lapsed plus one year forward support. For customers that have not renewed maintenance for 2 or more years, the customer will have the right to buy new licenses or be subject to the same policy as the rest of the customer base (as listed below). Customers that have not renewed maintenance for under 2 years will be charged for all lapsed support at the originally contracted rate times the current list price + one year forward support.

For Mainframe Service Management (MSM), the lapsed support would be calculated at the Customer's Discount Of Record (DOR) x the current List Price x 20% + one year forward support.

REMEDY, MAGIC, AND MARIMBA PRODUCTS

ENTERPRISE SERVICE MANAGEMENT (ESM)

The maintenance pricing is as follows:

BMC Basic - 5X8 (8 hours a day x 5 days a week; 4-24-business hour response) 15% of the then-current commercial published license fee equals list price for Basic Support. For all customers a 2% discount is applied to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

BMC Fast-Track Support - 5X12 (12 hours a day x 5 days a week; 1-24-business hour response). . 18% of the then-current commercial published license fee equals list price for Extended Support. For all customers a 2% discount is applied to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

BMC Continuous Support - 7X24 (24 hours a day X 7 days a week; 1-24 business hour response). 20% of the then-current commercial published license fee equals list price for Extended Support. For all customers a 2% discount is applied to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

BMC Premiere Support Add-On Services – 22% of the then-current commercial published license fee equals list price for Extended Support. For all customers a 2% discount is applied to the software maintenance list price, and/or the upgrade list price, for the purpose of determining GSA maintenance fees. Additionally the Premier offering (base and tier) is special bid only.

BMC Premiere Complete
BMC Premiere Focused

BMC Premiere Dedicated

Remedy also offers the following discounts for an annual payment in advance option:

- Prepay 2nd Year5.0%
 - Prepay 3rd Year..... 10.0%
- Note: Discounts are exclusive of the IFF requirement.

Remedy also provides the following additional discounts for Volume Support purchase. Volume Support purchase is calculated based on Support Contract ID and requires a minimum support level of Fast-Track+:

| | Basic Rate | Fast-Track Rate | Continuous Rate |
|-------------|-------------------|------------------------|------------------------|
| \$1,000,000 | 14.2% | 16.67% | 18.62% |
| \$2,000,000 | 13.7% | 15.70% | 17.64% |
| \$3,000,000 | 13.2% | 14.73% | 16.66% |
| \$4,000,000 | 12.7% | 13.76% | 15.68% |
| \$5,000,000 | 12.3% | 12.70% | 14.70% |
| \$6,000,000 | 11.8% | 11.73% | 13.72% |
| \$7,000,000 | 11.3% | 10.76% | 12.74% |
| \$8,000,000 | 10.8% | 10.76% | 11.76% |
| \$9,000,000 | 10.8% | 10.76% | 10.78% |

Reinstatement of maintenance: The fee will equal the amount they would have paid if maintenance had not lapsed plus one year forward support. For customers that have not renewed maintenance for 2 or more years, the customer will have the right to buy new licenses or be subject to the same policy as the rest of the customer base (as listed below). Customers that have not renewed maintenance for under 2 years will be charged for all lapsed support at the originally contracted rate times the current list price + one year forward support.

For Enterprise Service Management (ESM) (excluding Distributed Systems Management (DSM) customers), the lapsed support would be at their original rate from their original support level/tier x the current List Price + the one year forward support at a support tier of their choice.

IDENTITY PRODUCTS

IDENTITY MANAGEMENT (IM)

The maintenance pricing is as follows:

Net Basic Support - 5X8 (8 hours a day x 5 days a week; 4-24-business hour response) 15% of the then-current commercial published license fee equals list price for Basic Support. For all ordering activity customers the BMC earned discount of record applicable to the original Identity license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

Net Fast-Track Support - 5X12 (12 hours a day x 5 days a week; 1-24-business hour response). 18% of the then-current commercial published license fee equals list price for Extended Support. For all ordering activity customers the BMC earned discount of record applicable to the original Identity license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

Net Continuous Support - 7X24 (24 hours a day X 7 days a week; 1-24 business hour response). 20% of the then-current commercial published license fee equals list price for Extended Support. For all ordering activity customers the BMC earned discount of record applicable to the original Identity license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

IDENTIFY PRODUCTS

ENTERPRISE SERVICE MANAGEMENT (ESM)

The maintenance pricing is as follows:

BMC Continuous Support - 7X24 (24 hours a day X 7 days a week; 1-24 business hour response). 20% of the then-current commercial published license fee equals list price for Extended Support. For all ordering activity customers the BMC earned discount of record applicable to the original Identity license purchase is then applied as the discount to the software maintenance list price, and/or the upgrade list price, for the purpose of determining net GSA maintenance fees.

Reinstatement of maintenance: The fee will equal the amount they would have paid if maintenance had not lapsed plus one year forward support. For customers that have not renewed maintenance for 2 or more years, the customer will have the right to buy new licenses or be subject to the same policy as the rest of the customer base (as listed below). Customers that have not renewed maintenance for under 2 years will be charged for all lapsed support at the originally contracted rate times the current list price + one year forward support.

For Enterprise Service Management (ESM) (excluding Distributed Systems Management (DSM) customers), the lapsed support would be at their original rate from their original support level/tier x the current List Price + the one year forward support at a support tier of their choice.

SIN 132-50 (TRAINING)

The price for each LPC is \$650.00, prior to applicable discount, USD.

| Learning Pass Credits | Discount |
|------------------------------------|----------|
| 5 to 19 (Minimum Purchase of 5) | 2% |
| 20 to 49 | 7% |
| 50 to 99 | 12% |
| 100 to 199 | 17% |
| 200 and up | 22% |

SIN 132-51 (IT PROFESSIONAL SERVICES)

Dollar volume discounts and resident discounts are afforded for **all services except REMEDY services**. These dollar volume discounts and resident discounts listed below cannot be combined. The discounts below are exclusive of the .75% Industrial Funding Fee (IFF).

Dollar Volume Discounts are as follows:

- \$0 - \$75K 5%
- \$75K - \$175K..... 10%
- >\$175K 15%

Resident Discounts - A local consultant scheduled to be onsite full-time for at least 6 mos (100 consecutive man-days) are as follows:

| Duration | Max Onsite Days | Discount from List |
|----------|-----------------|--------------------|
| 6 mos. | 100..... | 15% |
| 9 mos. | 150..... | 20% |
| 12 mos. | 200..... | 25% |

- d. GOVERNMENT EDUCATIONAL INSTITUTIONS. Government Educational Institutions are offered the same discounts as all other Government customers.

- e. DISCOUNT FOR USE OF GOVERNMENT COMMERCIAL CREDIT CARD. None.
- f. OTHER. None
- g. PRICES. All prices shown herein are net prices for acquisition under this contract unless otherwise indicated.

8. TRADE AGREEMENTS ACT OF 1979 (as amended):

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

9. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:

Not available within the scope of this contract.

10. SMALL REQUIREMENTS:

The minimum dollar value of an order for delivery to one destination is \$100.00.

11. MAXIMUM ORDER: (All dollar amounts are exclusive of any discount for prompt payment)

- a. The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:
 - Special Item Number 132-3 - Leasing of Product
 - Special Item Number 132-33 - Perpetual Software Licenses
 - Special Item Number 132-34 – Maintenance of Software
 - Special Item Number 132-51 - Information Technology (IT) Professional Services
- b. The Maximum Order value for the following Special Item Numbers (SINs) is \$25,000:
 - Special Item Number 132-50 - Training Courses

12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACT.

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

13. FEDERAL INFORMATION TECHNOLOGY/ TELECOMMUNICATION STANDARDS REQUIREMENTS:

Federal departments and ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):

Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information

Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):

Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDS should be obtained from the GSA, Federal Supply Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202) 619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975-2833.

14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2001):

- a. **SECURITY CLEARANCES:** The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- b. **TRAVEL:** The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges.
- c. **CERTIFICATIONS, LICENSES AND ACCREDITATIONS:** As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- d. **INSURANCE:** As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- e. **PERSONNEL:** The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- f. **ORGANIZATIONAL CONFLICTS OF INTEREST:** Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- g. **DOCUMENTATION/STANDARDS:** The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.
- h. **DATA/DELIVERABLE REQUIREMENTS:** Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.

- i. GOVERNMENT-FURNISHED PROPERTY: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- j. AVAILABILITY OF FUNDS: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES:

Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See C.1.)

16. GSA ADVANTAGE!:

The GSA *Advantage!* is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA *Advantage!* will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product category(ies).

Agencies can browse GSA *Advantage!* by accessing the Internet World Wide Web utilizing a browser. The Internet address is <http://www.gsa.gov/>.

17. PURCHASE OF OPEN MARKET ITEMS:

NOTE: Open Market Items are also known as incidental items, non-contract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated at open market purchases. Ordering Activities procuring open market items must follow FAR 8.401(d).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, only if-

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));
- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS:

- a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

19. OVERSEAS ACTIVITIES:

The terms and conditions of this contract shall apply to all overseas location orders for purchase of software and software maintenance, in areas listed in the pricelist outside the 48 contiguous states, the District of Columbia, Alaska, Hawaii and the Commonwealth of Puerto Rico, except as indicated below:

See F.O.B. Point, paragraph 5, under Information for Ordering Activities.

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable or an allowance basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract (Purchase, Maintenance, and Service).

20. BLANKET PURCHASE AGREEMENTS (BPAs):

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating an implementing BPA(s).

21. CONTRACTOR TEAM ARRANGEMENTS:

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clause 552.238-74, Industrial Funding Fee Sales and Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

22. INSTALLATION, DEINSTALLATION, REINSTALLATION:

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

23. SECTION 508 COMPLIANCE:

If applicable, Section 508 conformance information on the supplies and services in this contract is available in Electronic and Information Technology (EIT) at the following:

www.bmc.com

24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order

- a. A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- b. The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997) (FAR 52.228-5)

- a. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.
- b. Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—
 - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
 - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- c. The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

26. SOFTWARE INTEROPERABILITY

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

27. ADVANCE PAYMENTS.

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324).

TERMS AND CONDITIONS APPLICABLE TO LEASING OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY PRODUCTS (SPECIAL ITEM NUMBER 132-3)

1. LEASING PRICE LIST NOTICE:

Contractors must include the following notice in their contract price list for SIN 132-3:

“The ordering activity is responsible for the obligation of funds consistent with applicable law. Agencies are advised to review the lease terms and conditions prior to ordering and obligating funding for a lease.”

2. STATEMENT OF GOVERNMENT INTENT:

- a. The ordering activity and the Contractor understand that a delivery order issued pursuant to this SIN is a lease arrangement and contemplates the use of the product for the term of the lease specified in such delivery order (the “Lease Term”). In that regard, the ordering activity, as lessee, understands that the lease provisions contained herein and the rate established for the delivery order are premised on the ordering activity's intent to fulfill that agreement, including acquiring products for the period of time specified in the order. Each lease hereunder shall be initiated by a delivery order which shall, either through a statement of work or other attachment, specify the product being leased, and the required terms of the transaction.
- b. Each ordering activity placing a delivery order under the terms of this option intends to exercise each renewal option and to extend the lease until completion of the Lease Term so long as the need of the ordering activity for the product or functionally similar product continues to exist and funds are appropriated. Contractor may request information from the ordering activity concerning the essential use of the products.

3. LEASE TERM:

- a. The date on which the ordering activity accepts the products is the Commencement Date of the lease. For acceptance to occur, the products must operate in accordance with the product's published specifications and statement of work. Acceptance shall be in accordance with the terms of the contract or as otherwise negotiated by the ordering activity and the Contractor.
- b. Any lease is executed by the ordering activity on the basis that the known requirement for such product exceeds the initial base period of the delivery order, which is typically 12 months, or for the remainder of the fiscal year. Pursuant to FAR 32.703-3(b), delivery orders with options to renew that are funded by annual (fiscal year) appropriations may provide for initial base periods and option periods that cross fiscal years as long as the initial base period or each option period does not exceed a 12 month period. Defense agencies must also consider DOD FAR supplement (DFAR) 232.703-3(b) in determining whether to use cross fiscal year funding. This cross fiscal year authority does not apply to multi-year leases.
- c. The total Lease Term will be specified in each delivery order, including any relevant renewal options of the ordering activity. All delivery orders, whether for the initial base period or renewal period, shall remain in effect through September 30 of the fiscal year (unless extended by statute), through any earlier expiration date specified in the delivery order, or until the ordering activity exercises its rights hereunder to acquire title to the product prior to such expiration date. The ordering activity, at its discretion, may exercise each option to extend the term of the lease through the lease term. Renewal delivery orders shall not be issued for less than all of the product and/or software set forth in the original delivery order. Delivery orders under this SIN shall not be deemed to obligate succeeding fiscal year funds. The ordering activity shall provide the Contractor with written notice of exercise of each renewal option as soon as practicable. Notice requirements may be negotiated on an order-by-order basis.
- d. Where an ordering activity's specific appropriation or procurement authority provides for contracting beyond the fiscal year period, the ordering activity may place a delivery order for a period up to the expiration of the

Lease Term, or to the expiration of the period of availability of the multi-year appropriation, or whatever is appropriate under the applicable circumstance.

4. LEASE TERMINATION:

- a. The Ordering Activity must elect the Lease Term of the relevant delivery order. The Contractor (and assignee, if any) will rely on the ordering activity's representation of its intent to fulfill the full Lease Term to determine the monthly lease payments calculated herein.
 - (1) The ordering activity may terminate or not renew leases under this option at no cost, pursuant to a Termination for Non-Appropriation as defined herein (see paragraph (c) below). In any other event, the ordering activity's contracting officer may either terminate the relevant delivery order for cause or Termination for Convenience in accordance with FAR 52.212-4 paragraphs (l) and (m).
 - (2) The Termination for Convenience at the end of a fiscal year allows for separate charges for the early end of the lease (see paragraph (d) below). In the event of termination for the convenience of the ordering activity, the ordering activity may be liable only up to the amount beyond the order's Termination Ceiling. Any termination charges calculated under the Termination for Convenience clause must be determined or identified in the delivery order or in the lease agreement.
- b. **TERMINATION FOR CONVENIENCE OF THE ORDERING ACTIVITY.** Leases entered into under this option may not be terminated except by the ordering activity's contracting office responsible for the delivery order in accordance with FAR 52.212-4, Contract Terms and Conditions-Commercial Items, paragraph (l), Termination for Convenience of the Ordering Activity. The costs charged to the ordering activity as the result of any Termination for Convenience of the Ordering Activity must be reasonable and may not exceed the sum of the fiscal year's payment obligations less payments made to date of termination plus the Termination Ceiling.
- c. **TERMINATION FOR NON-APPROPRIATION.** The ordering activity reasonably believes that the bona fide need will exist for the entire Lease Term and corresponding funds in an amount sufficient to make all payment for the lease Term will be available to the ordering activity. Therefore, it is unlikely that leases entered into under this option will terminate prior to the full Lease Term. Nevertheless, the ordering activity's contracting officer may terminate or not renew leases at the end of any initial base period or option period under this paragraph if (a) it no longer has a bona fide need for the product or functionally similar product; or (b) there is a continuing need, but adequate funds have not been made available to the ordering office in an amount sufficient to continue to make the lease payments. If this occurs, the ordering activity will promptly notify the Contractor, and the product lease will be terminated at the end of the last fiscal year for which funds were appropriated. Substantiation to support a termination for non-appropriation shall be provided to the Contractor upon request.
- d. **TERMINATION CHARGES.** At the initiation of the lease, termination ceilings will be established for each year of the lease term. The termination ceiling is a limit on the amount that a Contractor may be paid by the ordering activity on the Termination for Convenience of a lease. No claim will be accepted for future costs: supplies, maintenance, usage charges or interest expense beyond the date of termination. In accordance with the bona fide needs rule, all termination charges must reasonably represent the value the ordering activity received for the work performed based upon the shorter lease term. No Termination for Convenience costs will be associated with the expiration of the lease term.
- e. At the order level, the ordering activity may, consistent with legal principles, negotiate lower monthly payments or rates based upon appropriate changes to the termination conditions in this section.

LEASE PROVISIONS COMMON TO ALL TYPES OF LEASE AGREEMENTS

1. ORDERING PROCEDURES:

- a. When an ordering activity expresses an interest in leasing a product(s), the ordering activity will provide the following information to the prospective Contractor:
 - (1) Which product(s) is (are) required.
 - (2) The required delivery date.
 - (3) The proposed lease plan and term of the lease.
 - (4) Where the product will be located.
 - (5) Description of the intended use of the product.
 - (6) Source and type of appropriations to be used.
- b. The Contractor will respond with:
 - (1) Whether the Contractor can provide the required product.
 - (2) The estimated residual value of the product (Lease with Option to Own and Step Lease only).
 - (3) The monthly payment based on the rate.
 - (4) The estimated cost, if any, of applicable State or local taxes. State and local personal property taxes are to be estimated as separate line items in accordance with FAR 52.229-1, which may be identified and added to the monthly lease payment.
 - (5) A confirmation of the availability of the product on the required delivery date.
 - (6) Extent of warranty coverage, if any, of the leased products.
 - (7i) The length of time the quote is valid.
- c. The ordering activity may issue a delivery order to the Contractor based on the information set forth in the Contractor's quote. In the event that the ordering activity does not issued a delivery order within the validity period stated in the Contractor's quote letter, the quote shall expire.

2. ASSIGNMENT OF CLAIMS:

GSAR 552.232-23, Assignment of Claims, is incorporated herein by reference as part of these lease provisions. The ordering activity's contracting officer will acknowledge the assignment of claim for a lease in accordance with FAR 32.804-5. The extent of the assignee's protection is in accordance with FAR 32.804. Any setoff provision must be in accordance with FAR 32.803.

3. PEACEFUL POSSESSION AND UNRESTRICTED USE:

In recognition of the types of products available for lease and the potential adverse impact to the ordering activity's mission, the ordering activity's quiet and peaceful possession and unrestricted use of the product shall not be disturbed in the event the product is sold by the Contractor, or in the event of bankruptcy of the Contractor, corporate dissolution of the Contractor, or other event. The product shall remain in the possession of the ordering activity until the expiration of the lease. Any assignment, sale, bankruptcy, or other transfer of the leased product by the Contractor will not relieve the Contractor of its obligations to the ordering activity, and will not change the ordering activity's duties or increase the burdens or risks imposed on the ordering activity.

4. COMMENCEMENT OF LEASE:

The date on which ordering activity accepts the products is the Commencement Date of the lease. Acceptance is as defined elsewhere in the contract, or as further specified in the order.

5. INSTALLATION AND MAINTENANCE:

- a. Installation and Maintenance, when applicable, normally are not included in the charge for leasing. The Contractor may require the ordering activity to obtain installation and maintenance services from a qualified source. The ordering activity may obtain installation and/or maintenance on the open market, from the Contractor's schedule contract, or from other sources. The ordering activity may also perform installation and/or maintenance in house, if qualified resources exist. In any event, it is the responsibility of the ordering activity to ensure that maintenance is in effect for the Lease term for all products leased.
- b. When installation and/or maintenance are ordered under this schedule to be performed by the Contractor, the payments, terms and conditions as stated in this contract apply. The rates and terms and conditions in effect at the time the order is issued shall apply during any subsequent renewal period of the lease. The maintenance rates and terms and conditions may be added to the lease payments with mutual agreement of the parties.

6. MONTHLY PAYMENTS:

- a. Prior to the placement of an order under this Special Item Number, the ordering activity and the Contractor must agree on a "base value" for the products to be leased. For Lease to Ownership (Capital Lease) the base value will be the contract purchase price (less any discounts). For Lease with Option to Own (Operating Lease), the base value will be the contract purchase price (less any discounts), less a mutually agreed upon residual value (pre-stated purchase option price at the conclusion of the lease) for the products. The residual value will be used in the calculation of the original lease payment, lease extension payments, and the purchase option price.
- b. To determine the initial lease term payment, the Contractor agrees to apply the negotiated lease factor to the agreed upon base value:

For Example: Lease factor one (1) percent over the rate for the three year (or other term) Treasury Bill (T-bill) at the most current U. S. Treasury auction.

The lease payment may be calculated by using a programmed business calculator or by using "rate" functions provided in commercial computer spreadsheets (e.g., Lotus 1-2-3, Excel).

- c. For any lease extension, the extension lease payment will be based on the original residual value, in lieu of the purchase price. The ordering activity and the Contractor shall agree on a new residual value based on the estimated fair market price at the end of the extension. The formula to determine the lease payment will be that in 6.b. above.

- d. The purchase option price will be the fair market value of the product or payment will be based upon the unamortized principle, as shown on the payment schedule as of the last payment prior to date of transfer of ownership, whichever is less.

NOTE: At the order level, ordering activity may elect to obtain a lower rate for the lease by setting the purchase option price as either, the fair market value of the product or unamortized principle. The methodology for determining lump sum payments may be identified in the pricelist.

- e. The point in time when monthly rates are established is subject to negotiation and evaluation at the order level.
In the event the ordering activity desires, at any time, to acquire title to product leased hereunder, the ordering activity may make a one-time lump sum payment.

7. LEASE END/DISCONTINUANCE OPTIONS:

- a. Upon the expiration of the Lease Term, Termination for Convenience, or Termination for Non-Appropriation, the ordering activity will return the Product to the Contractor unless the ordering activity by 30 days written notice elects either:

- (1) to purchase the product for the residual value of the product, or
- (2) to extend the term of the Lease, as mutually agreed. To compute the lease payment, the residual value from the preceding lease shall be the initial value of the leased product. A new residual value shall be negotiated for the extended lease and new lease payments shall be computed.

- b. RELOCATION. The ordering activity may relocate products to another location within the ordering activity with prior written notice. No other transfer, including sublease, is permitted. Ordering activity shall not assign, transfer or otherwise dispose of any products, or any interest therein, or crate or suffer any levy, lien or encumbrance then except those created for the benefit of Contractor or it's assigns.

- c. RETURNS.

- (1) Within fourteen (14) days after the date of expiration, non-renewal or termination of a lease, the ordering activity shall, at its own risk and expense, have the products packed for shipment in accordance with manufacturer's specifications and return the products to Contractor at the location specified by Contractor in the continental US, in the same condition as when delivered, ordinary wear and tear excepted. Any expenses necessary to return the products to good working order shall be at ordering activity's expense.
- (2) The Contractor shall conduct a timely inspection of the returned products and within 45 days of the return, assert a claim if the condition of the product exceeds normal wear and tear.
- (3) Product will be returned in accordance with the terms of the contract and in accordance with Contractor instruction.
- (4) With respect to software, the ordering activity shall state in writing to the Contractor that it has:
 - (a.) deleted or disabled all files and copies of the software from the equipment on which it was installed;
 - (b.) returned all software documentation, training manuals, and physical media on which the software was delivered; and
 - (c.) has no ability to use the returned software.

8. UPGRADES AND ADDITIONS:

- a. The ordering activity may affix or install any accessory, addition, upgrade, product or device on the product ("additions") provided that such additions:

- (1) can be removed without causing material damage to the product;
 - (2) do not reduce the value of the product; and
 - (3) are obtained from or approved by the Contractor, and are not subject to the interest of any third party other than the Contractor.
- b. Any other additions may not be installed without the Contractor's prior written consent. At the end of the lease term, the ordering activity shall remove any additions which:
- (1) were not leased from the Contractor, and
 - (2) are readily removable without causing material damage or impairment of the intended function, use, or value of the product, and restore the product to its original configuration.
- c. Any additions that are not so removable will become the Contractor's property (lien free).
- d. Leases of additions and upgrades must be co-terminus with that of the product.

9. RISK OF LOSS OR DAMAGE:

The ordering activity is relieved from all risk of loss or damage to the product during periods of transportation, installation, and during the entire time the product is in possession of the ordering activity, except when loss or damage is due to the fault or negligence of the ordering activity. The ordering activity shall assume risk of loss or damage to the product during relocation, (i.e., moving the product from one ordering activity location to another ordering activity location), unless the Contractor shall undertake such relocation.

10. TITLE:

During the lease term, product shall always remain the property of the Contractor. The ordering activity shall have no property right or interest in the product except as provided in this leasing agreement and shall hold the product subject and subordinate to the rights of the Contractor. Software and software licenses shall be deemed personal property. The ordering activity shall have no right or interest in the software and related documentation except as provided in the license and the lease. Upon the Commencement Date of the Lease Term, the ordering activity shall have an encumbered license to use the software for the Lease Term. The ordering activity's encumbered license rights in the software will be subject to the same rights as provided to a purchaser of a license under the terms of this contract except that the ordering activity will not have an unencumbered, paid-up license until it has made all lease payments for the full Lease Term in the case of an Lease To Ownership or has otherwise paid the applicable purchase option price.

11. TAXES:

The lease payments, purchase option prices, and interest rates identified herein exclude all state and local taxes levied on or measured by the contract or sales price of the product furnished hereunder. The ordering activity will be invoiced for any such taxes as Contractor receives such tax notices or assessments from the applicable local taxing authority. Pursuant to the provisions of FAR 52.229-1, State and Local Taxes, the ordering activity agrees to pay tax or provide evidence necessary to support an exemption from the tax.

12. OPTION TO PURCHASE EQUIPMENT (FEB 1995) (FAR 52.207-5):

- a. The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The

effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

- b. Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification required in paragraph (a) of this clause.
- c. The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.
- d. The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

TERMS AND CONDITIONS APPLICABLE TO PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM 132-33) AND MAINTENANCE (SPECIAL ITEM 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE

1. PURCHASE TERMS:

- a. ACCEPTANCE/INSPECTION. The ordering activity shall accept or reject software in writing within thirty (30) calendar days after date of delivery to determine whether the software has been properly shipped to the ordering activity.

- b. WARRANTY.

The Contractor warrants and conditions that the media on which the PRODUCT is furnished will be, under normal use, free from defects in materials and workmanship. The Contractor also warrants that the PRODUCT will perform in substantial accordance with the operating specifications contained in the accompanying product documentation that is most current at the time of the acceptance of any PRODUCT SCHEDULE ordering such PRODUCT, for a period of 12 months from the Effective Date. If the ordering activity under a Perpetual License changes (a) Tiers, (b) Terminal Levels, or (c) Product Levels within the same family line of products (where applicable), there shall be no new warranty period.

The Contractor's entire liability and the ordering activity's exclusive remedy under these provisions will be for the Contractor to use reasonable best efforts to remedy defects covered by this warranty and condition within a reasonable period of time or, at the Contractor's option, either to replace the defective PRODUCT or to refund the amount paid by the ordering activity to license the use of the PRODUCT, less the then current monthly rental rate of the PRODUCT times the number of months during which the PRODUCT has been used in production by the ordering activity. The Contractor does not warrant or condition that the operation of the PRODUCT will be uninterrupted or error free, or that all software defects can be corrected or that it will meet all of ordering activity's requirements.

This warranty and condition shall not apply if: 1) the PRODUCT is not used in accordance with the Contractor's instructions; 2) a PRODUCT defect has been caused by any of the ordering activity's malfunctioning equipment; 3) any other cause within the control of the ordering activity causes the PRODUCT to malfunction; or 4) the ordering activity has made modifications to the PRODUCT not expressly authorized in writing by the Contractor.

No employee, agent or representative of the Contractor has authority to bind the Contractor to any oral representations, warranties or conditions concerning the PRODUCT. Any written representation, warranty or condition not expressly contained in this contract shall not be enforceable.

The obligations set forth in this provision constitute Contractor's exclusive obligations and liability and provide the ordering activity's sole and exclusive recourse with respect to nonconformance of the PRODUCT to specifications. Except for the express provisions stated herein, the PRODUCT and Documentation are each licensed "AS IS" and "Without Warranty", and Contractor hereby specifically excludes and disclaims the implied warranties of merchantability and fitness for a particular use and all other warranties, whether express or implied by law, statute or course of dealing, and the parties specifically exclude all representations and warranties, whether statutory or otherwise, with respect to non-infringement of any other nature of the rights of third party. "

- c. ORDER. A written order, EDI (GSA Advantage! and FACNET) and credit card orders shall be the basis for the purchase of software and software maintenance in accordance with the terms of this contract.

Written orders, EDI orders, credit card orders or, in the case of BPA's or BOA's, telephone orders are permissible.

- d. TRIAL OF PRODUCT. From time to time, the ordering activity may accept copies of the Contractor's PRODUCT(S) for trial use without the execution of any PRODUCT ORDER FORM hereunder. By accepting such trial PRODUCT(S), the ordering activity accepts the PRODUCT(S) AS IS AND WAIVES ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS during the trial period. The ordering activity shall have no obligation regarding the PRODUCT(S) during or following the trial period, except to exercise the duties specified under Utilization Limitations herein. The trial period shall be agreed upon between the Contractor and the ordering activity. The trial period may be canceled by either Party upon notice to the other. Upon termination or expiration of the trial period, the ordering activity shall either execute a PRODUCT ORDER FORM covering the trialed PRODUCT(S) or return the PRODUCT(S) to the Contractor.

2. TECHNICAL SERVICES:

- a. MAINFRAME PRODUCTS MAINFRAME SERVICE MANAGEMENT (MSM) AND DISTRIBUTED SYSTEM PRODUCTS DISTRIBUTED SYSTEMS MANAGEMENT (DSM). Technical telephone service is included in the purchase price of software for the twelve (12) months following the Effective Date of the License. After the guarantee period, technical support services are available outside the scope of the contract.
- b. REMEDY, MAGIC, MARIMBA, IDENTIFY, and IDENTITY PRODUCTS ENTERPRISE SERVICE MANAGEMENT (ESM) PRODUCTS . Technical support services are not included in the purchase price of the software. Technical support services are available under Special Item Number 132-34 at the option of the ordering activity.

3. SOFTWARE MAINTENANCE:

- a. Software maintenance service and options shall include the following for MAINFRAME PRODUCTS MAINFRAME SERVICE MANAGEMENT (MSM) AND DISTRIBUTED SYSTEM PRODUCTS DISTRIBUTED SYSTEMS MANAGEMENT (DSM).
 - (1) SUPPORT. Support shall be provided twenty-four (24) hours per day, seven (7) days per week.

Under Support, the ordering activity shall be entitled, at no additional charge, to designate in writing, two (2) authorized contacts of the ordering activity, per Product Line ("Support Contact"), who shall be permitted to report problems and receive Support from the Contractor. The Support Contacts shall be inclusive of those authorized Support Contacts registered under the guarantee. A change to the Support Contacts of the ordering activity must be submitted in writing to the Contractor by a duly authorized representative of the ordering activity.

ADDITIONAL CONTACT FEE. In the event the ordering activity desires to register additional Support Contacts to those authorized under the guarantee period, the ordering activity may register such additional authorized Support Contacts at the rate of \$2,000 per additional Support Contact per Support year. The charge for the first year of additional Support Contacts may be prorated to coincide with the Support Anniversary Date. Such additional Support Contact(s) of the ordering activity must be submitted in writing to the Contractor by a duly authorized representative of the ordering activity.

Support shall entitle the ordering activity to the following support, maintenance and enhancement functions:

- (i) Supply telephone or other electronic support to the ordering activity in order to help the ordering activity locate and, on its own, correct problems with the PRODUCT(S). At the Contractor's sole discretion, the Contractor shall a.) supply code corrections to the ordering activity to correct PRODUCT malfunctions in order to bring such PRODUCT into substantial conformity with the operating specifications for the most current version of the PRODUCT, unless the ordering activity's unauthorized modifications prohibits or hampers such corrections or causes the malfunction; or b.) supply code corrections to correct such non-substantial problems at the next general Release of the PRODUCT;

- (ii) Supply, so long as is technically and economically feasible, at the Contractor's sole discretion, updated PRODUCT(S) as required to operate under new releases of the operating system and other system software with which the PRODUCT(S) is designed to operate and which the Contractor furnishes, without charge, to all other LICENSEES of the PRODUCT(S) who are enrolled in Support;
 - (iii) Supply all extensions, enhancements and other changes that the Contractor, at its sole discretion, makes or adds to the PRODUCT(S) and which the Contractor furnishes, without charge, to all other LICENSEES of the PRODUCT(S) who are enrolled in Support; and
 - (iv) Replace the PRODUCT(S) at no charge if the media becomes destroyed or damaged so that the PRODUCT(S) becomes unusable.
- (2) ELECTRONIC SERVICES. The ordering activity may electronically access, at no charge, services that will be available 24 hours a day, 7 days per week. Such electronic services may include, but are not limited to:
- (i) User forums, product-specific information, hints and tips.
 - (ii) Bug fix retrieval via the Internet or World Wide Web access.
 - (iii) Public and private forums, as well as product maintenance retrieval via CompuServe access.
 - (iv) Product maintenance and demonstration code retrieval via a WAN-accessible FTP server.
 - (v) Product maintenance information via a facsimile retrieval system.
 - (vi) Access to a problem resolution database via the Contractor's customer support system.
- b. Software maintenance service for REMEDY, MAGIC, MARIMBA, IDENTIFY, and IDENTITY PRODUCTS ENTERPRISE SERVICE MANAGEMENT (ESM) . Software Maintenance is available through the Contractor for an additional fee on an annual basis. If the ordering activity is enrolled in Maintenance, the Contractor shall:
- (1) Supply code corrections to the ordering activity to correct Product malfunctions in order to bring the Product into material conformity with the then current published specifications as set out in the Documentation for the most current edition of the Product unless such malfunctions have been caused by modifications of the Product made by the ordering activity or a third party under the direction of the ordering activity or unless the ordering activity's modifications prohibit or hamper such corrections;
 - (2) Provide the ordering activity with technical support to answer operational questions and to report irregularities within the Product pursuant to the Maintenance plan selected by the ordering activity;
 - (3) Supply, so long as commercially feasible, updated Product as necessary to operate under new releases of the operating system or database for which the Product was designed;
 - (4) Supply all extensions, enhancements and other changes that the Contractor deems to be logical improvements or extensions that are incorporated into the Product and that the Contractor elects to generally furnish without additional charge to all customers enrolled in Maintenance for the particular Product (the ordering activity shall receive one (1) copy of each such extension, enhancement or other changes, at no additional charge and the Contractor shall provide reasonable assistance with technical support issues that arise during the installation of each such extension, enhancement or other change); and
 - (5) Replace the Product at no charge if the media becomes destroyed or damaged to such an extent that the Product becomes unusable.

The ordering activity may order the first year's annual Maintenance through the Contractor. Once enrolled in Maintenance, the ordering activity will then be invoiced annually for Maintenance services. If the ordering activity elects to continue the service, the ordering activity shall pay the invoice prior to expiration of the then current Maintenance period. The ordering activity may cancel its enrollment in Maintenance by giving notice of such cancellation at least thirty (30) days prior to the anniversary date of Maintenance. If the ordering activity cancels Maintenance, the Contractor may cancel Maintenance for all Products under the applicable Contractor support id. In the event Maintenance is terminated by the ordering activity, the ordering activity may re-enroll in Maintenance by paying a reinstatement fee equal to the total Maintenance fees that would have been paid had the ordering activity not terminated Maintenance services and the ordering activity must pay the annual charge for Maintenance for the next year in advance.

The Contractor shall have no support obligations under Maintenance with respect to (i) Product which has been modified by the ordering activity or on behalf of the ordering activity; (ii) malfunctions caused by the use or operation of the Product with any hardware, software or media not authorized by the Contractor; (iii) malfunctions resulting from operator error or incorrect use of the Product; (iv) malfunctions attributable to the equipment and programs used in conjunction with the Product or to any other reason external to the Product; or (v) if any previous patches or error corrections of the Product have not been implemented by the ordering activity or the instructions of the Contractor have not been followed. The Contractor reserves the right to discontinue Maintenance services for the Product if the Contractor generally discontinues such services to all its Customers for the applicable Product. The Contractor's obligation to provide Maintenance is dependent on the continued existence of the license to use the Product and if the license is terminated for any reason, the Contractor's obligations to provide Maintenance will cease automatically on the occurrence of such event."

- d. Invoices for maintenance service shall be paid in advance unless otherwise agreed to by the Contractor and the ordering activity.

4. PERIODS OF MAINTENANCE (132-34):

- a. The Contractor shall honor orders for periods of one year or less.
- b. If the ordering activity has terminated its enrollment in Support, the ordering activity may re-enroll by paying a reinstatement fee calculated as follows:

The fee will equal the amount they would have paid if maintenance had not lapsed plus one year forward support. For customers that have not renewed maintenance for 2 or more years, the customer will have the right to buy new licenses or be subject to the same policy as the rest of the customer base (as listed below). Customers that have not renewed maintenance for under 2 years will be charged for all lapsed support at the originally contracted rate times the current list price + one year forward support.

In addition, the ordering activity must pay the annual charge for Support for the next year in advance. Such reinstatement date shall then be considered the Support Anniversary Date.

- c. All orders automatically expire on September 30 of the contract term unless otherwise agreed to by the Contractor and the ordering activity.
- d. Notwithstanding "c", above, the ordering activity may choose to issue a delivery order for maintenance which extends beyond the end of the fiscal year, under the authority of FAR 37.106 and/or DFAR 237.106(2).

5. UTILIZATION LIMITATIONS (132-33 AND 132-34):

Commercial computer software and/or commercial computer software documentation is offered by the Contractor under licenses customarily provided to the public. The ordering activity shall have only those rights specified in the end-user license agreement packaged with the product and stated herein. The Contractor does not furnish technical

information related to commercial computer software (or commercial computer software documentation) that is not customarily provided to the public. Further, the Contractor does not relinquish rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software (or commercial computer software documentation) except as mutually agreed to by the parties. See 48 CFR 12.212.

When acquired by the ordering activity, commercial computer software and related documentation shall be subject, but not limited, to the following:

- a. **TITLE AND PROPRIETARY INFORMATION:** The Contractor has the full rights to license the PRODUCT(S) to the ordering activity and to perform its obligations under this contract. The ordering activity acknowledges that copyright and other industrial, intellectual and marketing rights in the PRODUCT(S), including all modifications made by or for the ordering activity by any party, are and shall remain the property of the Contractor and/or copyright owner of the PRODUCT(S), as the case may be. The ordering activity acknowledges that the PRODUCT(S) have been developed as valuable trade secrets. The ordering activity agrees that this contract establishes a confidential relationship between the Parties with respect to this information. The ordering activity agrees, therefore, to preserve the confidential nature of the proprietary and trade secret information by retaining and using the PRODUCT(S) in trust and confidence, solely for its own internal use, and agrees not to disassemble, reverse compile, or reverse engineer the PRODUCT(S) or take any action in order to derive a source code equivalent of the PRODUCT(S), nor permit the use of the PRODUCT(S) by, or disclosure of such information, to unauthorized persons or any party not subject to the confidentiality provisions herein. The ordering activity agrees to promptly report to the Contractor any violations of these provisions by the ordering activity's employees, consultants or agents of which the ordering activity is aware.

The ordering activity shall not copy or make, cause or permit any third party to copy the PRODUCT(S), in whole or in part, without the prior written consent of the Contractor except for a reasonable number of internal back-up or archival copies. All copies shall bear all copyright, trade secret, trademark and any other intellectual property right notices on the original copies. The Contractor shall have the right to obtain injunctive relief against unauthorized copying or use of the PRODUCT(S), in addition to any other rights to which it may be entitled. The ordering activity agrees not to modify the PRODUCT(S) without the prior written approval of the Contractor. Unapproved alterations to the PRODUCT(S) shall void any obligation by the Contractor to provide support for the PRODUCT(S), pursuant to terms and conditions under SIN 132-34 Software Maintenance, during the warranty period and any subsequent period in which the ordering activity is enrolled in the Support, Maintenance and Enhancement Plan. No changes, additions or alterations to the PRODUCT(S), however extensive, shall reduce the Contractor's title to them.

PATROL Knowledge modules licensed under this contract, and derivatives thereof, shall not be used by, or licensed or transferred in any manner to any Third Party except as provided in this contract. In addition, any knowledge modules created, developed, built, modified or enhanced using the Contractor's System Development Kit or the Patrol Script Language shall not be used by, or sold, licensed, sublicensed, or otherwise transferred to any Third Party without the prior written consent of the Contractor. As used in this paragraph, a "Third Party" is any person, company or entity other than the parties to this contract.

- b. **CHANGE IN DESIGNATED CPU.** The ordering activity may use the PRODUCT(S) only on the DESIGNATED CPU; provided, however, that the PRODUCT(S) may be transferred temporarily to another computer if the DESIGNATED CPU is inoperable due to malfunction, initiation of a disaster recovery program or for routine maintenance. However, in no event, shall the ordering activity use both CPUs in a productive capacity. By written notice to the Contractor, the ordering activity may designate, as the DESIGNATED CPU, another computer owned or leased by the ordering activity located within the same country as the original DESIGNATED CPU. If the new DESIGNATED CPU is of a higher Tier than the previous DESIGNATED CPU, both Parties agree to execute new PRODUCT ORDER FORMS reflecting the changes, and the ordering activity agrees to pay an upgrade fee based on the Contractor's then current commercial list price and upgrade policy and to pay any applicable support charge based upon the new Tier. If the new DESIGNATED CPU is of a lower Tier, both Parties agree to execute new PRODUCT ORDER FORMS with

support charges based upon the new lower Tier, effective on the next support anniversary date. If the ordering activity changes Tiers, the original support anniversary date shall remain unchanged.

- c. FOR REMEDY PRODUCTS. Subject to the ordering activity's compliance with the terms in this Agreement, the Contractor hereby grants the ordering activity a nontransferable, nonexclusive, perpetual license to use, in object code form only, the Product, including updates and new versions delivered by the Contractor to the ordering activity, if any under Maintenance, along with all Documentation. All rights not expressly granted herein are retained by the Contractor and its licensors.

GENERAL LICENSE USE AND RESTRICTIONS. The ordering activity may use the Product only to process the ordering activity's own data. Except as expressly permitted under this Agreement or by the Contractor in writing, the ordering activity may not sublicense, translate, resell, lease, lend, rent, distribute, use the Product to operate a software service bureau, use the Product to operate as an outsourcer, use the Product in a time-sharing arrangement; use or otherwise burden any Product beyond the type and number of licenses stated in the Order for the Product; publish any result of any benchmark of the Product; decompile, reverse engineer, disassemble, or seek to reconstruct or discover any humanly readable form of the Product source code, except to the extent allowed by applicable law despite this limitation; or except as specifically provided for in this Agreement, in any way reproduce, disclose, distribute or transfer any of the Product, or allow access to the Product by any third party.

COPIES. The ordering activity may only make copies of the Product and Documentation in a reasonable number and only for backup or archival use consistent with the terms of this Agreement. The ordering activity shall include the Contractor's copyright, trademarks and other proprietary rights notices, as contained in the original copy of the Product, on every copy the ordering activity makes of the Product and Documentation. The ordering activity may not under any circumstance, and may not permit any third party to, prepare any derivative work of the Product or Documentation or remove any product identification, copyright, trademark or other notice from the Product or the Documentation.

SPECIFIC PRODUCT USE AND RESTRICTIONS. The following further restrictions apply to specific Product applications:

- (1) Action Request System® Server Software. The Contractor enables the Action Request System ("AR System" ®) software on a server through the use of an encrypted string of characters provided separately to the ordering activity (a "License Key"). The ordering activity may not install the AR System software on any more than one server for each License Key it acquires from the Contractor. The ordering activity may not allow access to any individual in excess of the number of individuals contemplated by the licenses, as set forth herein, purchased pursuant to all applicable Orders. If the ordering activity requires moving the Product to a different server, it may require a new License Key, which the Contractor shall provide for a nominal fee unless the ordering activity is a current Maintenance subscriber.
- (2) The Contractor Applications. The ordering activity may install any Product application on only one server running the AR System software. The ordering activity may allow access to any application only up to the number of individuals contemplated by the licenses, as set forth herein, purchased pursuant to all applicable Orders accepted by the Contractor for the application.
- (3) Write License. The ordering activity must have a "Write" license to allow an individual to change data in the AR System Software.
- (4) The Contractor Full Text Search Option License. The ordering activity must have a Contractor Full Text Search Option™ ("Full Text") license to allow individuals to perform searches using the embedded full text search capability of the Product.
- (5) Development License. The ordering activity must have a Write "Development" license to allow an individual to conduct development and testing of applications for the AR System. The ordering activity shall restrict all such development and testing to a server dedicated to development and testing only and restricted from any production or commercial activity of any nature.

- (6) Hot Backup License. The ordering activity must have a “Hot Backup” license to replicate all other licenses from the Contractor then in force on a backup server (“Backup Server”). The ordering activity may access the Backup Server only in an emergency when the customary server on which the AR System is installed (the “Primary Server”) fails and only in preparation of the Backup Server for such an emergency. The ordering activity may not run the Backup Server in addition to the Primary Server except in an emergency or for preparation for an emergency as permitted by this Section 6. The Hot Backup license shall remain in effect only so long as the ordering activity maintains and has paid for support for all licenses covered by the Contractor-accepted purchase orders. The Hot Backup licenses co-term to the end date of paid for support.
- (7) Fixed, Floating Formats. Under a “Fixed” format, the ordering activity shall restrict access to a Write or a Full Text license on a permanent basis only to the individual who the ordering activity has specified internally to have a Fixed format license. Only when that individual has left their position requiring a Fixed format license may the ordering activity reassign the Fixed format license to another individual. Under a “Floating” format, the ordering activity may allow any number of individuals access to the Write or Full Text license equal to the number of Floating format licenses that the ordering activity has obtained for the particular Write or Full Text license. The ordering activity may take no action and may not permit any activity that would result in the ordering activity utilizing either format of license in excess of the number of individuals contemplated by this Section 7. The ordering activity may configure AR System such that the ordering activity requires no specific license to allow individuals to perform read only or query searches within the AR System or to submit a ticket to the AR System; however, Licensee may not bypass, in any way, the use of a Fixed and Floating 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)..”
- (8) Master AR Suite (“MARS”) Software. MARS is licensed for execution on only one Central Processing Unit or “Designated CPU” and may not be transferred without Remedy's written permission. THE ORDER SHALL IDENTIFY THE CPU AND UNDER NO CIRCUMSTANCES SHALL THE MARS SOFTWARE BE INSTALLED ON A NETWORK SERVER OR OTHER MULTI-USER COMPUTER SYSTEM. Licensee may use the MARS Software only on the Designated CPU while it possesses and operates the Designated CPU. If the Designated CPU becomes temporarily inoperable, Licensee may load and use the MARS Software on another of its computer hardware systems at the same location until the Designated CPU becomes operable, but in no event for more than 30 days. Licensee must notify Remedy by written notice of such a change. Any other change in the Designated CPU, (including any increase in the number of licensed workstations) will require Remedy's prior written approval, which may be subject to additional charges. **UNDER NO CIRCUMSTANCES MAY A SINGLE MARS SOFTWARE LICENSE BE USED BY MORE THAN A SINGLE USER.**

6. SOFTWARE CONVERSIONS (132-33):

Software conversions are not available under the scope of this contract.

7. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY:

Product Descriptions are found on BMC's worldwide web listed in alphabetical order. Please reference www.bmc.com, click on Products, Product Directory available as well as Environment Index.

A list of the equipment on which the software can be used is set forth in the section titled Machine Class Product Availability Listing.

All equipment compatibility or supported hardware functions applicable to Contractor's products are set forth in the Contractor's published literature or manuals supplied with the Products. For all additional information concerning supported hardware or compatibility requirements the ordering activity is advised to contact the Contractor.

8. RIGHT-TO-COPY PRICING:

Right-to-copy license pricing is not available under the scope of this contract. Right to copy is limited solely for the purpose of system back up unless otherwise so indicated.

9. LIABILITY FOR INJURY OR DAMAGE:

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of software provided by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE
(SPECIAL ITEM NUMBER 132-50)**

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.
- c. The Contractor shall provide training courses to the ordering activity through the purchase of Learning Pass Credits (LPCs). Learning Pass Credits may be purchased by the ordering activity in quantities to cover an individual student in a particular course or in significant quantities, at a discount, to cover the needs of the ordering activities organization requirements over a period of time.
- d. Contractor agrees to provide to ordering activity Learning Pass Credits ("LPCs") at the quantity and discounted price stated. Customer may use the LPCs to purchase training from Contractor, either at public classes or in private training at ordering activity's site. All training shall be done by professional instructors who are skilled in the subject matter of a specific class.

2. ORDER

- a. Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the contact's name, number of Learning Pass Credits to be purchased, , and contracted dollar amount for the Learning Pass Credits. Specific courses to be attended may also be included on the order. Orders shall include the contact's name, number of Learning Pass Credits to be purchased, and contracted dollar amount for the Learning Pass Credits. Specific courses to be attended may also be included on the order.
- b. Contractor will issue a PIN code to an individual designated by the ordering activity (the "Contact"). All ordering activity-authorized personnel will use this PIN code when enrolling in a class as a means of payment. Ordering activity is responsible for authorizing individuals to use the PIN code and for ensuring proper usage of the PIN code. Contractor is not responsible for unauthorized use of the PIN code.
- c. Contractor will provide the Contact with a monthly report that details usage of the LPCs to date. The report will specify the user, the class, the number of LPCs used and the LPC balance remaining.
- d. Contractor provides training throughout the year. Ordering activity may contact Contractor for a published schedule of training classes or visit our website at www.bmc.com. The LPCs issued pursuant to this Agreement shall expire twelve (12) months from the date of the ordering activity purchase order. Any remaining LPCs not utilized during the twelve (12) months period shall be forfeited by ordering activity. The 12 month period will begin on the day the Purchase Order or EDI order is issued to Contractor.
- e. Ninety (90) days prior to the Expiration Date of the Learning Pass Credits, the ordering activity will be notified by Contractor as to the Expiration Date of the Learning Pass Credits. If the ordering activity requests an extension of the expiration for an additional year, the ordering activity may roll any unused LPC's in to the new annual agreement provided that they sign up for a quantity of LPC's that is equal to the same discount level as the prior year.
Example: # of LPC's originally purchased 70 with a 10% discount
 # of LPC's left at end of year = 10

of additional LPCs required for the extension and maintain the 10% discount = 60 LPCs

- f. LPCs are for the exclusive use of ordering activity and may not be resold, transferred or bartered.

3. TIME OF DELIVERY

The Contractor shall conduct on-site training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity. For an onsite private class, a Training and Education Work Order will need to be executed by both parties once a mutually agreed upon date for the onsite private class has been established.

If the ordering activity elects to use LPCs for public training classes, training will take place at a regularly scheduled training class in a facility normally used by Contractor for that purpose. If the ordering activity elects to use LPCs for training in a private on-site setting, ordering activity shall pay all related travel expenses for the instructor. The instructors expenses must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. This is in addition to the required number of LPC's

Onsite Standard Training Class at Ordering Activity Designated Location

(1) Training is provided in English at Contractor facilities CONUS and OCONUS

(2) Training is available onsite at the customer premises for any of the standard BMC training courses in English. An onsite class can accommodate up to 10 students.

1. Quoted Services dates are valid for a period of 5 business days from the Effective Date. If Customer does not return a signed copy of the Training and Education Work Order to Contractor via fax within 5 business days of the Effective Date, Customer may lose the given dates for Training Services. Once the ordering activity and Contractor agree to delivery dates a Training and Education Work Order document will be sent to the ordering activity for signature.

2. If ordering activity desires to cancel or reschedule a class, it must provide notice to Contractor at least 10 business days before the start date of the class. Any changes to the agreed to class schedule shall be documented in a modification to the Training and Education Work Order that shall be mutually agreed to in writing. If ordering activity give less than 10 business days notice, Contractor shall deduct from the Client Learning Pass Account the number of Learning Pass Credits associated with the delivery of the on-site course and ordering activity shall pay any un-reimbursable Travel & Living expenses incurred by Contractor's instructor.

3. Classes are limited to the number of students outlined in the Training and Education Work Order, and the number of sets of training materials that will be shipped is associated with the number of students listed on the Training and Education Work Order, unless otherwise stated.

4. Ordering activity is responsible for payment of Instructors reasonable actual travel and related expenses incurred in the performance of the Training Services. The Instructor's travel reservations will not be made until the Training and Education Services Work Order is executed by the ordering activity and returned to Contractor. Such expenses will be invoiced separately, as specified in the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed.

The ordering activity, through the use of the PIN via the BMC Software Education web portal, may enroll in publicly available courses at any time.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify the Contractor at least thirteen business days before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the

order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.

If Customer desires to cancel or reschedule a class, it must provide notice to BMC at least 10 business days before the start date of the class to not to incur penalty.

If Customer give less than 10 business days notice, BMC shall invoice and Customer shall pay a fee of 50% of the course cost and any travel expenses incurred by BMC's instructor as liquidated damages.

If Customer gives 5 business days or less notice Customer shall pay a fee of 100% of the course cost and any travel expenses incurred by BMC's instructor as liquidated damages.

b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.

c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

Public Training – Class Cancellation Policy

Contractor reserves the right to cancel any class up to 10 business days prior to the start of the class. If this occurs the ordering activity's LPC balance will be reinstated by the amount allocated for the course.

5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with telephone support, via BMC Software technical support, in conjunction with any BMC Software licensed for use by the ordering activity.

6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

The ordering activity will issue Contractor a Purchase Order for the amount of Learning Pass Credits to be purchased along with any provisions for Travel and Living expenses associated with the delivery of on-site private courses. Contractor will invoice the ordering activity the full amount of the Learning Pass Credits upon receipt of the Purchase Order. Once payment is received from the ordering activity, the Contractor will establish an account that can be accessed via the PIN for enrollment in public courses. This account will be established as the Client Learning Pass Account. The Training and Education Work Order will be used to identify the Learning Pass Credits to deducted from the Client Learning Pass Account.

BMC Software will provide the ordering activity a monthly statement that contains the balance in the Client Learning Pass Account, the amount of Learning Pass Credits used in the prior period, and a list of the individuals who attended courses along with the course titles.

8. FORMAT AND CONTENT OF TRAINING

- a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class. All manuals, handbooks, texts, etc. provided as part of the course offer will remain licenses and copyrighted by BMC Software, Inc.
- b. ****If applicable**** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.
- c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.
- d. The Contractor shall provide the following information for each training course offered:
- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
 - (2) The length of the course;
 - (3) Mandatory and desirable prerequisites for student enrollment;
 - (4) The minimum and maximum number of students per class;
 - (5) The locations where the course is offered;
 - (6) Class schedules; and
 - (7) Price (per student, per class (if applicable)).
- e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses, must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts.

9. TERMS AND CONDITIONS FOR WEB-BASED TRAINING

Introduction to the Training

You have requested to purchase web-based training (the "Training") from BMC Software Services, Inc. ("BMC"). This Training consists of several units that include reading materials, exercises, and learning activities (self tests) designed to teach you the basic functions and capabilities of a BMC product. The Training is a self-paced activity; the time required to complete the course is based on the pace you set and the time that you have available. BMC will provide the Training for a specified period during which you may take the Training as many times as you like and review certain parts of the Training as you wish. At the end of the designated period of availability you will no longer have access to the Training unless you choose to purchase the Training again. This designated period of time may vary, based on the type of Training you select; please refer to the course description pages for more information. You must agree to comply with all the terms and conditions below (the "Terms") in order to have access to the Training. You indicate your agreement with the Terms by clicking the "I Agree" button at the bottom of this page.

Any new features that add to or enhance the Training will be subject to these Terms.

You may not transfer your usage rights to the Training (including your User ID and Password) to another entity. If you have any questions regarding these Terms or Training, please contact BMC via email at education@bmc.com

Eligibility for the Training

In order to enter into these Terms and access the Training, you must have an email address and you must be able to enter into legally binding contracts under applicable law for legitimate business purposes, subject to additional limits contained in these Terms.

Training Registration

To obtain access to the Training, you must do the following:

- accept these Terms;
- complete the registration form; and
- pay the appropriate fees, using a credit card or BMC Learning Pass Credit(s);

You agree to provide BMC with correct, truthful and complete contact information, including your legal name, street address, email address, and telephone number. If you provide false contact information, or if you otherwise breach these Terms, BMC may terminate your access to the Training.

Site Content

The Training web site (the "Site") may contain information, data, software, text, sound, photographs, graphics, video, messages or other materials (collectively, "Content") that are protected by applicable intellectual property law, including that of copyrights, trademarks and trade secrets. You agree not to directly or indirectly copy, distribute, modify, publish, transmit, sell, rent, lease or otherwise transfer, create derivative works from, or in any way use or exploit any of the Content or any part of the Content, except as BMC expressly authorizes you to do so in writing. Content includes but is not limited to items that are publicly posted and those that are privately transmitted.

Some of the Content may be the property of third parties. BMC is not responsible for and does not guarantee the accuracy or quality of such third party Content. In addition, in using the Site and the Training, you may be exposed to third party Content that is be offensive, indecent or objectionable.

You agree that you bear all risks associated with the use of any Content and services, whether owned by BMC or a third party, including any reliance on the accuracy, quality or usefulness of such Content.

Through the Site, you may be exposed to hyperlinks to Web sites controlled by parties other than BMC. BMC is not responsible for and does not endorse or accept any responsibility over the content or use of these Web sites. You should refer to the policies posted by other Web sites regarding privacy and other topics before you use them.

Conduct while On-Line

You agree to use the Training and the Site only for lawful purposes. You agree not to create any Content or otherwise transmit any information or material that: (a) is false or misleading; (b) harasses another or invades their privacy; (c) promotes racism or hatred against any group; (d) is obscene; (e) infringes another's intellectual property rights; or (f) is spam. You agree not to collect or store personal data about other users of the Site unless BMC expressly authorizes you to do so in writing.

Content is the sole responsibility of the person who originates such Content. In other words, you, not BMC, are entirely responsible for all Content that you upload, post, email or otherwise transmit to the Site ("Your Content"). You may upload Your Content to areas of the Site which are accessible to other subscribers (i.e. chat rooms, etc.) ("Public Areas"). If you upload Your Content to a Public Area, in doing so you grant BMC a perpetual, royalty-free, irrevocable, nonexclusive license to use, copy, modify, publish, transmit and distribute Your Content, in whole or in part, in any form, media or technology. If you are not the owner of any of Your Content you upload, then you warrant that the owner expressly grants BMC all of those same rights. You also warrant that all "moral rights" in Your Content that you upload to a Public Area have been waived.

BMC protects Your Content that you enter into non-Public Areas of the Site, as outlined in the Privacy Policy posted on the Site.

BMC does not pre-screen Your Content. However, BMC does retain the right (that it may or may not exercise, in its discretion) to (i) remove any Content or other information or material from the Site, regardless of whether the Content is in Public Area or non-Public Areas of the Site and (ii) make changes to or discontinue any and/or all parts of the Site.

BMC agrees to investigate complaints that are brought to its attention concerning inappropriate use of the Site.

No Warranties

THE TRAINING, THE SITE, AND ALL CONTENT ON THE SITE, IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. BMC DOES NOT WARRANT THAT THE TRAINING WILL SATISFY YOUR REQUIREMENTS, THAT THE TRAINING OR THE SITE IS WITHOUT DEFECT OR ERROR OR THAT THE OPERATION OF SITE WILL BE UNINTERRUPTED. BMC DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, MADE WITH RESPECT TO THE TRAINING, THE SITE AND THE CONTENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

Limitation of Liability

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You hereby indemnify and hold harmless BMC from any and all losses, costs, claims, liabilities, suits, judgments, claims, demands, actions proceedings and expense, including, without limitation, reasonable attorney's fees, based upon or relating to your access to or use of the Training or the Site.

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You agree to comply with all local rules and regulations regarding online conduct and acceptable Content. Specifically, you agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside and you agree that U.S. export control laws and other applicable export and import laws govern your use of the Site and the Training, including technical data. You agree that you will not, directly or indirectly, export the Site or the Training nor any direct product thereof, in violation of these laws, and that you will not use the same for any purpose prohibited by these laws.

BMC Software, Inc.

Pricing

The price for each LPC is \$650.00, prior to applicable discount, USD. Customer will pay amount within 30 days of invoicing.

Discount Schedule

| Learning Pass Credits- | Discount |
|------------------------------------|----------|
| 5 to 19 (Minimum Purchase of 5) | 2% |
| 20 to 49 | 7% |
| 50 to 99 | 12% |
| 100 to 199 | 17% |
| 200 and up | 22% |

Pricing conversion table for LPC's

| Product Name | Unit Of Measurement | BMC Business School |
|---|---------------------|---------------------|
| 5-19 Learning Pass Credits For BMC Business School Offerings | LPC | \$637.00 |
| 20 - 49 Learning Pass Credits For BMC Business School Offerings | LPC | \$604.50 |
| 50 - 99 Learning Pass Credits For BMC Business School Offerings | LPC | \$572.00 |
| 100 - 199 Learning Pass Credits For BMC Business School Offerings | LPC | \$539.50 |
| 200 + Learning Pass Credits For All BMC Business School | LPC | \$507.00 |

| CONVERSION RATES FOR LPC PURCHASE | | |
|--|-----------------|--------------------|
| PRIVATE TRAINING * Does not include Instructor T&E | | |
| <i>Private Training offerings by BMC Business School- Instructor</i> | | |
| Standard Non Customized Training Onsite at Customer Facility | per day | 7 LPC's, per day |
| For up to 10 students | | |
| Does not include instructors travel expenses | | |
| Customized and/or Tailored Training | per day | 3 LPC's per day |
| Instructor led Training | | |
| Web Based Training | | |
| Each additional student over 10 for a private training class | per day | .50 LPC's per day |
| BMC Business School Traveling Classroom or Classroom Rental for PRIVATE CLASS ONLY | per day | 3 LPC's per day |
| Educational Needs Analysis | per day | 4 LPC's per day |
| Onsite Education Workshop | per day | 6 LPC's per day |
| Informal training with NO materials | | |
| PUBLIC and e-learning EDUCATION OFFERINGS | | |
| <i>Public Training offerings by BMC Business School- Instructor</i> | | |
| Standard Non Customized Published Public Training classes | Per day | 1 LPC's, per day |
| This does not include Certification Boot Camp Classes, or ITIL | | |
| This does not include CBT, WBT, or Online training offerings | | |
| Online Non Customized Published Public Training classes | 1 hour | .20 LPC's per hour |
| WBT Non Customized Published Training Offering | per copy | 1 LPC |
| CBT Non Customized Published Training Offering | per copy | 1 LPC |
| BMC Certification Boot Camps | per 5 day class | 7 LPC's |
| Training Manuals for Standard Non Customized Training Course | | 3 LPC's |
| Does not include BMC Certification Boot Camps or ITIL | | |
| Training Manuals for BMC Certification Boot Camps | | 5.25 LPC's |

TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY PROFESSIONAL SERVICES (SPECIAL ITEM 132-51)

1. SCOPE:

- a. The prices, terms and conditions stated under Special Item Number 132-51 Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- a. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

2. PERFORMANCE INCENTIVES:

- a. Performance incentives may be agreed upon between the Contractor and the ordering office on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the Contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the Contractor. Incentives shall be based on objectively measurable tasks.

3. ORDER:

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks, which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

4. PERFORMANCE OF SERVICES:

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.
- d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

- e. **LICENSE.** Subject to the terms of this Agreement, Contractor grants the ordering activity a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other deliverables delivered as a result of the Services provided under the Statement of Work (“Deliverables”) solely for its own internal use. Except as expressly permitted by applicable law and this Agreement, the ordering activity may not reverse engineer or decompile any Deliverable for the purpose of developing comparable functionality; may not sell, rent, lease, sublicense, timeshare, outsource or otherwise use the Deliverables; and may not export any Deliverable without the appropriate export license exceptions.
- f. **MUTUAL CONFIDENTIALITY.** Each party agrees that at all times during the term of any order, and thereafter, each party will hold in confidence, and will not, other than for purposes of the order, 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 Contractor the Deliverables. “Confidential Information” includes, without limitation, the terms of any order, 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.
- g. **OWNERSHIP.** Contractor owns all right, title and interest in the Deliverables, including all intellectual property rights embodied therein.
- h. **LIMITED WARRANTY.** Contractor warrants that it will perform the Services in conformance with generally accepted practices within the software services industry and in accordance with the Statement of Work. The ordering activity must notify Contractor of any breach of this warranty no later than 90 days after completion of the Services under the Statement of Work. The ordering activity’s exclusive remedy and Contractor’s entire liability under this warranty shall be for Contractor to re-perform any non-conforming portion of the Services within a reasonable period of time, or if Contractor 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 Statement of Work. This warranty will not apply to the extent the ordering activity, its contractors or agents have modified any Deliverable, unless otherwise authorized by Contractor 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.**
- i. **LIMITATION ON LIABILITY.** 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 OR SUCH LOSS OR DAMAGE. IN NO EVENT WILL CONTRACTOR’S LIABILITY FOR DIRECT DAMAGES EXCEED AMOUNTS PAYABLE BY THE ORDERING ACTIVITY UNDER THE STATEMENT OF WORK. NONE OF THE ABOVE LIMITATIONS AFFECT THE LIABILITY OF EITHER PARTY FOR A BREACH OF SECTIONS e. and f.
- j. **NON-SOLICITATION.** During the term of any order, and for a period of six months thereafter, the ordering activity will not solicit for employment any employees of Contractor or its affiliates who, within six months prior to such solicitation, directly performed under the order.

5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work

order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

6. INSPECTION OF SERVICES:

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

7. RESPONSIBILITIES OF THE CONTRACTOR:

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 Rights in Data – General, may apply.

8. RESPONSIBILITIES OF THE ORDERING ACTIVITY:

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

9. INDEPENDENT CONTRACTOR:

All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

10. ORGANIZATIONAL CONFLICTS OF INTEREST:

- a. DEFINITIONS. “Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

- b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

11. INVOICES:

The Contractor, upon completion of the work ordered, shall submit invoices for IT services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

12. PAYMENTS:

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

- (1) The offeror;
- (2) Subcontractors; and/or
- (3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

13. RESUMES:

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

14. INCIDENTAL SUPPORT COSTS:

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

15. APPROVAL OF SUBCONTRACTS:

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

16. DESCRIPTION OF IT SERVICES AND PRICING:

A description of the types of Information Technology Services offered under SIN 132-51 is set forth under the IT Service Descriptions Section. Specific Labor Categories and Rates are set forth in the IT Professional Services Pricelist.

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.

| GSA Daily Rate | Job Level | Description |
|----------------|---|---|
| \$1,439 | Associate Consultant | A BMC Associate Consultant provides implementation skills for BMC systems management solutions. He/she implements BMC solutions on mainframe or distributed systems. He/she can work with teams of BMC, customer, and partner professionals in the development and implementation of IT solutions to solve customer IT problems. |
| \$1,919 | Consultant | Responsible for implementing BMC solutions and BMC products. Capable of assessing client environment and needs and defining proper configuration and setup of BMC Software products. Able to integrate BMC products with other technologies in support of an integrated solution. |
| \$2,398 | Senior Consultant | Responsible for tailoring BMC solutions to meet 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 impact IT operations and management. Interacts with client project leads and client management. |
| \$2,398 | Principal Consultant | 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. |
| \$1,919 | Project Manager | 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 develop customized services to meet customer objectives. Provides coordination and management required for the delivery of customized solutions, monitors and reports financial status and contract necessities to the client. |
| \$2,879 | Advisory Consultant | A BMC Advisory Consultant 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 implementor of 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. |
| \$2,399 | Sr. Project Manager | A BMC Sr. Project Manager is responsible for managing enterprise-scale implementations of BMC Software products, including designing the implementation to enhance 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. |
| \$1,919 | Security Optimization Consultant | Provides for the planning and architecture of UNIX, NT, and MVS security systems administration including an understanding of firewalls, security access systems, and other systems security technologies. Performs analysis of system access, security procedures and other methodologies. Extends the capabilities of the product by writing customized scripts, exits and other automation that may be necessary to provide additional functionality to the customer. Conducts security discovery engagements. |
| \$1,919 | Security Application Interface Consultant | Provides development that extends the products capabilities to enable management of any security system encountered. Interfaces with customer to design and implement a custom API's to unsupported systems or software. |

| GSA Daily Rate | Job Level | Description |
|----------------|----------------------------|---|
| \$2,399 | Solutions Architect | A BMC Solutions Architect provides planning and design consulting for complex systems management solutions. Experience and knowledge of customer service and support, Internet and Intranet and/or other distributed technologies are prerequisites for a BMC Solutions Architect. He/she consults on multi-product, multi-platform distributed systems. This individual is articulate and communicates BMC solutions architectures and their applicability to solving business solutions effectively. He/she can lead moderately sized teams of BMC, customer, and partner professionals in the development and implementation of BMC solutions that solve customer business problems. This individual has broad experience in the implementation, engineering, and design of BMC and other vendor IT solutions. |
| \$2,879 | Senior Solutions Architect | A BMC Senior Solutions Architect leads complex planning and design consulting efforts for customer systems management solutions. The Senior Solutions Architect leads the development of customer application-oriented multi-product, multi-platform enterprise systems management solutions. He/she is articulate and can communicate BMC solutions architectures and their applicability to solving business solutions effectively to senior customer management. They can lead any sized team of BMC, customer, and partner professionals in the development and implementation of BMC solutions that solve customer business problems. This individual has broad experience in the implementation, engineering, and design of BMC and other vendor IT solutions. |

IT PROFESSIONAL SERVICES DESCRIPTIONS FOR REMEDY PRODUCTS

Associate Technical Consultant: Trained Remedy development resource working towards Remedy Approved Consultant certification. Works on technical issues/problems of moderate scope where analysis of situations or data requires a review of a variety of factors. Exercises judgment within defined procedures and practices to determine appropriate action. Has internal and some external contacts. Normally receives general instructions on routine work, detailed instructions on new projects or assignments. Typically, requires a minimum of 2 years of related experience. Works as part of a Remedy project team supervised and mentored on a day-to-day basis by a project manager and other senior resources on the project.

Technical Consultant: Trained and certified Remedy Approved Consultant. Uses skills as a seasoned, experienced professional with a full understanding of industry practices. Resolves a wide range of issues in imaginative as well as practical ways. Works on problems of diverse scope where analysis of data requires evaluation of identifiable factors. Demonstrates good judgment in selecting methods and techniques for obtaining solutions. Interacts with senior internal and external personnel. Normally receives little instruction on day-to-day work, general instructions on new assignments. Typically requires a minimum of 5 years of related experience. Works as part of a Remedy project team supervised and mentored on a day-to-day basis by a project manager and other senior resources on the project.

Senior Technical Consultant: Trained and certified Remedy Approved Consultant with mastery of one or more technical areas such as architecture, design, or integrations. Having wide-ranging experience uses professional concepts and methodologies to resolve complex issues in creative and effective ways. Works on complex issues where analysis of situation or data requires an in-depth evaluation of variable factors. Exercises judgment in selecting methods, techniques and evaluation criteria for obtaining results. Determines methods and procedures on new assignments, and may provide guidance to other personnel. Typically requires a minimum of 8 years of related experience. May work independently or part of a Remedy project team supervised by a project manager. **Remedy Administrator:** Trained in administering the Remedy AR System and Remedy applications. Primarily focused on administrative and clerical functions pertaining to the day-to-day maintenance/management of the Remedy system. May also have the skills required to perform basic field and workflow additions/deletions/modifications. Normally receives general instructions on routine work, detailed instructions on new projects or assignments. Typically, requires a minimum of 2 years related experience.

Documentation Specialist: Provides support in the preparation of customer deliverables including presentations, proposals and reports. Skilled in business writing, editing, document formatting and document production. Typically requires a minimum of 3 years of related experience. Normally receives little instruction on day-to-day work, general instructions on new assignments.

Program Manager: Provides leadership over large Remedy projects involving one or more projects/sub-projects encompassing complex 3rd-party integrations, business process improvements, application consolidations, enterprise roll-outs, and/or extensive customizations. Uses skills as a seasoned and experienced project/program manager to ensure project success

through management of the project plan and delegation of responsibilities to team members. Primary interface to the customer's project sponsor(s). Typically requires a minimum of 10 years of related experience.

Project Manager: Responsible for the successful execution of Remedy projects by employing sound project management practices. Manages one or more consulting resources assigned to project. Independently handles complex and changing issues by leveraging the resources provided. Works on problems of diverse scope where analysis of data requires evaluation of identifiable factors. Demonstrates good judgment in selecting methods and techniques for obtaining solutions. Interacts with senior internal and external personnel. Normally receives little instruction on day-to-day work, general instruction on new assignments. Typically requires 8 years of related experience.

Administrative Services: Responsible for general administrative and clerical activities including data processing, document preparation and production, ordering supplies, scheduling meetings and maintaining calendars. Normally receives detailed instructions on day-to-day tasks.

Rapid Results for Health Check: Remedy Rapid Results for Help Desk assists you in installing, configuring, and deploying the Action Request System (AR System®) and the Remedy Help Desk application, based on your organization's requirements. It includes 15 days of on-site implementation consulting as well as 3 days of training for 2 students. Not only that, but just as Remedy Help Desk adapts to your specific business needs, so does Remedy Rapid Results for Help Desk: other products and implementation services may be added as appropriate.

Remedy Strategic Migration Package for AR: Combining Remedy's knowledge and experience with proven best practices, Remedy Consulting will review the current usage of your AR System implementation and provide recommendations on a migration roadmap for your current applications. In addition, we will work with you to identify business areas that may be improved by leveraging the power of AR System going forward.

The Strategic Migration Package for AR System 5.x includes three elements:

- Strategic Assessment Service: An assessment of your existing AR System implementation that focuses on common migration pitfalls, areas where new features can be utilized to enhance performance and productivity, and on business processes that may benefit from future AR System automation
- Strategic Assessment Report: A document outlining our findings and recommendations
- Strategy and Planning: A presentation of findings and recommended migration strategy, including detailed discussion of timeframe, cost, and considerations for executing the migration of AR System 5.x so that you can realize its full benefits.

Remedy Implementation Planning Workshop: The Remedy Implementation Planning Workshop (IPWS) Package is a fixed-price consulting engagement where Remedy consultants work with you to prepare a roadmap for implementing a Remedy solution. The IPWS engagement will result in a detailed project charter that defines project scope, objectives, and success criteria. Additionally, the team will assess the readiness of the technology (and supporting) infrastructure, define a recommended full life-cycle project process to ensure quality deliverables, establish a high level project plan, assess project team composition and skill requirements, and recommend project control mechanisms. The package includes onsite-consulting services to perform baseline analysis required to work jointly with your project team to establish a Project Charter outlining the items discussed above. [Engagements are typically 3-5 days in duration.]

The Implementation Planning Workshop Package typically includes the following activities:

- Offsite (Remote) planning work to ensure that the customer is prepared for the engagement
- Kick-off and initial assessments
- Detailed assessments and documentation of the Project Charter
- Documentation and customer preview and revisions
- Formal presentation and discussion of next steps

Following completion of the package services, you will have a comprehensive approach defined to implementing your Remedy solution. Should you elect to leverage Remedy's Consulting extensive technical and process expertise to assist in the implementation, additional consulting or education services may be added to the Implementation Planning Workshop Package. Remedy Consulting can provide technical and consulting services including an implementation of any Remedy product, development of new custom applications, and upgrading or migrating existing applications.

DESCRIPTIVE INFORMATION RELATING TO SOFTWARE

Product Descriptions are found on BMC's worldwide web listed in alphabetical order. Please reference www.bmc.com, click on Products, Product Directory available as well as Environment Index.

PRODUCT DEFINITIONS

TASK BASED LICENSE

Task Based License shall mean that each defined job is considered a task as far as pricing is concerned. A job's definition contains the name of the JCL, CL, DCL, or Script that will run, when to run, what machine to run on, what resources are required, predecessor/successor information, etc. The number of steps contained within a submitted job's Script, JCL, etc., do not have any bearing and do not indicate the number of tasks defined. The entire job entity constitutes a single task.

ENTERPRISE USERS

Enterprise Users shall mean a high-level identifier representing a person (any employee, agent, or contractor of the Customer) in the enterprise. It is defined and accessed through CONTROL-SA's GUI or batch interface. The Control-SA Enterprise User is associated with a number of resident security system user IDs on different platforms. The enterprise user entity is used to manage the person's access to all the relevant platforms and resources.

EXTERNAL USERS

External Users shall mean any non employee, such as, but not limited to, business partner personnel, who has access to Customer computer network and systems via the web.

INTERNET USERS

Internet Users shall mean a user limited to a single point of access via the web to a single application.

AGENTS

Agent shall mean an agent that is defined and managed by the Enterprise Security Station (ESS) database and shall also be defined as an entity that may be deployed, utilized or implemented on any number of machines at any Customer location so long as the agent is supported internally to the Customer via the ESS.

SERVER

Server shall mean a single machine that services seats, agents, options and or interfaces.

KNOWLEDGE MODULE DEFINITION

Loadable libraries of expertise that provide proactive monitoring and management to databases and applications.

MIPS CAPACITY DEFINITION

MIPS Capacity shall mean the aggregate computing power (expressed in Millions of Instructions Per Second and rounded to the next even multiple of 10) of all mainframe computers that (a) employ the OS/MVS operating system; and (b) are located at the LICENSEE'S site.

per adapter

A license is required each time an adapter or an integration CLI is installed on a Computer, or a Computer is configured to directly communicate to a BMC impact manager product component using the EIF protocol, impact web server, or other API.

per asset

A license is required for every 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 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 server

A license is required for each Server (with a Classification at the appropriate Tier level, if applicable) upon which the Product or one of its components is installed and/or manages regardless of whether the Product or one of its components is installed on that Server.

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. 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 and more. 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 loaded into the daily CONTROL-M active environment in a 24 hour period. Each 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 and more. 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/Assist**: Licensed tasks equal the maximum number of tasks that will interface a third party scheduler with the CONTROL-M active environment in a 24 hour period. 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. 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.

AGGREGATE UNITS OF MEASURE

The following units of measurements are defined as aggregate units of measure. Aggregate is a mass of distinct things gathered into a total or whole

- Per asset
- Per CPU – Full Capacity
- Per CPU – Sub Capacity
- Per GB
- Per managed component
- Per mips
- Per monitored element
- Per named user (systems management IDM only)/not a aggregate: Fixed License
- Per User
- Per Concurrent User
- Per Task
- Per Value Units: License definition: A license is required for the total aggregate number of “VU”s for each Server. This is a withdrawn metric, and only customer currently licensed are able to continue the license

NOTE: Additional capacity of an installed product that is purchased on an aggregate metric is not eligible for the free support period.

BMC Software products offered on a tier metric and thus are sold on a “per copy” basis. Products sold on a “per copy” basis receive a free support on each copy purchased, that includes the initial purchase and incremental copies acquired in the future. Free support periods do not apply to enterprise-type licensing (ELO) for upgrades or additional capacity once a product is already licensed, or for term-based (non perpetual) licenses.

PER COPY UNITS OF MEASURE

- per installed server
- per managed server

How to determine when free support and warranty is given:**System Management Products – Tier Based(per copy)****When is Free support and warranty given on tiered based products**

| | |
|--|-----|
| New Title – One year of Support included | Yes |
| Additional Product Same Title Support | Yes |
| Arrangement – ELO, Additional Product same title | No |
| Arrangement – POF, Additional Product Same Title | Yes |
| New Title Performance Warranty | Yes |
| Additional Product Same Title Performance Warranty | Yes |

System Management Products – Aggregate Unit of Measure**When is free support and warranty given**

| | |
|--|-----|
| New Title – One year of Support included | Yes |
| Additional Product Same Title Support | No |
| Arrangement – ELO, Additional Product same title | No |
| Arrangement – POF, Additional Product Same Title | No |
| New Title Performance Warranty | Yes |
| Additional Product Same Title Performance Warranty | No |

Service Management Products – All Units of Measure

| | |
|--|-----|
| New Title – One year of Support included | No |
| Additional Product Same Title Support | No |
| Arrangement – ELO, Additional Product same title | No |
| Arrangement – POF, Additional Product Same Title | No |
| New Title Performance Warranty | Yes |
| Additional Product Same Title Performance Warranty | No |

MACHINE CLASS PRODUCT AVAILABILITY LISTING

The Machine Class Product Availability Listing can be found on BMC's worldwide web. Please reference www.bmc.com, click on Products, Product Directory available as well as Environment Index.

USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS

1. PREAMBLE:

Contractor provides commercial products and services to the ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

2. COMMITMENT:

- a. To actively seek and partner with small businesses.
- b. To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.
- c. To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.
- d. To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.
- e. To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.
- f. To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.
- g. To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts. To accelerate potential opportunities please contact the Contractor.

SUGGESTED FORMATS FOR BLANKET PURCHASE AGREEMENTS

BEST VALUE BLANKET PURCHASE AGREEMENT FEDERAL SUPPLY SCHEDULE (Insert Customer Name)

In the spirit of the Federal Acquisition Streamlining Act (Ordering Activity) and (Contractor) enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) _____.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

| | |
|-------------------|-------|
| Ordering Activity | Date |
| _____ | _____ |
| Contractor | Date |
| _____ | _____ |

BPA NUMBER _____

**(CUSTOMER NAME)
BLANKET PURCHASE AGREEMENT**

Pursuant to GSA Federal Supply Schedule Contract Number(s) _____, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH (Ordering Activity):

- (1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract, except as noted below:

| MODEL/PART NUMBER | *SPECIAL BPA DISCOUNT/PRICE |
|-------------------|-----------------------------|
| _____ | _____ |
| _____ | _____ |

- (2) Delivery:

| DESTINATION | DELIVERY SCHEDULE/DATES |
|-------------|-------------------------|
| _____ | _____ |
| _____ | _____ |

- (3) The ordering activity estimates, but does not guarantee, that the volume of purchases through this agreement will be _____.
- (4) This BPA does not obligate any funds.
- (5) This BPA expires on _____ or at the end of the contract period, whichever is earlier.
- (6) The following office(s) is hereby authorized to place orders under this BPA:

| OFFICE | POINT OF CONTACT |
|--------|------------------|
| _____ | _____ |
| _____ | _____ |

- (7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.
- (8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:
- (a) Name of Contractor;
 - (b) Contract Number;
 - (c) BPA Number;
 - (d) Model Number or National Stock Number (NSN);
 - (e) Purchase Order Number;
 - (f) Date of Purchase;
 - (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
 - (h) Date of Shipment.

- (9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.
- (10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

**BASIC GUIDELINES FOR USING
“CONTRACTOR TEAM ARRANGEMENTS”**

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to an ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- + The customer identifies their requirements.
- + Federal Supply Schedule Contractors may individually meet the customers needs, or -
- + Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- + Customers make a best value selection.

**AUTHORIZED GOVERNMENT RESELLERS
AND TEAMING PARTNERS**

For **Magic** product orders .. these Partners have
Reseller Agreements:

RightStar Systems, Inc.

POC Dick Stark
100 East Street SE, Suite 202
Vienna, VA 22180
703.242.7598
703.242.7599 fax
email: dick.stark@rightstarsystems.com

Merlin Technical Solutions

POC Steve Bolster
8381 Old Courthouse Rd.
Suite 200
Vienna, VA 22182
703.752.5487
703.752.5471 fax
email: sbolster@merlints.com

SRA International

POC: Bob Pitts
4300 Fair Lakes Court
Fairfax, VA 22033
703-227-8218
e-mail: bob_pitts@sra.com

SAIC

POC: Tom Morris
10260 Campus Point Drive
San Diego, CA 92121
703-915-6354
e-mail: Thomas.W.Morris@saic.com

Titan

POC Heather Brown
11955 Freedom Drive
Reston, VA 20190
703.434.4772
email: heather.brown@titan.com

Apptis

POC Tom Flynn
14155 Newbrook Drive
Chantilly, VA 20151
703.691.4911
703.279.3000 fax
email: tom.flynn@apptis.com

Enterprise Management Solutions

POC Barton Cockayne
600 Cleveland Street
Clearwater, FL 33755
305-445-1202
Email: barton.cockayne@emscorporation.com

Column Technologies

POC Rob Yario
111 Broadway, Suite 1504
New York, NY 10006
PH: 212-385-0863
Fax: 212-227-3040
Email: ryario@columnit.com

For **legacy BMC Distributed** product orders ..these
Partners have Reseller Agreements:

Merlin Technical Solutions

POC Steve Bolster
8381 Old Courthouse Rd.
Suite 200
Vienna, VA 22182
703.752.5487
703.752.5471 fax
email: sbolster@merlints.com

Apptis

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14155 Newbrook Drive
Chantilly, VA 20151
703.691.4911
703.279.3000 fax
email: tom.flynn@apptis.com

SRA International

POC: Bob Pitts
4300 Fair Lakes Court
Fairfax, VA 22033
703-227-8218
e-mail: bob_pitts@sra.com

IMRI

POC: Janet Miller
940 South Coast Drive
Costa Mesa, CA 92626
949-852-5101
e-mail: jmiller@imri.com

SAIC

POC: Tom Morris
10260 Campus Point Drive
San Diego, CA 92121
703-915-6354
e-mail: Thomas.W.Morris@saic.com

Titan

POC Heather Brown
11955 Freedom Drive
Reston, VA 20190
703.434.4772
email: heather.brown@titan.com

Enterprise Management Solutions

POC Barton Cockayne
600 Cleveland Street
Clearwater, FL 33755
305-445-1202
Email: barton.cockayne@emscorporation.com

For **Remedy** Product orders .. these Partners have Reseller Agreements:

Merlin Technical Solutions

POC Steve Bolster
8381 Old Courthouse Rd.
Suite 200
Vienna, VA 22182
703.752.5487
703.752.5471 fax
email: sbolster@merlints.com

Apptis

POC Tom Flynn
14155 Newbrook Drive
Chantilly, VA 20151
703.691.4911
703.279.3000 fax
email: tom.flynn@apptis.com

QMX Support Services

POC: Mike Gauche
111 Franklin Street
Alexandria, VA 22314
703-549-9555
703-832-2429
e-mail: mgauche@qmxs.com

SRA International

POC: Bob Pitts
4300 Fair Lakes Court
Farifax, VA 22033
703-227-8218
e-mail: bob_pitts@sra.com

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POC Heather Brown
11955 Freedom Drive
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703.434.4772
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Rapid Technologies

POC: Bill Mell
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Littleton, CO 80128
303-948-1014
e-mail: bill.mell@raptex.com

IMRI

POC: Janet Miller
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949-852-5101
e-mail: jmiller@imri.com

RightStar Systems, Inc.

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Vienna, VA 22180
703.242.7598
703.242.7599 fax
email: dick.stark@rightstarsystems.com

Rigid Systems

POC Jim Ryave
30 Corporate Center
10440 Little Patuxent Parkway, Suite G3
Columbia, MD 21044
410.715.4446
410.715.0848 fax
email: jryave@rigidsystems.com

SAIC

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600 Cleveland Street
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305-445-1202
Email: barton.cockayne@emscorporation.com

Column Technologies

POC Rob Yario
111 Broadway, Suite 1504
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PH: 212-385-0863
Fax: 212-227-3040
Email: ryario@columnit.com

For the **Marimba** product orders, these Partners have reseller Agreements:

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POC Steve Bolster
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Vienna, VA 22182
703.752.5487
703.752.5471 fax
email: sbolster@merlints.com

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POC: Janet Miller
940 South Coast Drive
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949-852-5101
e-mail: jmiller@imri.com

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703-227-8218
e-mail: bob_pitts@sra.com

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QMX Support Services

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111 Franklin Street
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703-832-2429
e-mail: mgauche@qmxs.com

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For **Identity Management** product orders, these Partners have reseller Agreements:

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703-549-9555
703-832-2429
e-mail: mgauche@gmxs.com

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305-445-1202
Email: barton.cockayne@emscorporation.com

*For Mainframe Product orders .. these Partners have
Reseller Agreements:*

Cetan Corporation

POC: Brad Scott
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Chesapeake, VA 23323
P – 757.548.6420
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Email: Brad.Scott@CetanCorp.com

BMC SOFTWARE DISTRIBUTION, INC. PRICELIST
