

**CONTRACT BETWEEN
BMC SOFTWARE, INC.
AND
THE COUNTY OF GLOUCESTER**

THIS CONTRACT is made effective the 12th day of February, 2016, by and between **THE COUNTY OF GLOUCESTER**, a body politic and corporate, with offices in Woodbury, New Jersey, hereinafter referred to as "County", and **BMC SOFTWARE, INC.(Numara Division)**, with offices at 2202 N. West Shore Blvd., Suite 650, Tampa, Florida 33607 hereinafter referred to as "Contractor".

RECITALS

WHEREAS, there exists a need for the County of Gloucester to contract for software which provides is a single platform for IT management and a basic help desk program that can be used for incidents, problems, and change requests. It helps manage everything needed to run the help desk and IT asset management operations; and

WHEREAS, the Contractor represents that it is qualified to perform said services and desires to so perform pursuant to the terms and provisions of this contract.

NOW THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Contractor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM.** This Contract shall be effective for the period commencing February 12, 2016 and concluding February 11, 2017.

2. **COMPENSATION.** Contractor shall be compensated the total contract amount of \$2841.81 as set forth in Attachment A – Quote #Q-00174749-1 , which is attached hereto and made a part of this contract.

Contractor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Contractor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

3. **DUTIES OF CONTRACTOR.** The specific duties of the Contractor shall be as set forth in Attachment A which is incorporated and made part of this contract together with any other specifications issued by the County in connection with this contract.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Contractor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Contractor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the Bid Specifications or in the Request for Proposals, if any, as the case may be, which are specifically referred to and incorporated herein by reference.

B. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Contractor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

E. Notwithstanding the above, the Contractor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Contractor, and the County may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the County from the Contractor is determined.

F. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **PROPERTY OF THE COUNTY.** All materials developed, prepared, completed, or acquired by Contractor during the performance of the services specified by this Contract, including, but not limited to, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, shall become the property of the County, except as may otherwise be stipulated in a written statement by the County.

8. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

9. **INDEMNIFICATION.** The Contractor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all mental or physical injuries or disabilities, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property sustained in connection with this contract which results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Contractor's failure to provide for the safety and protection of its employees, or from Contractor's performance or failure to perform pursuant to the terms and provisions of this Contract. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

10. **INSURANCE.** Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with companies deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Contractor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County, naming County as an additional insured.

If Contractor is a member of a profession that is subject to suit for professional malpractice, then Contractor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. **SET-OFF.** Should Contractor either refuse or neglect to perform the service that Contractor is required to perform in accordance with the terms of this Contract, and if expense is incurred by County by reason of Contractor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

12. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Contractor shall be suspended without liability for the

period during which the County is so prevented.

13. **METHODS OF WORK.** Contractor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

14. **NONWAIVER.** The failure by the County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by Contractor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

15. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

16. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

17. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

18. **APPLICABLE LAW.** The terms and provisions of this Contract shall be construed pursuant to the laws of the State of New Jersey and, where applicable, the laws of the United States of America.

19. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Contractor is an independent contractor and is not an agent of the County.

20. **CONFLICT OF INTEREST.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services pursuant to this Contract. The Company further covenants that in the performance of this Contract, no person having any such interest shall be employed.

21. **CONFIDENTIALITY.** Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

22. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

23. **CONTRACT PARTS.** This Contract consists of this Contract, Attachment A, which is attached hereto, and any specifications issued by the County of Gloucester in connection with the


work to be performed. If there is a conflict between Attachment A and the Specifications, the Specifications will control. If there is a conflict between either document and this Contract, then this Contract will control.

THIS CONTRACT is made effective the 12th day of February, 2016.

IN WITNESS WHEREOF, the Gloucester County Purchasing Agent, pursuant to authority granted to him and set forth in the County Administrative Code has executed this Agreement and Contractor's authorized representative has executed this Agreement on the date indicated herein.

ATTEST:

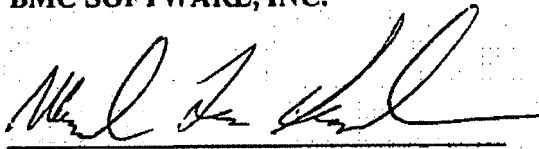
COUNTY OF GLOUCESTER


ANDREA LOMBARDI,
PRINCIPAL PURCHASING ASSISTANT


PETER M. MERCANTI, DIRECTOR

ATTEST:

BMC SOFTWARE, INC.


MARK Lee Graham



Quote

BMC Software Inc.
2101 CityWest Boulevard
Houston, Texas 77042 USA

Date: 29-DEC-2015

Prepared By: Jason Poole

Phone: +18132274549

Fax:

Email: jason_poole@bmc.com

Quote #: Q-00174749-1

Support Contract ID: SC-541945

This Quote is Valid Through: 11-FEB-2016 (unless executed)

License Type: Perpetual

License Territories: USA

Line #	Part # / LP #	Product Name	Support Plan	Line Type	Licensed Capacity		License Unit Cost in USD	Support Unit Cost in USD	Total Per Product License Fee in USD	Total Per Product Support Fee in USD
					Unit of Measurement	# of Units				
1	TIE1140359	ITSM - OTHER Track-II	BMC Continuous Support - TO -	Renewal Summary	per Instance	1				2,841.81

Note(s): Columns may not calculate to totals due to rounding.

*Note: The Support Period for the renewed Products listed in the table above is set forth in the Renewed Asset Details.

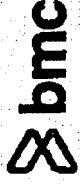
License Fees: 0.00 USD

Number of Support Years Purchased: 1.0000 year

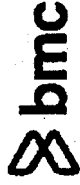
Total Support Fees: 2,841.81 USD

Total Fees - Exclusive of applicable taxes: 2,841.81 USD

- Payment Conditions: Payment will be due within thirty days of receipt of an invoice unless otherwise indicated in the Agreement (as defined below).
- This Quote is an offer to license the Products and set Support and any other items listed in the table above, subject to the terms and conditions of this Quote, and acceptance is expressly limited to the terms and conditions of the Quote.
- To accept this offer and complete a purchase: Sign and Submit this document to BMC Software Inc. ("BMC"), OR submit an executed purchase order, to BMC referencing Quote number (Q-001747491), with this Quote attached. Each party warrants and represents that a duly authorized representative of such party has executed this Quote and this Quote constitutes the legal, valid and binding obligation of such party. When a party has executed this Agreement using an electronic or digital signature, that party warrants and represents that the signature is legally binding and satisfies all legal requirements.



CUSTOMER: County of Gloucester
Signature: *[Handwritten Signature]*
Printed Name: PETER L. MERCANTI
Title: Purchasing Director
Date: 1-25-16



1. License Definitions/Restrictions:

General Unit of Measurement	Unit of Measurement Definition
per asset	A license is required for every physical or logical Server Endpoint, Client Endpoint, Device Endpoint, Data Center Rack, Data Center IP Sensor, or Other Endpoint monitored, managed or discovered by the Product. "Client Endpoint" means a laptop, desktop or other non-Server Computer. "Device Endpoint" means a personal digital assistant or similar computing device. "Other Endpoint" means a router, a switch, a hub, or other network device, peripheral or hardware instrument, as the case may be. A "Server Endpoint" is any virtual or physical Computer that provides a service for other Computers or users connected to it via the Internet, extranet, Intranet, or other networked technologies.
per concurrent user	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 instance	A license is required for all named occurrences of the Product created or installed in the Enterprise.
per named user	A license (with a Classification at the appropriate Level, if applicable) is required for all individual employees or contractors or clients of Customer for whom credentials have been created in the Product and who have access to the Product on a computer or multiple computers through the issuance of an unique ID or otherwise, regardless of whether the individual is actively using the Product at any given time.

2. Terms and Conditions:

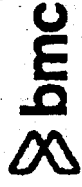
- Upon execution by Customer, this Quote becomes an "Order" under the license agreement provided with the Products, a copy of which may be viewed at http://media.cms.bmc.com/documents/and_user_license_agreement.pdf (the "Agreement"), the terms of which are incorporated into this Quote.
- A description of BMC's current Support offering is located at <http://www.bmc.com/support/review-policies>.

- In the event of any inconsistency or conflict between this Order and the Agreement, this Order will control. Any additional or conflicting terms of Customer's acceptance of this offer, including any purchase order are rejected by BMC. Neither party may terminate this Order for its convenience.
- If requested by BMC, and not more than once a year, Customer agrees to deliver to BMC within 30 days of such request, as specified by BMC either (a) periodic Product usage reports generated from specific Products or (b) written periodic Product usage reports to be provided solely when the Product does not generate reports. If Customer is found to have exceeded its Licensed Capacity for a Product based on such reports, then Customer agrees to pay the applicable fees for the additional capacity upon receipt of an invoice from BMC.
- The Renewed Assets Details table below provides further detail for the Products and Support identified in the initial table of this Order.

Renewed Asset Details

Reference Line #	Asset # / Serial Number	Product Name	Support Contract	# of Units	Support Period	# of Months	Install Address
1	2423280 TIE1140359	BMC Track-III Starter Pack (1 Named Tech + 50 Audits + 50 Ent SS)	541945	1	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA
1	2423275 TIE1140359	BMC Track-III Audit	541945	950	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA
1	2423276 TIE1140359	BMC Track-III Concurrent Technician	541945	2	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA
1	2423277 TIE1140359	BMC Track-III Named Technician	541945	7	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA
1	2423278 TIE1140359	BMC Track-III Remote Control	541945	100	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA
1	2423278 TIE1140359	BMC Track-III Self Service Users	541945	950	12-FEB-2016 - TO: 11-FEB- 2017	12.0000 00	1200 N Delaware Dr Bldg E Clayton NJ 08312-1000 USA

Customer: County of Gloucester



BILL TO INFORMATION:

Company	County of Gloucester
Address:	1200 N Delisea Dr Bldg E Clayton NJ 08312 USA
Contact:	Amy Gregg
Email:	agregg@co.gloucester.nj.us