

BMC HELIX CLOUD SERVICES MASTER AGREEMENT

THIS CLOUD SERVICES MASTER AGREEMENT ("**AGREEMENT**") GOVERNS YOUR FREE TRIAL, IF ANY, OF THE SUBSCRIPTION SERVICES.

IF YOU PURCHASE THE SUBSCRIPTION SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE AND ONGOING USE OF THE SUBSCRIPTION SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SUBSCRIPTION SERVICES.

You may not access the Subscription Services if you are BMC Helix's direct competitor, except with BMC Helix's prior written consent. In addition, you may not access the Subscription Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on March 17, 2026. This Agreement is between the entity or individual entering into this Agreement ("**Customer**") and the BMC Helix contracting entity set forth on the applicable Order ("**BMC Helix**"). If Customer has a fully executed BMC Helix Cloud Services Master Agreement then such fully executed BMC Helix Cloud Services Master Agreement supersedes and replaces any clickwrap or click-through agreements (or other similar agreements) that Customer may be required to accept as a part of accessing or using the Subscription Services. For Customer's convenience, prior versions of this Agreement are available at https://www.helixops.ai/legal/csma.html.

FREE TRIAL.

BMC Helix may make the Subscription Services available to Customer on a trial basis free of charge. If BMC Helix offers Customer a free trial, it will run until the earlier of (a) the end of the trial period stated in an Order or on the trial registration web page or (b) the start date of a paid-for subscription to the Subscription Services, as set forth in an Order. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE SUBSCRIPTION SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SUBSCRIPTION SERVICES BY OR FOR CUSTOMER, DURING A FREE TRIAL MAY BE PERMANENTLY LOST.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT, DURING ANY FREE TRIAL PERIOD THE SUBSCRIPTION SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTY.

1. DEFINITIONS.

1.1 "**Affiliate**" is an entity that controls, is controlled by or shares common control with BMC Helix or Customer, where such control arises from the legal power to direct or cause the direction of the general management and policies of the company, partnership or legal entity.

1.2 "**Capacity**" means the amount of access to the Subscription Services purchased as specified in an Order, which is counted in accordance with the Unit of Measure described in the Order.

1.3 "**Consulting Services**" means the consulting, implementation, training or other services provided under the terms of Attachment B (Consulting Services) and as further described under the applicable Order.

1.4 "**Customer Content**" means all electronic data or information (a) submitted to the Subscription Services by Customer, a third party on behalf of Customer, or as directed by Customer or (b) collected, processed or returned by the Subscription Services.

1.5 "**IP Rights**" means all intellectual property or other proprietary rights worldwide, including patents, trade secrets, copyrights, trademarks, moral rights, and any other intellectual or industrial property including registrations, applications,

renewals, and extensions of such rights.

1.6 "**Order**" means (i) the agreed ordering document for the purchase of the Subscription Services, (ii) that is subject to this Agreement, and (iii) that identifies the terms of the purchase and fees to be paid. The term "Order" includes Customer's online registration for and purchase of the Subscription Services, If any.

1.7 "**Subscription Services**" means the generally available hosted service which packages web-based access and the right-to-use the supported applications, installed agents and associated reference, user and technical guides.

1.8 "**User Guide**" means the online help, functional guide and technical specifications for the Subscription Services, as updated by BMC Helix from time to time. The User Guides may be viewed here: https://docs.bmc.com/docs/.

2. SCOPE. Subject to the terms of this Agreement, Customer may purchase and BMC Helix will provide Customer with access to the Subscription Services as set forth in this Agreement and the applicable Order. Subject to the Attachments to this Agreement, Customer may also purchase BMC Helix Platform Services, BMC Helix Consulting Services and BMC Helix On Premise Subscription Services. In the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will control only if the Order is executed by an authorized representative of each party. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise therein. Orders may also be placed via a BMC Helix authorized reseller. Neither execution of this Agreement, nor anything contained herein, shall obligate either party to enter into any Orders. In the event an Order is proposed by BMC Helix and is deemed to constitute an offer, then acceptance of such offer is limited to its terms. In the event Customer proposes an Order by submitting a purchase order, then regardless of whether BMC Helix acknowledges, accepts or fully or partially performs under such purchase order, **BMC Helix OBJECTS** to any additional or different terms in the purchase order.

3. ACCESS TO SUBSCRIPTION SERVICES.

3.1 Access Rights. Subject to the terms of this Agreement, BMC Helix will provide Customer with worldwide access to the Subscription Services in accordance with the Order (i) up to the Capacity, (ii) for Customer's and its Affiliates' internal business operations, (iii) in accordance with the User Guide and the applicable Order. Customer may exercise its rights under this Section 3.1 through its employees, consultants, contractors, agents, and Affiliates (all, "**Users**"). Notwithstanding the foregoing, Users do not include service providers or outsourcers, unless authorized by BMC Helix in writing.

3.2 BMC Helix Subscription Services Support. BMC Helix will provide the support described at http://www.helixops.ai/support/review-policies("**Support**") to Customer for the Subscription Services.

3.3 Use of Subcontractors. Customer acknowledges and agrees that BMC Helix uses subcontractors to provide portions of the Subscription Services. BMC Helix's subcontractors acting as subprocessors are listed in the Data Processing Agreement between the parties and/or on each Order. BMC Helix is responsible for the performance of all subcontractors providing any of the Subscription Services and for such subcontractors' compliance with the terms of this Agreement.

3.4 Compliance with Laws. Each party shall comply with all applicable laws in the performance of its obligations under this Agreement.

3.5 Acceptable Use Policy and Restrictions.

(a) Customer will (i) maintain the confidentiality of all authentications and passwords for the Subscription Services and immediately notify BMC Helix if it becomes aware that an unauthorized party has gained access such authentications and passwords, (ii) be responsible for use of the Subscription Services by its Users in compliance with this Agreement, (iii) prevent unauthorized access to, or use of, the Subscription Services, and notify BMC Helix promptly of any such unauthorized access or use, and (iv) be responsible for obtaining its own Apple Push Notification certificate, if the Subscription Services are used to manage devices running iOS. Customer is responsible for the creation and implementation of a privacy policy and end user agreement, if applicable, which will set forth the guidelines of how Customer uses and protects the data and personal information of its Users, and how said Users may utilize the Subscription Services.

(b) Customer will not (i) modify, copy or create derivative works based on the Subscription Services; (ii) create Internet "links" to or reproduce any content forming part of the Subscription Services, other than for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Subscription Services or part thereof, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (iv) interfere with or disrupt the integrity or performance of the Subscription Services; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, or send or store material in violation of any third party's privacy rights via the Subscription Services; (vi) send or store viruses or malicious code via the Subscription Services; (vii) attempt to gain unauthorized access to the Subscription Services or its related software, systems, platforms or networks, including any form of security and/or penetration testing; (viii) use any components provided with the Subscription Services separately from the Subscription Services; (ix) distribute, rent, lease or provide the Subscription Services to any third party or use it in a service bureau,

outsourcing environment, or for the processing of third party data; (x) conduct penetration test or security vulnerability tests of any type on the Subscription Services without BMC Helix's prior written consent; (xi) publish or make public any benchmark, security, or performance data or information about the Subscription Services without BMC Helix's prior written consent; or (xii) use any third party components, systems, platforms or networks that are delivered as part of the Subscription Services separately from such Subscription Services.

4. FEES AND PAYMENT.

4.1 Fees. The fees payable for the Subscription Services and the payment period for such fees will be set forth in and paid in accordance with the Order. All payments are due within 30 days of the date of the invoice.

4.2 Late Fees. Late balances may, at BMC Helix's sole election, bear interest at a rate equal to the lesser of 1% per month or the maximum amount permitted by law.

4.3 Taxes. Customer will pay taxes imposed in connection with the fees paid for the Subscription Services, which are exclusive of these taxes.

4.4 Payment Disputes. If Customer disputes an invoice in good faith, it will notify BMC Helix within 30 days of receiving the invoice. The parties will seek to resolve such dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period, but will timely pay all undisputed amounts. After the discussion period, either party may pursue all available remedies.

4.5 Solution Providers. With regard to Subscription Services acquired by Customer through an authorized reseller of BMC Helix ("**Solution Provider**"), notwithstanding anything to the contrary in Sections 4.1 to 4.4 above, Customer will have no direct payment obligations to BMC Helix for such fees.

5. TERM, SUSPENSION AND TERMINATION.

5.1 Term. This Agreement begins on the Effective Date and will remain in effect unless terminated pursuant to Section 5.2 below, regardless of the billing frequency selected in the Order.

5.2 Termination.

(a) Termination for Convenience. Customer may terminate this Agreement by providing BMC Helix with at least 30 days prior written notice; provided, however, such termination will have no effect on Orders in effect at the time of such termination. Orders may not be terminated for convenience unless otherwise specified therein. Customer may notify BMC Helix of its intent to terminate by emailing BMC Helix at order_services@helixops.ai.

(b) Termination for Cause. Either party may terminate this Agreement and/or an Order for cause upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. In the event Customer terminates the Agreement and an Order for BMC Helix's material breach, BMC Helix will refund the amount paid by Customer to BMC Helix for the Subscription Services on such Order, pro-rated from the date of the notice of the termination.

5.3 Suspension of Subscription Services for Cause. In addition to its other rights and remedies, BMC Helix reserves the right, without liability to Customer, to suspend any and all access to the Subscription Services if Customer commits a material breach of this Agreement and fails to cure the same within 30 days from Customer's receipt of written notice of such breach from BMC Helix. Provided however, that BMC Helix may immediately suspend any and all access to the Subscription Services without any cure period if BMC Helix determines in good faith that Customer's material breach of the Agreement will cause material harm to BMC Helix, the Subscription Services, or any other customer. Once the material breach is resolved, BMC Helix will promptly restore Customer's access to the Subscription Services in accordance with this Agreement.

5.4 Effects of Termination. Upon termination or expiration of any Order or this Agreement, all rights and Licenses granted thereunder will terminate and Customer will make no further use of the Subscription Services. No termination will relieve the Customer of the obligation to pay any fees accrued or payable to BMC Helix pursuant to any Order. Upon written request by Customer made within 60 days after the effective date of termination, BMC Helix will make the Customer Content available to Customer for retrieval in an industry standard format. After such 60-day period, BMC Helix shall have no obligation to maintain any Customer Content and will thereafter delete Customer Content. Any terms in this Agreement which by their nature extend beyond termination of this Agreement will remain in effect until fulfilled.

5.5 Termination Assistance. Upon Customer's request and upon (a) the expiration of an Order or (b) the termination of an Order for any reason other than Customer's breach, BMC Helix shall perform such services as the parties in good faith agree are reasonably necessary to facilitate the orderly transition of the Services to the successor service provider or to the Customer. BMC Helix will provide any such services under the terms and conditions of the Agreement, and subject to payment of the then-current fees and charges, generally applicable to BMC Helix's performance of such services, as agreed between the parties at such time.

6. LIMITED WARRANTY.

6.1 Warranties and Limited Remedies. BMC Helix warrants to Customer that:

(a) the online availability of the Subscription Services will be maintained in accordance with the service levels described at https://www.helixops.ai/content/dam/bmc/corporate/service-level-agreement.pdf (the "**Service Level Agreement**" or "**SLA**"). Customer's exclusive remedy and BMC Helix's sole obligation for breach of the warranty in this Section 6.1(a) is described in the Service Level Agreement; and

(b) the Subscription Services (i) will perform in substantial accordance with the then-current on-line User Guide available via the Subscription Services, (ii) will be performed in a manner consistent with industry standards reasonably applicable to the provision thereof and (iii) will not materially degrade during the term of any Order. Customer's exclusive remedy and BMC Helix's sole obligation for breach of the warranty in this Section 6.1(b) will be BMC Helix's use of commercially reasonable efforts to have the Subscription Services perform in substantial accordance with the User Guide, or replace the non-conforming portion of the Subscription Services within 30 days from the written notice of claim, or if BMC Helix cannot have the Subscription Services perform in substantial accordance with the User Guide or replace the Subscription Services within such time period, then Customer may terminate the non-performing Subscription Services, and upon such termination BMC Helix will refund the amount paid by Customer for the Subscription Services, pro-rated from the date of the notice of the claim. Customer agrees to provide BMC Helix with written notice of the claim, a description of the alleged defects and a reference to the User Guide to which such alleged defects are contrary.

(c) In connection with the Subscription Services (i) it has used commercially reasonable efforts consistent with industry standards to scan for and promptly remove any software viruses for no charge and (ii) it has not inserted any Disabling Code. "**Disabling Code**" means computer code inserted by BMC Helix, that is not addressed in the User Guide, and that is designed to expose data, delete, interfere with, and/or disable the normal operation of the Subscription Services. This Disabling Code warranty does not apply to BMC Helix passwords necessary for the operation of the Subscription Services, or for any use by Customer outside the scope of this Agreement.

6.2 Disclaimer. CUSTOMER ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BMC Helix, ITS AFFILIATES AND LICENSORS MAKE NO WARRANTY, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE SUBSCRIPTION SERVICES OR USE THEREOF. BMC Helix, ITS AFFILIATES AND LICENSORS HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, NON-INFRINGEMENT AND INFORMATION CONTENT.

7. PROPRIETARY RIGHTS AND CONFIDENTIALITY.

7.1 Proprietary Rights. BMC Helix, its Affiliates or licensors retain all right, title and interest to the Subscription Services and all related intellectual property and proprietary rights. The Subscription Services are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC Helix owns all right, title and interest in all software, programming, documentation, templates, questionnaires, methodologies, models, charts, reports, ideas, features, content, functions, graphics and any other items provided as part of the Subscription Services ("**Service Items**") and access to and use of the relevant Service Items will be governed by the terms of this Agreement. Subject to (i) BMC Helix's or its licensor's ownership of any Service Items and (ii) Section 3.5(b)(i) of the Agreement, Customer owns all rights, title, and interest in Customer Applications, including all proprietary and intellectual property rights. BMC Helix reserves any rights not expressly granted to Customer. Customer shall not access the Subscription Services in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Subscription Services.

7.2 Confidentiality. "**Confidential Information**" means all proprietary or confidential information that is disclosed to the recipient ("**Recipient**") by the discloser ("**Discloser**"), and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its customer-related and financial information, software code, BMC Helix product vulnerabilities, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to BMC Helix, and its licensors, the Subscription Services and Service Items; and (iii) the terms of any Orders, including without limitation, pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is or was independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of the Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient's employees and agents who have need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no

case less protective) as the provisions of this Agreement.

7.3 Notification Obligation. If the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Discloser's Confidential Information, the Recipient will exercise its commercially reasonable efforts to preserve the confidentiality of the portion of the Discloser's Confidential Information that Recipient is bound to furnish, including, without limitation, seeking or cooperating with Discloser to seek an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the portion of the Discloser's Confidential Information that is furnished.

7.4 Customer Content. As between BMC Helix and Customer, Customer owns all rights, title and interest in and to Customer Content. Customer Content is deemed Confidential Information under this Agreement. BMC Helix will use the Customer Content only as necessary to provide the Subscription Services in accordance with this Agreement. At any time during the term of the Subscription Services, Customer may request copies of all Customer Content from the Subscription Services. Customer is responsible for complying with all legal and contractual requirements, including its agreements with third parties. With the exception of Customer Content collected by the Subscription Services, Customer is solely responsible for the transmission of Customer Content to BMC Helix and to the Subscription Services. Customer is solely responsible for the encryption of any Customer Content during such transmission.

7.5 Suggestions. Customer grants BMC Helix a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into any BMC Helix products or services any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the Subscription Services.

8. DISCLAIMER OF DAMAGES AND LIMITS ON LIABILITY.

8.1 DISCLAIMER OF DAMAGES. NEITHER PARTY OR ITS AFFILIATES OR LICENSORS ARE LIABLE FOR ANY , SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE SUBSCRIPTION SERVICES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF, DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF ANY NEGLIGENCE OF A PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW. THE FOREGOING LIMITATIONS DO NOT APPLY TO EACH PARTY'S RESPONSIBILITIES IN SECTION 9, INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S IP RIGHTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, DEATH OR BODILY INJURY, ACTS OF FRAUD, NOR ANY LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED BY LAW.

8.2 LIMITS ON LIABILITY. NEITHER PARTY OR ITS AFFILIATES OR LICENSORS SHALL HAVE AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SUBSCRIPTION SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEEDING THE AMOUNTS ACTUALLY PAID BY AND PAYABLE FROM CUSTOMER FOR THE SUBSCRIPTION SERVICES GIVING RISE TO LIABILITY PURSUANT TO THE ORDER(S) THAT ARE IN EFFECT AS OF THE DATE THE LIABILITY FIRST AROSE. THE FOREGOING LIMITATIONS DO NOT APPLY TO EACH PARTY'S RESPONSIBILITIES IN SECTION 9, INFRINGEMENT BY A PARTY OF THE OTHER PARTY'S IP RIGHTS, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, DEATH OR BODILY INJURY, ACTS OF FRAUD, NOR ANY LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED BY LAW.

9. INFRINGEMENT CLAIMS.

9.1 Indemnification by BMC Helix. If a third party asserts a claim against Customer asserting that Customer's use of the Subscription Services, including Platform Services, Deliverables and Licenses as defined in the Attachments to this Agreement, in accordance with this Agreement violates that third-party's IP Rights ("**Infringement Claim**"), then BMC Helix will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded or settled upon against Customer based on infringement by the Subscription Services or Deliverables, including court costs and reasonable attorney's fees. If BMC Helix believes the Subscription Services may violate a right, then BMC Helix will, at its expense: (a) modify the Subscription Services, or (b) procure the right to continue using the Subscription Services, and if (a) or (b) are not commercially reasonable, terminate Customer's right to use the Subscription Services and issue a pro-rata refund for the unexpired pre-paid portion of such Subscription Services.

9.2 Indemnification by Customer. Subject to the terms of this Agreement, if a third party asserts a claim against BMC Helix asserting that any of the following violates that third-party's IP Rights: (i) Customer Content, (ii) Customer Applications as defined in Attachment A, (iii) Customer Property as defined in Attachment B or (iv) Customer's use of the Subscription Services in violation of this Agreement ("**Claim**"), then Customer will, at its own expense: (a) defend or settle the Claim; and (b) indemnify BMC Helix for any damages finally awarded or settled upon against BMC Helix based on the Claim, including court costs and reasonable attorney's fees.

9.3 Indemnity Process. Neither party's obligations under this Section 9 will apply if: (a) the indemnifying party's legal department does not receive prompt, detailed written notice of the Infringement Claim/Claim from the party being

indemnified, (b) the indemnifying party is not able to retain sole control of the defense of the Infringement Claim/Claim and all negotiations for its settlement or compromise, or (c) the indemnifying party does not receive all reasonable assistance from the party being indemnified. Neither party will bind the indemnified party to a monetary obligation in a settlement or compromise, or make an admission on behalf of the indemnified party, without obtaining that party's prior consent. The indemnified party agrees to use all reasonable efforts to help the indemnifying party mitigate damages resulting from an Infringement Claim/Claim, including without limitation Customer promptly installing all On Premise Subscription Services updates BMC Helix provides to mitigate any Infringement Claim.

9.4 THIS SECTION 9 CONTAINS EACH PARTY'S EXCLUSIVE REMEDIES AND THE INDEMNIFYING PARTY'S SOLE LIABILITY FOR INFRINGEMENT CLAIMS/CLAIMS, RESPECTIVELY.

10. **EXPORT CONTROLS**. Both parties agree to comply with applicable export regulations, including but not limited to U.S. Export Administration Regulations and the OFAC embargoes and sanctions lists. More information on BMC Helix's export compliance program may be found here: https://www.helixops.ai/legal/export-compliance.html.

11. **GOVERNING LAW AND DISPUTE RESOLUTION**. Any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof (each, a "**Controversy**") will be resolved as follows:

(i) **UNITED STATES**. If Customer is incorporated under the law of any state in the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both parties hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens. Notwithstanding the foregoing, if Customer is a state or local governmental entity or higher education institution and legally required to apply state law, then Customer's state law will apply to the Controversy, without reference to conflict of law principles.

(ii) **CANADA.** If Customer is incorporated in Canada (outside Quebec), then the law of the Province of Ontario applies, without reference to conflict of law principles. If Customer is incorporated in Quebec, then the laws of the Province of Quebec will apply, without reference to conflict of law principles.

(iii) **EMEA AND ASIA-PACIFIC**. If Customer is incorporated in countries in Europe, Middle East, Africa or Asia Pacific regions, the Controversy shall be tried in the District Court located in Amsterdam, the Netherlands and the substantive laws of the Netherlands shall govern. Both parties hereby submit to the exclusive jurisdiction of the District Court in Amsterdam, the Netherlands and waive all defenses based on forum non conveniens.

(iv) **OTHER REGIONS**. In all other instances, the Controversy shall be tried in state court located in Houston, Texas and the laws of the State of Texas shall govern.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Nothing in this Agreement shall be deemed as preventing either party from seeking immediate injunctive relief from any court having jurisdiction over the parties and the subject matter of the dispute.

12. **U.S. GOVERMENT END USER RIGHTS.** This Section 13 applies only to acquisitions of the commercial Subscription Services subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, agreement or other activity with the United States Government. When Subscription Services are delivered or provided to the United States Government, the United States Government agrees that this commercial license Agreement and the Subscription Services governed by this Agreement are defined in accordance with and qualify as "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" as outlined in FAR 12.211, FAR 12.212 and DFARS 227.7202-3, as applicable. The terms and conditions of this Agreement shall pertain to the United States Government's use (including documentation or technical data), duplication, and disclosure of the Subscription Services, and shall supersede any conflicting contractual terms and conditions.

13. **DATA PROTECTION.** The processing of Customer Content under this Agreement is governed by the BMC Helix Data Processing Agreement set forth on the Order.

14. **VERIFICATION.** Customer agrees that BMC Helix or its agent may monitor the Subscription Services to ensure Customer's compliance with the terms of this Agreement. If such monitoring reveals that Customer has exceeded the Capacity for the Subscription Services, Customer will execute an Order for additional Capacity of such Subscription Services through the end of the term of such Subscription Services, promptly upon BMC Helix's request.

15. **NOTIFICATIONS**. Any general notifications regarding technical matters from BMC Helix to Customer will be sent to the Customer contact stated in the Customer Technical Contact Information section of the Order. The Customer contact in the Order has been assigned by Customer as the Customer contact for operational issues that may arise. Customer shall notify BMC Helix of any change to the Customer contact details in writing, which may include via e-mail or in a form in the

Subscription Services. Customer will receive system notifications from BMC Helix and its licensors, if applicable (i.e. planned downtime notices, etc.).

16. CONDUCTING BUSINESS WITH HONESTY AND INTEGRITY. BMC Helix is committed to conducting business with honesty and integrity. BMC Helix's Code of Conduct set forth in https://www.helixops.ai/legal/code-of-conduct.html governs the conduct of all officers, directors, and employees of BMC Helix, and contingent workers and business partners acting on BMC Helix's behalf. BMC Helix demonstrates its commitment to environmental stewardship by its global accreditation for ISO 14001:2015.

17. INFORMATION SECURITY. BMC Helix employs comprehensive organizational and technical security safeguards to protect the security and integrity of Customer Content in line with industry best practices, as set forth in the Information Security Requirements found at http://www.helixops.ai/content/dam/bmc/corporate/hinfosec.pdf.

18. FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for obligations of confidentiality or a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including, but not limited to (i) Acts of God, explosion, flood, lightning, tempest, fire or accident; (ii) war, hostilities (whether war is declared or not), invasion, acts of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil war; (iv) riot, civil commotion or disorder; (v) acts, restrictions, regulations, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any local, state, national, governmental or supra-governmental authority; and/or (vi) epidemics, pandemics, and quarantines (a "**Force Majeure Event**"). If either party is affected by Force Majeure Events, it shall promptly notify the other party (when possible) in writing of the matters constituting the Force Majeure Events. If possible, the party affected by the Force Majeure Event shall take reasonable steps available to it to minimize the effects of the Force Majeure Events on the performance of its obligations under the Agreement and/or affected Order. If a Force Majeure Event prevents BMC Helix from performing the Subscription Services for more than 30 days, either party may terminate this Agreement and all relevant Orders. Upon such termination BMC Helix will refund all prepaid and unused amounts to Customer, provided Customer has paid BMC Helix for all Subscription Services that were performed up to the date of termination.

19. INSURANCE. BMC Helix will provide and maintain the following insurance, but only for losses arising out of BMC Helix's provision of Subscription Services: (a) Worker's Compensation insurance as prescribed by the law of the state applicable to the employees performing the Subscription Services; (b) Employer's Liability insurance with a limit of $1,000,000 USD for each occurrence; (c) Commercial General Liability insurance with $1,000,000 USD per occurrence combined single limit and $2,000,000 USD general aggregate, including coverage for Products Liability and Completed Operations; (d) Automobile Liability insurance, including coverage for Hired and Non-owned vehicles of $1,000,000 USD for combined single limit for bodily injury and/or property damage; and (e) Professional Liability insurance covering Errors and Omissions and Cyber Liability in the amount of $1,000,000 USD for each occurrence and in the aggregate associated with Subscription Services performed under this Agreement. BMC Helix will provide certificates of insurance upon Customer's request.

20. ASSIGNMENT. Customer has the right to assign this Agreement and all Orders in whole to an Affiliate, or to a successor in connection with (i) the sale of all or substantially all of the assets of Customer or (ii) a merger by operation of law, by providing written notice to BMC Helix. The assignee may not be a known direct competitor of BMC Helix. The successor entity or Affiliate must agree in writing with BMC Helix (in advance of the assignment) to be bound by the terms of this Agreement. Any Customer transfer or assignment except as expressly authorized above will be null and void.

21. AI TERMS OF USE. The parties agree to comply with BMC Helix's AI Terms of Use, a copy of which is located at https://www.helixops.ai/content/dam/bmc/corporate/AIterms.pdf.

22. HIGH RISK USE. Customer is responsible for determining the scope of use of the Subscription Services. BMC Helix has not specifically designed the Subscription Services for use in high-risk environments such as nuclear facilities, aircraft systems, air traffic control, life support machines, or weapons systems, where failure could cause death, injury, or serious damage, or any other use defined as high-risk by applicable laws (collectively, "**High Risk Activities**"). BMC Helix disclaims all liability for Customer's use of the Subscription Services in direct connection with High Risk Activities.

23. MISCELLANEOUS TERMS. The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. This Agreement, including the Attachments and Orders constitutes the entire agreement between Customer and BMC Helix and supersedes and replaces (i) any prior or contemporaneous negotiations or agreements, whether oral or written concerning the Subscription Services and (ii) terms contained on, provided in connection with or accessed through any customer portal or vendor onboarding website or process. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. There are no third-party beneficiaries to this Agreement; Customer is not entering into a contractual relationship with BMC Helix's licensors and BMC Helix's licensors have no liability to Customer. A waiver by

a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. This Agreement may not be modified or rescinded except in writing signed by both parties. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. The Subscription Services may contain hyperlinks to websites controlled by parties other than BMC Helix. BMC Helix is not responsible for and does not endorse the content or accept any responsibility for Customer's use of these websites. Customer should refer to the policies posted by other websites regarding privacy and other topics regarding data privacy before using them. The Subscription Services may contain third party software which is delivered to Customer as part of the Subscription Services and may not be taken out of the Subscription Services or used separately from the Subscription Services and for which additional terms may be included in the User Guide. In compliance with all applicable laws and for internal purposes only, BMC Helix may compile and use de-identified, aggregate or statistical information related to Customer's use of the Subscription Services for the purposes of enhancing and improving the Subscription Services, developing new products and services, and for other development, diagnostic, statistical and corrective purposes, provided that such information (a) does not incorporate Customer's personally identifiable information or personal data and (b) does not identify or describe the Customer. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

ATTACHMENTS INCORPORATED INTO AGREEMENT
Attachment A – Platform Services Attachment
Attachment B – Consulting Services Attachment
Attachment C – On Premise Subscription Services Attachment

ATTACHMENT A
PLATFORM SERVICES ATTACHMENT
to the
BMC HELIX CLOUD SERVICES MASTER AGREEMENT

Except as otherwise provided herein, the terms of the BMC Helix Cloud Services Master Agreement (the "**Base Agreement**") are incorporated into this Platform Services attachment (the "**Attachment**"). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the "Agreement" for purposes of Customer's access and use of Platform Services, only if the Platform Services are set forth on an Order referencing the Base Agreement. For purposes of the Agreement, the term "Subscription Services" as defined in the Base Agreement shall be extended to include the Platform Services. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer's access and use of the Helix Platform Services only and does not apply to any of BMC Helix's Control-M offerings.

1. SCOPE. Subject to the terms of the Agreement, BMC Helix will provide Customer with access to the Platform Service named in the applicable Order.

2. DEFINITIONS.

2.1 "**Application**" is the object code, its definitional structures, and data created to fulfill a particular purpose, which runs on the Platform Services. An Application may also include its documentation and User Guide.

2.2 "**Customer Applications**" means Applications that are owned or licensed by Customer, and which run on the Platform Services.

2.3 "Development Platform" means BMC Helix provided development capabilities which allows Customer to develop a custom application to run on the Platform Services.

2.4 "Platform" means the generally available BMC Helix-provided PaaS platform and its capabilities to run Applications.

2.5 "**Platform Services**" means the specific Platform Services identified in the Order.

3. BMC HELIX PLATFORM SERVICES.

3.1 BMC Helix Platform Services Support. BMC Helix will provide Support only for Platform Services. Customer is responsible for its own support for Customer Applications. For the avoidance of doubt, Support does not include development consulting.

3.2 Administration of Subscription Services. Customer may be granted access and use rights to the Platform for the sole purpose of administering Subscription Services deployed on the Platform.

4. CUSTOMER APPLICATIONS.

4.1 The terms contained in this section 4 apply only to Orders for Platform Services entitling Customers to develop and deploy Customer Applications onto the Platform Services. Any Customer Applications that run on the Platform Services are hereby excluded from the defined terms "Subscription Services" and "Platform Services".

4.2 Development Platform. Customer may utilize the Development Platform to create an Application to run on the Platform Services. Customer's use of the Development Platform is governed by the terms of the Agreement subject to the restrictions set forth in Sections 4.2.1 to 4.2.2 below. Customer's development of an Application must meet the best practices development guidelines set forth in the User Guide. Each Customer Application shall at all times materially conform to policies and best practices set forth in the User Guide. Prior to the deployment of any Customer Applications in a production or non-production environment of the Platform Services, Customer must conduct security and functional tests of each Customer Application and submit the results of such tests to BMC Helix for review. BMC Helix reserves the right to reject Customer's deployment request of a Customer Application based on the results of Customer's security and functional tests. Additionally, BMC Helix reserves the right, during the term of the Agreement, to request Customer conduct additional security and functional tests and provide the results of said tests to BMC Helix for review. Notwithstanding the foregoing, Customer must ensure that at all times Customer Applications are secure.

4.2.1 Acceptable Use. The right to access and use the Development Platform is granted solely for the purpose of performing non-production application development work on the Development Platform. Customer agrees not to use the Development Platform to (1) process production data or for any other production purposes, including but not limited to publishing digital applications, or (2) distribute applications. Customer is responsible for

acquiring all necessary and required licenses for the use of any third-party software, source code and/or libraries Customer may use as part of its development with the Development Platform.

4.2.2 **Open Source**. Customer may not use any software, library, utility, tool, or other computer or program code ("**Code**") with the Subscription Services that in any way that would (i) weaken BMC Helix's intellectual property rights in the Services, or (ii) require the Subscription Services to become or be disclosed or distributed as Open Source Software. For purposes of this Section 4.2.2, "**Open Source Software**" means any Code that is substantially similar to, (A) the Affero General Public License, (B) the GNU General Public License (GPL) or Lesser/Library GPL (LGPL), (C) the Artistic License (e.g. PERL), (D) the Mozilla Public License, (E) the Netscape Public License, (F) the Sun Community Source License (SCSL), (G) the Sun Standards License (SISL), or (H) any "copyleft" license, or any other license that requires as a condition of use, reproduction, modification, or distribution that such Code or other software or computer code distributed with it: (1) be disclosed or distributed in source code form; (2) be licensed for the purpose of creating derivative works; (3) be licensed under terms that allow reverse engineering, reverse assembly, or disassembly of any kind; (4) be subject to a patent non-assert or royalty-free patent license; or (iv) be redistributable at no charge.

4.3 **License to Customer Applications.** Subject to the terms and conditions of the Agreement, Customer hereby grants BMC Helix a worldwide, limited, nonexclusive license during the term of the applicable Order for the Platform Services to host, copy, transmit, adapt and display Customer Applications solely for the purpose of fulfilling BMC Helix's obligations under the Agreement.

4.4 **Functionality of Customer Applications.** Customer is solely responsible for the operation of Customer Applications, including but not limited to any information stored in or transmitted by Customer Applications. Customer is responsible for monitoring the usage of each Customer Application. Customer is responsible for the configuration, functionality, performance, compliance with applicable data protection laws and security of all Customer Applications, including any interfaces used to connect to Customer Applications.

4.5 **Customer Assistance**. Customer will provide information or other materials related to a Customer Applications as reasonably requested by BMC Helix to verify Customer's compliance with the Agreement and the User Guide.

4.6 **Security Evaluations of Customer Applications**. BMC Helix may conduct periodic security evaluations of all Customer Applications as set forth in the User Guide.

4.7 **Suspension of Customer Applications**. Customer's use of the Platform Services may be immediately suspended and/or terminated due to (i) reasonable security threats regarding the Platform Services or Customer Applications, (ii) Customer Applications interfering with, disrupting or threatening the integrity or performance of the Subscription Services and/or the Platform Services, or (iii) violates the law, infringes or misappropriates the rights of any third party or otherwise violates a material term of the Agreement. In the event (i) or (ii) above apply to Customer Applications, Customer is required to remediate any such issue to BMC Helix's commercially reasonable satisfaction before use of Customer Applications can resume. BMC Helix shall use reasonable commercial efforts to only suspend the non-conforming portion of the Platform Services.

5. **CUSTOMER APPLICATIONS WARRANTIES.** Customer warrants to BMC Helix that: (a) each Customer Application will perform materially in accordance with the User Guide; (b) Customer has all rights in the Customer Content and Customer Applications necessary to grant the rights contemplated by the Agreement; (c) none of the Customer Content or Customer Applications or Users' use of Customer Content or Customer Applications will violate the Agreement and the User Guide; and (d) Customer's security and functional tests of Customer Applications was conducted in a commercially reasonable manner and the results of said tests provided to BMC Helix for review are correct and valid.

ATTACHMENT B
CONSULTING SERVICES ATTACHMENT
to the
BMC HELIX CLOUD SERVICES MASTER AGREEMENT

Except as otherwise provided herein, the terms of the Cloud Services Master Agreement (the "**Base Agreement**") are incorporated into this Consulting Services attachment (the "**Attachment**"). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the "**Agreement**" for purposes of Customer's purchase of Consulting Services, only if Consulting Services are set forth on an Order referencing the Base Agreement. For purposes of the Agreement, the term "Subscription Services" as defined in the Base Agreement shall be extended to include Consulting Services. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer's purchase of Consulting Services only. The parties agree that the following Sections of the Base Agreement do not apply to the Consulting Services provided under this Attachment: Section 3.2 (BMC Helix Subscription Services Support), Section 4 (Fees and Payment), and Section 6 (Limited Warranty).

1. SCOPE. BMC agrees to render to Customer Consulting Services under the terms of the Agreement and as further described in an Order. BMC Helix will render the Consulting Services in the location(s) as set forth in the Order. The performance of the Consulting Services will not relieve or alter the rights, obligations and responsibilities of Customer and of the BMC Helix Affiliate providing Subscription Services and/or Licenses with respect to Subscription Services and/or Licenses under the applicable agreement. BMC Helix will notify Customer in writing of any subcontractors prior to the commencement of the Consulting Services.

2. SERVICE FEES AND EXPENSES. The fees payable to BMC Helix for the Consulting Services to be rendered will be detailed in the Order. BMC Helix will submit invoices to Customer for such fees and incurred expenses either upon completion of the Consulting Services, or at stated intervals, in any case in accordance with the applicable Order. Customer shall pay amounts invoiced within 30 days of the date of the invoice. If Customer disputes an invoice in good faith, it will notify BMC Helix within 30 days of receiving the invoice. The parties will seek to resolve such dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period, but will timely pay all undisputed amounts. After the discussion period, either party may pursue all available remedies.

3. EDUCATION. Customer may acquire Learning Pass Credits and Education Services (collectively, "**BMC Helix Education**") on a Order. The BMC Helix Education terms that govern such Orders are set forth in the Education Program Guide located at https://www.helixops.ai/content/dam/bmc/education/education-program-guide.pdf, and is incorporated herein by this reference.

4. STATEMENTS OF WORK. Consulting Services may require the execution of a Statement of Work, in which case, such Statement of Work will be considered an Order for Consulting Services. In the event of any conflict between the terms of a Statement of Work and the Agreement, the Agreement shall prevail except for matters of service fees, payment and reimbursement of expense, and termination of Consulting Services if further specified in the Statement of Work. During the term of an applicable Statement of Work, and for a period of six months thereafter, neither party will solicit for employment any employees, agents, or subcontractors of the other party or its affiliates who, within six months prior to such solicitation, had contact with the soliciting party based in whole or in part upon Consulting Services provided under the Agreement. The restrictions in this Section 4 shall be deemed not to apply to general solicitations for employment posted on Internet job sites or printed in newspapers or trade or professional journals.

5. PROPRIETARY RIGHTS AND RIGHTS IN DELIVERABLES.

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

5.2 Deliverables. Deliverables are those created under the Order, including, but not limited to, software, software scripts, routines, libraries or other code, or appliances, methodologies, templates, tools, policies, records, working papers, reports, methodologies, know-how, data, or other intellectual property, written or otherwise, including any derivative works or

modifications to the above, whether pre-existing or created during the performance of the Consulting Services and all proprietary and intellectual property rights embedded therein delivered as a result of the Consulting Services as specified under the Order. BMC Helix owns all right, title and interest in the Deliverables. Provided Customer has paid in full for the Consulting Services that resulted in the Deliverables, BMC Helix will deliver the Deliverables to Customer in accordance with the applicable Order. Subject to compliance with the terms of the Agreement and the applicable Order, BMC Helix grants Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free, paid-up license to use, create derivative works of and modify all Deliverables solely for its internal business operations. If Customer is a contractor engaging BMC Helix for the benefit of a third party ("**Client**"), then provided that the Client is properly identified in the Order and that Customer is responsible for such Client's compliance with the provisions of the Agreement and the relevant Order, Customer may assign to the Client the rights granted to Customer in this Section 5.2.

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

5.4 **Retention**. Customer acknowledges that BMC Helix provides similar services to other customers and that nothing in the Agreement shall be construed as operating to prevent BMC Helix from carrying on such business. Further BMC Helix may use ideas, concepts, or know-how developed or acquired by BMC Helix during performance of the Consulting Services to the extent by BMC Helix's personnel as impressions and general learning.

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

EXCEPT FOR THE EXPRESS WARRANTIES IN THE AGREEMENT, THE CONSULTING SERVICES AND DELIVERABLES ARE PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC HELIX, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, FITNESS FOR A PARTICULAR PURPOSE AND IN THE UNITED STATES AND CANADA, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND NON-INFRINGEMENT.

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

8. **INDEPENDENT CONTRACTOR.** All of the services performed by BMC Helix under the Agreement will be performed as an independent contractor.

ATTACHMENT C
ON PREMISE SUBSCRIPTIONS ATTACHMENT
to the
BMC HELIX CLOUD SERVICES MASTER AGREEMENT

Except as otherwise provided herein, the terms of the Cloud Services Master Agreement (the "**Base Agreement**") are incorporated into this On Premise Subscriptions attachment (the "**Attachment**"). Together, this Attachment and the Base Agreement (as incorporated into this Attachment) are referred to as the "**Agreement**" for purposes of Customer's purchase and ongoing use of On Premise Subscriptions, only if On Premise Subscriptions are set forth on an Order referencing the Base Agreement. For purposes of the Agreement, the term "Subscription Services" as defined in the Base Agreement shall be extended to include On Premise Subscriptions. In the event of a conflict between the Base Agreement and the terms of this Attachment, the terms of this Attachment will control for Customer's purchase of On Premise Subscriptions only. The parties agree that the following Sections of the Base Agreement do not apply to the On Premise Subscriptions provided under this Attachment: Section 3.1 (Access Rights), Section 3.5 (Acceptable Use Policy and Restrictions), Section 6 (Limited Warranty) and Section 15 (Verification).

1. DEFINITIONS.

1.1 "**Authorized User**" means Customer, Customer Affiliate(s), and their employees, consultants, contractors and agents that are acting under the instructions and control of Customer or Customer Affiliate(s) and are bound by the terms and conditions no less restrictive than those contained herein and for whom Customer takes full responsibility. Notwithstanding the foregoing, Authorized Users do not include service providers or outsourcers.

1.2 "**Documentation**" means the technical publications relating to the software, such as release notes, license entitlement descriptions, reference, user, installation, systems administrator and technical guidelines, included with the On Premise Subscription.

1.3 "**Licensed Capacity**" is the amount of each On Premise Subscription licensed as established in the Order.

1.4 "**On Premise Subscription**" is the object code of the software and all accompanying Documentation delivered to Customer, including all items delivered by BMC Helix to Customer under Support.

2. LICENSE. Subject to the terms, conditions, payment requirements and restrictions set forth in the Agreement, BMC Helix grants Customer a non-exclusive, non-transferable, non-sub-licensable term license to install in the Territory as defined in an Order, access and use the On Premise Subscription during the term specified on the Order (i) by Authorized User(s), (ii) up to the Licensed Capacity, (iii) for Customer's and its Affiliates' internal business operations, (iv) in accordance with the Documentation and the applicable Order, and (v) make a reasonable number of copies of the On Premise Subscription for archival purposes only (collectively a "**License**"). Affiliates may use and access the On Premise Subscriptions under the terms of the Agreement, and Customer is responsible for its Affiliates compliance with the terms of the Agreement.

3. RESTRICTIONS. Customer will not: (a) copy, operate or use any On Premise Subscription in excess of the applicable Licensed Capacity or other than as set forth in the License above; (b) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("**Identification**") from any On Premise Subscription, or copy or partial copy of an On Premise Subscription; (c) disassemble, reverse engineer, decompile or otherwise attempt to derive any On Premise Subscription source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the On Premise Subscription to any third party; (e) use the On Premise Subscriptions in an outsourcing or service bureau environment on behalf of non-Affiliate third parties, or allow the On Premise Subscriptions to be used by an outsourcing or service bureau provider on Customer's behalf; (f) conduct penetration test or security vulnerability tests of any type on the On Premise Subscription without BMC Helix's prior written consent; (g) publish or make public any benchmark, security, or performance data or information about the On Premise Subscription without BMC Helix's prior written consent; or (h) attempt to disable or circumvent any of the licensing mechanisms within the On Premise Subscription.

4. ON PREMISE SUBSCRIPTION PERFORMANCE WARRANTY. BMC Helix warrants that (a) the On Premise Subscription will perform in substantial accordance with its Documentation for a period of one year from the date of the first Order, (b) BMC Helix has used commercially reasonable efforts consistent with industry standards to scan for and remove software viruses, and (c) other than passwords that may be required for the operation of the On Premise Subscription, BMC Helix has not inserted any code that is not addressed in the Documentation and that is designed to delete, interfere with or disable the normal operation of the On Premise Subscription in accordance with the License. This warranty will not apply to any problems caused by hardware, Computers, or software other than the On Premise Subscription, or misuse of the On Premise Subscription, use of the On Premise Subscription other than as provided by the applicable License, modification of the On Premise Subscription, or claims made

either outside the warranty period or not in compliance with the notice and access requirements set forth below. No warranty is provided for additional Licensed Capacity, On Premise Subscription provided pursuant to Support.

BMC Helix's entire liability, and Customer's exclusive remedy, for breach of the above warranty is limited to: BMC Helix's use of commercially reasonable efforts to have the On Premise Subscription perform in substantial accordance with its Documentation, or replacement of the non-conforming On Premise Subscription within a reasonable period of time, or if BMC Helix cannot have the On Premise Subscription perform in substantial accordance with its Documentation or replace the On Premise Subscription within such time period, then BMC Helix will refund the amount paid by Customer for the License for that On Premise Subscription. Customer agrees to provide BMC Helix during the warranty period (i) full cooperation and access to the On Premise Subscription in resolving any claim; and (ii) written notice that includes notice of the claim, a complete description of the alleged defects sufficient to permit their reproduction in BMC Helix's development or support environment, and a reference to the Documentation to which such alleged defects are contrary.

EXCEPT FOR THE EXPRESS WARRANTIES IN THIS ATTACHMENT, THE ON PREMISE SUBSCRIPTION IS PROVIDED WITH NO OTHER WARRANTIES WHATSOEVER, AND BMC HELIX, ITS AFFILIATES AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IN THE UNITED STATES AND CANADA, MERCHANTABILITY AND NON-INFRINGEMENT. BMC HELIX DOES NOT WARRANT THAT THE OPERATION OF THE ON PREMISE SUBSCRIPTION WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS CAN BE CORRECTED.

5. **DELIVERY**. For On Premise Subscriptions that are delivered electronically, upon request from BMC Helix, Customer agrees to provide BMC Helix with documentation supporting that the designated On Premise Subscription was received electronically. If Customer accepts any On Premise Subscription in a non-electronic format, there may be an additional charge and it is the sole responsibility of Customer to bear any sales/use tax obligation, penalties, and interest. All On Premise Subscriptions are licensed FCA ("Free Carrier" as per Incoterms 2000) shipping point. The On Premise Subscriptions are accepted on the date BMC Helix delivers the On Premise Subscription to the Customer either physically or by providing access codes for electronic download, whichever occurs first, however, such acceptance will not affect the On Premise Subscription Performance Warranty provided in the Agreement.

6. **AUDIT**. If requested by BMC Helix, and not more than once a year, Customer agrees to deliver to BMC Helix, within 30 days of such request, as specified by BMC Helix (a) periodic product usage reports generated from specific products (b) third party usage reports related to the On Premise Subscriptions (*e.g.,* SCRT reports) and (c) written periodic product usage reports, to be provided solely when the product does not generate reports (together, "**Reports**"). Additionally, if requested by BMC Helix not more than once a year and upon at least ten days prior written notice to Customer, Customer agrees to allow BMC Helix to perform an audit ("**Audit**") to ensure compliance with the terms of the Agreement at the locations where the On Premise Subscriptions are installed, during normal business hours. to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any such Audit and to provide reasonable access to its information and systems. If Customer is found to have exceeded its Licensed Capacity for an On Premise Subscriptions based on such Reports or Audit, then Customer agrees to pay the applicable fees for the additional capacity through the end of the applicable Order term upon receipt of an invoice from BMC Helix.