

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

BMC SOFTWARE INC

CIK: **835729** | IRS No.: **742126120** | State of Incorpor.: **DE** | Fiscal Year End: **0331**
Type: **10-Q** | Act: **34** | File No.: **001-16393** | Film No.: **091147371**
SIC: **7372** Prepackaged software

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-Q

(Mark One)



QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2009

OR



TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 001-16393

BMC Software, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

**2101 CityWest Boulevard
Houston, Texas**

(Address of principal executive offices)

74-2126120

(IRS Employer
Identification No.)

77042-2827

(Zip Code)

Registrant's telephone number including area code: (713) 918-8800

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer (Do not check if a smaller reporting company)

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of October 26, 2009, there were outstanding 183,392,000 shares of Common Stock, par value \$.01, of the registrant.

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QUARTER ENDED SEPTEMBER 30, 2009

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PART I. FINANCIAL INFORMATION

Item 1. *Financial Statements*

BMC SOFTWARE, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except par value data)

	<u>September 30,</u> <u>2009</u>	<u>March 31,</u> <u>2009</u>
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,137.8	\$1,023.3
Short-term investments	74.7	73.6
Trade accounts receivable, net	174.6	217.8
Trade finance receivables, net	85.3	99.3
Deferred tax assets	71.2	68.0
Other current assets	<u>77.0</u>	<u>78.5</u>
Total current assets	1,620.6	1,560.5
Property and equipment, net	104.3	103.0
Software development costs	135.5	122.6
Long-term investments	76.3	72.3
Long-term trade finance receivables, net	52.5	92.1

Intangible assets, net	168.8	189.9
Goodwill	1,322.0	1,288.7
Other long-term assets	267.3	268.4
Total assets	<u>\$3,747.3</u>	<u>\$3,697.5</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	\$ 50.1	\$57.2
Finance payables	13.9	13.7
Accrued liabilities	236.2	285.1
Deferred revenue	934.1	977.3
Total current liabilities	1,234.3	1,333.3
Long-term deferred revenue	762.5	810.6
Long-term debt	309.8	313.6
Other long-term liabilities	215.7	191.5
Total liabilities	<u>2,522.3</u>	<u>2,649.0</u>
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 1.0 shares authorized, none issued and outstanding	—	—

Common stock, \$.01 par value, 600.0 shares authorized, 249.1 shares issued

	2.5	2.5
Additional paid-in capital	918.3	881.2
Retained earnings	2,159.8	1,985.4
Accumulated other comprehensive income (loss)	11.3	(25.5)
	<u>3,091.9</u>	<u>2,843.6</u>
Treasury stock, at cost (65.5 and 64.4 shares)	(1,866.9)	(1,795.1)
Total stockholders' equity	<u>1,225.0</u>	<u>1,048.5</u>
Total liabilities and stockholders' equity	<u>\$3,747.3</u>	<u>\$3,697.5</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

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BMC SOFTWARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME
(In millions, except per share data)
(Unaudited)

	<u>Quarter Ended</u>		<u>Six Months Ended</u>	
	<u>September 30,</u>		<u>September 30,</u>	
	<u>2009</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>
Revenue:				
License	\$174.0	\$175.5	\$341.0	\$324.9
Maintenance	257.4	255.5	508.6	509.8
Professional services	<u>30.4</u>	<u>35.7</u>	<u>62.2</u>	<u>69.5</u>
Total revenue	<u>461.8</u>	<u>466.7</u>	<u>911.8</u>	<u>904.2</u>
Operating expenses:				
Cost of license revenue	26.5	29.5	54.6	57.1
Cost of maintenance revenue	36.7	46.6	74.0	87.1
Cost of professional services revenue	31.8	36.3	65.0	71.5
Selling and marketing expenses	130.6	136.7	256.5	277.1
Research and development expenses	41.7	53.7	95.4	115.5
General and administrative expenses	51.2	48.2	105.8	101.7
In-process research and development	-	-	-	50.3

Amortization of intangible assets	8.0	8.7	16.0	17.2
Severance, exit costs and related charges	<u>0.5</u>	<u>1.5</u>	<u>1.5</u>	<u>7.9</u>
Total operating expenses	<u>327.0</u>	<u>361.2</u>	<u>668.8</u>	<u>785.4</u>
Operating income	<u>134.8</u>	<u>105.5</u>	<u>243.0</u>	<u>118.8</u>
Other income (loss), net:				
Interest and other income, net	1.7	10.5	5.3	19.5
Interest expense	(5.3)	(5.8)	(10.8)	(7.9)
Gain (loss) on investments	<u>1.4</u>	<u>(1.5)</u>	<u>2.6</u>	<u>(0.3)</u>
Total other income (loss), net	<u>(2.2)</u>	<u>3.2</u>	<u>(2.9)</u>	<u>11.3</u>
Earnings before income taxes	132.6	108.7	240.1	130.1
Provision for income taxes	<u>38.4</u>	<u>38.9</u>	<u>63.5</u>	<u>59.1</u>
Net earnings	<u>\$94.2</u>	<u>\$69.8</u>	<u>\$176.6</u>	<u>\$71.0</u>
Basic earnings per share	<u>\$0.51</u>	<u>\$0.37</u>	<u>\$0.96</u>	<u>\$0.37</u>
Diluted earnings per share	<u>\$0.50</u>	<u>\$0.36</u>	<u>\$0.94</u>	<u>\$0.37</u>
Shares used in computing basic earnings per share	<u>183.5</u>	<u>188.8</u>	<u>183.9</u>	<u>189.1</u>
Shares used in computing diluted earnings per share	<u>187.0</u>	<u>192.2</u>	<u>187.4</u>	<u>192.8</u>
Comprehensive income:				

Net earnings	\$94.2	\$69.8	\$176.6	\$71.0
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Net changes in accumulated comprehensive income (loss):

Foreign currency translation adjustment	15.0	(20.6)	35.0	(14.9)
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Unrealized gain (loss) on available-for-sale securities	<u>1.1</u>	<u>(0.5)</u>	<u>1.8</u>	<u>(3.0)</u>
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Comprehensive income	<u>\$110.3</u>	<u>\$48.7</u>	<u>\$213.4</u>	<u>\$53.1</u>
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The accompanying notes are an integral part of these condensed consolidated financial statements.

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BMC SOFTWARE, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	Six Months Ended	
	September 30,	
	2009	2008
Cash flows from operating activities:		
Net earnings	\$176.6	\$71.0
Adjustments to reconcile net earnings to net cash provided by operating activities:		
In-process research and development	–	50.3
Depreciation and amortization	84.8	90.3
Share-based compensation expense	42.5	43.3
Other	(2.6)	0.3
Changes in operating assets and liabilities, net of acquisitions:		
Trade finance receivables	53.6	(11.2)
Accrued liabilities	(45.8)	1.3
Deferred revenue	(93.7)	(24.7)
Other operating assets and liabilities	33.3	6.0
Net cash provided by operating activities	<u>248.7</u>	<u>226.6</u>

Cash flows from investing activities:

Proceeds from maturities / sales of investments	229.4	107.2
Purchases of investments	(221.7)	(122.2)
Cash paid for acquisitions, net of cash acquired, and other investments	(24.7)	(783.7)
Capitalization of software development costs	(40.4)	(26.8)
Purchases of property and equipment	(13.8)	(16.8)
Other investing activities	—	(0.2)
Net cash used in investing activities	<u>(71.2)</u>	<u>(842.5)</u>

Cash flows from financing activities:

Treasury stock acquired	(125.0)	(200.0)
Repurchases of stock to satisfy employee tax withholding obligations	(7.3)	(16.1)
Proceeds from stock options exercised and other	47.4	62.5
Excess tax benefit from share-based compensation	5.4	21.0
Payments on debt and capital leases	(9.6)	(6.0)
Proceeds from issuance of long-term debt, net of debt issuance costs	—	295.6
Net cash provided by (used in) financing activities	<u>(89.1)</u>	<u>157.0</u>

Effect of exchange rate changes on cash and cash equivalents

26.1 (19.1)

Net change in cash and cash equivalents	114.5	(478.0)
Cash and cash equivalents, beginning of period	<u>1,023.3</u>	<u>1,288.3</u>
Cash and cash equivalents, end of period	<u>\$1,137.8</u>	<u>\$810.3</u>

Supplemental disclosure of cash flow information:

Cash paid for interest	\$11.5	\$2.3
Cash paid for income taxes, net of amounts refunded	\$63.5	\$34.1

The accompanying notes are an integral part of these condensed consolidated financial statements.

BMC SOFTWARE, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

(1) Basis of Presentation

The accompanying unaudited condensed consolidated financial statements include the accounts of BMC Software, Inc. and its subsidiaries (collectively, we, us, our or BMC). All significant intercompany balances and transactions have been eliminated in consolidation. These financial statements reflect all normal recurring adjustments necessary to fairly present our financial position and results of operations as of and for the periods presented herein. We have evaluated subsequent events through October 30, 2009, the date the financial statements were issued. These financial statements have been prepared in accordance with U.S. generally accepted accounting principles (GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission (SEC). Accordingly, certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations.

Interim results are not necessarily indicative of results for a full year. Our results generally tend to be stronger in the third and fourth quarters of our fiscal year, as compared to the first and second quarters of our fiscal year. These financial statements should be read in conjunction with our annual audited consolidated financial statements for the fiscal year ended March 31, 2009, as filed with the SEC on Form 10-K.

Recently Adopted Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (FASB) issued a new accounting standard which defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. In February 2008, the FASB delayed the effective date of this standard to April 1, 2009 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (that is, at least annually). We adopted the new standard relating to assets and liabilities recognized or disclosed in the financial statements at fair value on a recurring basis on April 1, 2008, and on April 1, 2009 with regard to non-financial assets and non-financial liabilities. The adoption of these provisions did not have a material impact on our financial position, results of operations or cash flows.

In December 2007, the FASB issued a revision to previously issued accounting literature which changes the accounting for business combinations including: (i) the measurement of acquirer shares issued in consideration for a business combination, (ii) the recognition of contingent consideration, (iii) the accounting for preacquisition gain and loss contingencies, (iv) the recognition of capitalized in-process research and development (IPR&D), (v) the accounting for acquisition-related restructuring costs, (vi) the treatment of acquisition-related transaction costs, and (vii) the recognition of changes in the acquirer's income tax valuation allowance. This guidance applies prospectively to all business combinations beginning in fiscal 2010. The impact of adoption on our financial position, results of operations or cash flows will be dependent upon the nature and terms of business combinations that we may consummate in fiscal 2010 and thereafter.

In April 2008, the FASB issued guidance that amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In June 2008, the FASB issued guidance clarifying that unvested share-based payment awards with a right to receive nonforfeitable dividends are participating securities and providing information on how to allocate earnings to participating securities to allow computation of basic and diluted earnings per share using the two-class method. This guidance was effective for us beginning in fiscal 2010 and requires retrospective application for periods prior to the effective date. The adoption of this guidance did not have a material impact on our computation of earnings per share. Refer to Note 7 for further information related to our computation of earnings per share.

In April 2009, the FASB issued guidance for estimating fair value when the volume or level of activity in a market for an asset or liability has decreased significantly. This guidance also provides information on identifying circumstances that indicate a transaction is not orderly (i.e.,

a forced liquidation or distressed sale). This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In April 2009, the FASB issued guidance that applies to investments in debt securities for which other-than-temporary impairments may be recorded. If an entity's management asserts that it does not have the intent to sell a debt security and it is more likely than not that it will not be required to sell the security before recovery of its cost basis, then an entity may separate other-than temporary impairments into two components: (i) the amount related to credit losses (recorded in earnings) and (ii) all other amounts (recorded in other comprehensive income). This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

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In April 2009, the FASB issued guidance that requires disclosures about fair value of financial instruments in interim financial statements. This guidance was effective for us beginning in fiscal 2010, and because it applies only to financial statement disclosures, it did not have any impact on our financial position, results of operations or cash flows.

In May 2009, the FASB issued guidance that provides general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued. This topic was previously addressed only in auditing literature. This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In July 2009, the FASB released the final version of its new “Accounting Standards Codification” (Codification) as the single authoritative source for GAAP. While not intended to change GAAP, the Codification significantly changes the way in which the accounting literature is organized, combining all authoritative standards into a comprehensive, topically organized database. All existing accounting standard documents were superseded and all other accounting literature not included in the Codification is considered nonauthoritative, other than guidance issued by the SEC. The Codification is effective for interim and annual periods ending on or after September 15, 2009. We adopted the Codification in our interim financial statements for the second quarter of fiscal 2010, which had no impact on our financial position, results of operations or cash flows.

(2) Business Combinations

In April 2008, we acquired all of the outstanding capital stock of BladeLogic, Inc. (BladeLogic), a leading provider of data center automation software, for \$28 per share. This acquisition expanded our offerings for server provisioning, application release management, automation and compliance. The acquisition of BladeLogic’s outstanding common stock and other equity instruments resulted in total purchase consideration of \$854.0 million, including approximately \$19.9 million of direct acquisition costs. Approximately \$50.3 million of the purchase price was allocated to purchased IPR&D and was expensed as of the acquisition date.

In August 2009, we acquired all of the outstanding capital stock of MQSoftware, Inc. (MQSoftware), a leading provider of middleware and enterprise application transaction management software, for purchase consideration of \$26.5 million. This acquisition expanded our offerings for middleware infrastructure software. The acquisition of MQSoftware included approximately \$7.3 million of acquired technology and \$7.9 million of customer relationships, with weighted average economic lives of approximately three years, in addition to other tangible assets and liabilities. This acquisition resulted in a preliminary allocation of \$18.5 million to goodwill that was assigned to the Mainframe Service Management segment. We are in the process of finalizing our assessment of the fair value of certain acquired assets and assumed liabilities, principally related to tax loss carryforwards and other deferred tax attributes, and will adjust the purchase price allocation when finalized.

(3) Financial Instruments

We measure certain financial instruments at fair value on a recurring basis using the following valuation techniques:

(A) Market approach - Uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities.

(B) Income approach - Uses valuation techniques to convert future estimated cash flows to a single present amount based on current market expectations about those future amounts, using present value techniques.

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The fair values of our financial instruments were determined using the following input levels and valuation techniques:

<u>September 30, 2009</u>	<u>Total</u>	<u>Quoted Prices in Active Markets for Identical Assets (Level 1)</u>	<u>Significant Other Observable Inputs (Level 2)</u>	<u>Significant Unobservable Inputs (Level 3)</u>	<u>Valuation Technique</u>
			(In millions)		
Assets					
Cash equivalents					
Money-market funds	\$558.4	\$ 558.4	\$ –	\$ –	A
United States treasury securities	302.0	302.0	–	–	A
Certificates of deposit	57.9	57.9	–	–	A
Short-term and long-term investments					
United States treasury securities	16.0	16.0	–	–	A
Auction rate securities	60.9	–	–	60.9	B
Certificates of deposit	58.7	58.7	–	–	A
Mutual funds and other	15.4	15.4	–	–	A
Foreign currency exchange derivatives	0.4	–	0.4	–	A
Auction rate securities put option	1.9	–	–	1.9	B

Total	<u>\$1,071.6</u>	<u>\$ 1,008.4</u>	<u>\$ 0.4</u>	<u>\$ 62.8</u>
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Liabilities

Foreign currency exchange derivatives	<u>\$(3.2)</u>	<u>\$ -</u>	<u>\$ (3.2)</u>	<u>\$ -</u>	A
Total	<u>\$(3.2)</u>	<u>\$ -</u>	<u>\$ (3.2)</u>	<u>\$ -</u>	

Level 1 classification is applied to any asset or liability that has a readily available quoted market price from an active market where there is significant transparency in the executed/quoted price.

Level 2 classification is applied to assets and liabilities that have evaluated prices where the data inputs to these valuations are observable either directly or indirectly, but do not represent quoted market prices from an active market.

Level 3 classification is applied to assets and liabilities when prices are not derived from existing market data and requires us to develop our own assumptions about how market participants would price the asset or liability.

The following table summarizes the activity in Level 3 financial instruments:

	Quarter Ended			Six Months Ended		
	September 30, 2009			September 30, 2009		
	Auction Rate Securities	Put Option	Total	Auction Rate Securities	Put Option	Total
Balance at the beginning of period	\$ 60.4	\$ 2.6	\$ 63.0	\$ 60.0	\$ 2.0	\$ 62.0
Redemption of auction rate securities	(1.8)	-	(1.8)	(1.8)	-	(1.8)
Unrealized gain (loss) included in interest and other income, net	0.7	(0.7)	-	0.1	(0.1)	-
Unrealized gain included in other comprehensive income	1.6	-	1.6	2.6	-	2.6
Balance at the end of period	<u>\$ 60.9</u>	<u>\$ 1.9</u>	<u>\$ 62.8</u>	<u>\$ 60.9</u>	<u>\$ 1.9</u>	<u>\$ 62.8</u>

Total maturities within 1 year	<u>\$73.6</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 73.6</u>
Maturities from 10 years and thereafter:				
Auction rate securities	<u>\$54.5</u>	<u>\$ -</u>	<u>\$ (10.2)</u>	<u>\$ 44.3</u>
Total maturities from 10 years and thereafter	<u>\$54.5</u>	<u>\$ -</u>	<u>\$ (10.2)</u>	<u>\$ 44.3</u>

Proceeds from the sale of available-for-sale securities, gross realized gains and gross realized losses were:

	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
	(In millions)			
Proceeds from sales	\$-	\$52.5	\$-	\$150.1
Gross realized gains	-	-	-	1.6
Gross realized losses	-	(1.5)	-	(1.9)

At September 30, 2009, we held auction rate securities with a par value of \$70.4 million, of which securities with a par value of \$53.1 million were classified as available-for-sale and a par value of \$17.3 million were classified as trading. The total estimated fair value of our auction rate securities was \$60.9 million and \$60.0 million at September 30, 2009 and March 31, 2009, respectively. Our auction rate securities consist entirely of bonds issued by public agencies that are backed by student loans with at least a 97% guarantee by the federal government under the United States Department of Education's Federal Family Education Loan Program. Substantially all of these bonds are currently rated investment grade by Moody's or Standard and Poor's. Auctions for these securities began failing in early 2008 and have continued to fail through October 2009, resulting in our continuing to hold such securities and the issuers paying interest at the maximum contractual rates. We do not believe that any of the underlying issuers of these auction rate securities are presently at risk or that the underlying credit quality of the assets backing the auction rate security investments has been impacted by the reduced liquidity of these investments. Due to the illiquidity in the auction rate securities market caused by failed auctions, we estimated the fair value of these securities and the put option discussed below using internally developed models of the expected cash flows of the securities which incorporated assumptions about the expected cash flows of the underlying student loans and discounts to reflect a lack of liquidity in the market for these securities.

In November 2008, we entered into a put agreement with a bank from which we have acquired certain auction rate securities with a remaining par value of \$17.3 million and an estimated fair value of \$15.4 million at September 30, 2009. Under the terms of the agreement, we have the ability to put these auction rate securities to the bank at par value at any time during the period beginning June 30, 2010 and ending June 30, 2012. The bank also has the right to repurchase these auction rate securities at par value on or

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before June 30, 2010. These auction rate securities have been reclassified to trading securities and, accordingly, any changes in the fair value of these securities are recognized in earnings. In addition, we have elected the option under GAAP to record the put option at fair value. The fair value adjustments to these auction rate securities and the related put option resulted in minimal net impact to the consolidated statements of operations for the quarter and six months ended September 30, 2009.

The unrealized loss on our available-for-sale auction rate securities, which have a fair value of \$45.5 million at September 30, 2009, was \$7.6 million at September 30, 2009 and was recorded in accumulated other comprehensive income (loss) as we believe the decline in fair value of these auction rate securities is temporary. In making this determination, we primarily considered the financial condition and near-term prospects of the issuers, the probability scheduled cash flows will continue to be made and the likelihood we would be required to sell the investments before recovery in market value or maturity. These available-for-sale auction rate securities have been in an unrealized loss position for greater than twelve months. Because of the uncertainty related to the timing of liquidity associated with these auction rate securities, these securities are classified as long-term investments at September 30, 2009 and March 31, 2009.

Derivative Financial Instruments

We operate globally and transact business in various foreign currencies. Our foreign currency exposures relate primarily to certain foreign currency denominated assets and liabilities, primarily non-U.S. dollar denominated accounts receivable, cash and intercompany balances held by U.S. dollar functional currency entities. To minimize the risk from changes in foreign currency exchange rates, we have established a program that utilizes foreign currency forward contracts to offset the risks associated with the effects of certain foreign currency exposures. Gains or losses on our foreign currency exposures are offset by gains or losses on the foreign currency forward contracts entered into under this program. These foreign currency forward contracts generally have terms of one month or less and are generally entered into at the prevailing market exchange rate at the end of each month. We do not use forward contracts for speculative purposes. While these foreign currency forward contracts are utilized to hedge foreign currency exposures, they are not formally designated as hedges, and therefore, the changes in the fair values of these derivatives are recognized currently in earnings. We record these foreign currency forward contracts at fair value as either assets or liabilities depending on the net settlement position of the foreign currency forward contracts with each respective counterparty at the balance sheet date.

The fair value of our outstanding foreign currency forward contracts that closed in a gain position at September 30, 2009 was \$0.4 million and was recorded as other current assets in our condensed consolidated balance sheet. The fair value of our outstanding foreign currency forward contracts that closed in a loss position at September 30, 2009 was \$3.2 million and was recorded as trade accounts payable in our condensed consolidated balance sheet. The notional amounts at contract exchange rates of our foreign currency forward contracts outstanding on September 30, 2009 and March 31, 2009 were:

	Notional Amount	
	September 30, 2009	March 31, 2009
	(In millions)	
Foreign Currency Forward Contracts (Receive U.S. dollar/pay foreign currency)		
Euro	\$ 102.4	\$ 132.8
British pound	15.5	29.4
Australian dollar	15.4	3.8

Singapore dollar	11.1	4.7
Chinese yuan renminbi	9.2	8.0
South Korean won	8.8	9.4
Other	24.3	25.4
Total	\$ 186.7	\$ 213.5

Foreign Currency Forward Contracts (Pay U.S. dollar/receive foreign currency)

Israeli shekel	\$ 42.7	\$ –
Indian rupee	14.1	24.3
Mexican peso	1.9	11.5
Other	3.0	1.7
Total	\$ 61.7	\$ 37.5

The effect of the foreign currency forward contracts for the quarter and six months ended September 30, 2009 was a loss of \$6.5 million and \$20.6 million, respectively, which was offset by gains on our foreign currency exposure, resulting in \$1.6 million and \$2.1 million, respectively, of net expense recorded in interest and other income, net. The effect of the foreign currency forward contracts for the quarter and six months ended September 30, 2008 was a gain of \$17.8 million and \$14.0 million, respectively, which was offset by losses on our foreign currency exposure, resulting in \$(1.0) million and \$0.8 million, respectively, of net expense (income) recorded in interest and other income, net.

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We are exposed to credit-related losses in the event of non-performance by counterparties to derivative financial instruments, but we do not expect any counterparties to fail to meet their obligations given their high credit ratings. In addition, we diversify this risk across several counterparties and utilize netting agreements to mitigate the counterparty credit risk.

Other Financial Instruments

The fair value of the senior unsecured notes due 2018 at September 30, 2009 and March 31, 2009, based on market prices, was \$335.6 million and \$275.1 million, respectively.

The carrying values of all other financial instruments, consisting of cash and cash equivalents, non-marketable securities and receivables, approximate their respective fair values.

(4) Long-Term Debt

Long-term debt consists of the following:

	<u>September 30,</u> <u>2009</u>	<u>March 31,</u> <u>2009</u>
	(In millions)	
Senior unsecured notes due 2018 (net of \$1.6 million of unamortized discount at September 30, 2009 and March 31, 2009)	\$ 298.4	\$ 298.4
Capital leases and other obligations	<u>20.3</u>	<u>23.1</u>
Total	318.7	321.5
Less current maturities of capital leases and other obligations (included in accrued liabilities)	<u>8.9</u>	<u>7.9</u>
Long-term debt	<u>\$ 309.8</u>	<u>\$ 313.6</u>

At September 30, 2009, we were in compliance with all debt covenants.

(5) Income Taxes

Income tax expense was \$38.4 million and \$38.9 million for the quarters ended September 30, 2009 and 2008, respectively, resulting in effective tax rates of 29.0% and 35.8%, respectively. Income tax expense was \$63.5 million and \$59.1 million for the six months ended September 30, 2009 and 2008, respectively, resulting in effective tax rates of 26.4% and 45.4%, respectively. The effective tax rate is impacted primarily by the worldwide mix of estimated consolidated earnings before taxes and our policy of indefinitely re-investing earnings from certain low tax jurisdictions, additional accruals and changes in estimates related to our uncertain tax positions, benefits associated with income attributable to both domestic production activities and the extraterritorial income exclusion and the non-deductible expense from the write-off of IPR&D assets associated with certain acquisitions. The higher effective tax rate for the six months ended September 30, 2008 was attributable primarily to the non-deductible expense from the write-off of IPR&D assets in connection with our acquisition of BladeLogic, Inc.

We file a federal income tax return in the United States as well as income tax returns in various local, state and foreign jurisdictions. Our tax years are closed with the United States Internal Revenue Service (IRS) through the tax year ended March 31, 2003. During fiscal 2009, we

filed a petition with the United States Tax Court in response to a Notice of Deficiency received from the IRS for the tax years ended March 31, 2004 and 2005 and during the quarter ended June 30, 2009 the United States Tax Court scheduled a trial date for later in the current fiscal year. During the quarter ended September 30, 2009, we jointly filed a motion for continuance with the IRS to the tax court which was granted. However, we have not received notice on a new trial date. We have recently begun settlement discussions with the IRS on certain issues and believe it is reasonably possible they will be concluded in the next twelve months; however, the ultimate outcome of these discussions cannot be reasonably estimated at this time. During fiscal 2009, the IRS completed its examination of our United States federal income tax returns for the tax years ended March 31, 2006 and 2007 and issued a Revenue Agent Report (RAR) thereon. We have filed a protest letter contesting certain adjustments included in the RAR and settlement discussions with the IRS Office of Appeals are scheduled to begin later in the current fiscal year. The IRS has initiated an examination of our federal income tax return for the tax year ended March 31, 2008. In addition, certain tax years related to state, local and foreign jurisdictions remain subject to examination. To provide for potential tax exposures, we maintain a liability for unrecognized tax benefits which we believe is adequate.

(6) Share-Based Compensation

During the six months ended September 30, 2009, we granted share-based awards to our executive officers and non-executive employees consisting of 0.2 million options to purchase our common stock and 1.4 million shares of time-based nonvested stock units. The time-based nonvested stock units vest in annual increments over three years.

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The fair value of share-based payments was estimated using the Black-Scholes option pricing model with the following weighted-average assumptions:

	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009*	2008	2009	2008
Expected volatility	–	34 %	35 %	32 %
Risk-free interest rate %	–	3.4 %	2.0 %	3.0 %
Expected term (in years)	–	5	4	4
Dividend yield	–	–	–	–

*

There were no options to purchase our common stock issued during the quarter ended September 30, 2009.

At September 30, 2009, we have approximately \$164.8 million of total unrecognized share-based compensation expense related to stock options, nonvested stock and nonvested stock units that is expected to be recognized as expense over a weighted-average period of two years.

Share-based compensation expense as recorded in our condensed consolidated statements of operations is summarized as follows:

	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
	(In millions)			
Cost of license revenue	\$0.5	\$0.4	\$1.0	\$0.7
Cost of maintenance revenue	2.4	2.6	4.1	5.1
Cost of professional services revenue	0.9	0.8	1.8	1.5
Selling and marketing expenses	8.0	7.4	15.1	15.3
Research and development expenses	2.2	3.0	4.6	6.8
General and administrative expenses	7.9	6.7	15.9	13.9

Total share-based compensation expense

\$21.9 \$20.9 \$42.5 \$43.3

(7) Stockholders' Equity

Earnings Per Share

The two-class method is utilized for the computation of earnings per share (EPS). The two-class method requires a portion of net income be allocated to participating securities, which are unvested awards of share-based payments with nonforfeitable rights to receive dividends or dividend equivalents, if declared. Income allocated to these participating securities is excluded from net earnings allocated to common shares, as shown in the table below.

Basic earnings per share is computed by dividing net income allocated to common shares by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed by dividing net income allocated to common shares by the weighted average number of common shares outstanding during the period, plus the dilutive effect of outstanding stock options and other dilutive securities using the treasury stock method.

The following table summarizes the basic and diluted EPS computations for the quarters and six months ended September 30, 2009 and 2008:

	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
(In millions, except per share data)				
Basic earnings per share:				
Net earnings	\$94.2	\$69.8	\$176.6	\$71.0
Less earnings allocated to participating securities	<u>(0.2)</u>	<u>(0.2)</u>	<u>(0.4)</u>	<u>(0.4)</u>
Net earnings allocated to common shares	<u>\$94.0</u>	<u>\$69.6</u>	<u>\$176.2</u>	<u>\$70.6</u>
Weighted average number of common shares outstanding	<u>183.5</u>	<u>188.8</u>	<u>183.9</u>	<u>189.1</u>
Basic earnings per share	<u>\$0.51</u>	<u>\$0.37</u>	<u>\$0.96</u>	<u>\$0.37</u>

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	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
(In millions, except per share data)				
Diluted earnings per share:				
Net earnings	\$94.2	\$69.8	\$176.6	\$71.0
Less earnings allocated to participating securities	(0.2)	(0.2)	(0.4)	(0.4)
Net earnings allocated to common shares	\$94.0	\$69.6	\$176.2	\$70.6
Weighted average number of common shares outstanding	183.5	188.8	183.9	189.1
Incremental shares from assumed conversions of stock options and other	3.5	3.4	3.5	3.7
Adjusted weighted average number of common shares outstanding	187.0	192.2	187.4	192.8
Diluted earnings per share	\$0.50	\$0.36	\$0.94	\$0.37

For the quarters ended September 30, 2009 and 2008, 5.9 million and 10.2 million weighted average potential common shares, respectively, have been excluded from the calculation of diluted EPS, as they were anti-dilutive. For the six months ended September 30, 2009 and 2008, 8.1 million and 8.8 million weighted average potential common shares, respectively, have been excluded from the calculation of diluted EPS, as they were anti-dilutive.

Treasury Stock

Our Board of Directors had previously authorized a total of \$3.0 billion to repurchase common stock. During the quarter and six months ended September 30, 2009, we purchased 2.1 million and 3.6 million shares, respectively, for \$75.0 million and \$125.0 million, respectively, under these authorizations. At September 30, 2009, approximately \$219.8 million remains authorized in the stock repurchase program, which does not have an expiration date. In addition, during the quarter and six months ended September 30, 2009, we repurchased 0.1 million and 0.2 million shares, respectively, for \$2.4 million and \$7.3 million, respectively, to satisfy employee tax withholding obligations upon the lapse of restrictions on nonvested stock grants.

(8) Guarantees and Contingencies

Guarantees

Under our standard software license agreements, we agree to indemnify, defend and hold harmless our licensees from and against certain losses, damages and costs arising from claims alleging the licensees' use of our software infringes the intellectual property rights of a third

party. Also, under these standard license agreements, we represent and warrant to licensees that our software products operate substantially in accordance with published specifications.

Other guarantees include promises to indemnify, defend and hold harmless each of our executive officers, non-employee directors and certain key employees from and against losses, damages and costs incurred by each such individual in administrative, legal or investigative proceedings arising from alleged wrongdoing by the individual while acting in good faith within the scope of his or her job duties on our behalf.

Historically, we have not incurred significant costs related to such indemnifications, warranties and guarantees. As such, and based on other factors, no provision or accrual for these items has been made.

Contingencies

We have received claims from a third party alleging that we infringe on one or more of the third party's patents. We believe that we have meritorious defenses to the claims and intend to vigorously contest them. Additionally, we have asserted counter-claims against the third party alleging infringement on certain of our patents. No formal proceedings have been initiated by either party and the ultimate outcome of this matter cannot be estimated at this time.

We are party to various labor claims brought by certain former international employees alleging that amounts are due such employees for unpaid commissions and other compensation. The claims are in various stages and are not expected to be fully resolved in the near future. We intend to vigorously contest all of the claims. However, the ultimate outcome of all of the claims cannot be estimated at this time.

In June 2006, we sought clarification from a Brazilian court as to whether a tax applies to the remittance of software payments from our Brazilian operations. The matter is currently being litigated in Brazilian courts. In February 2007, a law was enacted that clarified that this particular tax did not apply to the remittance of software payments, retroactive to January 1, 2006. We continue to pursue a favorable resolution on this matter for years prior to January 1, 2006. While we believe we will ultimately prevail based on the merits of our position, we cannot predict or estimate the timing or ultimate outcome of this matter.

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In April 2009, a lawsuit was filed against us by Data Detection Systems, LLC in the United States District Court for the Southern District of Texas, Houston Division. The complaint seeks monetary damages in unspecified amounts and permanent injunction based upon claims for alleged patent infringement. We believe that we have meritorious defenses and intend to vigorously defend this matter. However, we cannot predict or estimate the timing or ultimate outcome of this matter.

We are subject to various other legal proceedings and claims, either asserted or unasserted, which arise in the ordinary course of business. We do not believe that the outcome of any of these matters will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

(9) Segment Reporting

We are organized into two business segments, Enterprise Service Management (ESM) and Mainframe Service Management (MSM). The ESM segment derives its revenue from our service support, service assurance and service automation solutions, along with professional services revenue derived from consulting, implementation, integration and educational services related to our software products. The MSM segment derives its revenue from products for mainframe database management, monitoring and automation, enterprise scheduling and output management solutions.

Segment performance is measured based on segment operating income, reflecting segment revenue less direct and allocated indirect segment operating expenses. Direct segment operating expenses primarily include cost of revenue, selling and marketing, research and development and general and administrative expenses that can be specifically identified to a particular segment and are directly controllable by segment management, while allocated indirect segment operating expenses primarily include indirect costs within these operating expense categories that are not specifically identified to a particular segment or controllable by segment management. The indirect operating expenses are allocated to the segments based on budgeted bookings, revenue and other allocation methods that management believes to be reasonable. Our measure of segment operating income does not include the effect of share-based compensation expenses, amortization of acquired technology and other intangible assets, the write-off of purchased IPR&D or the costs associated with severance and exit activities described in Note 10, which are collectively included in unallocated operating expenses below. Assets and liabilities are reviewed by management at the consolidated level only.

The table below summarizes segment performance for the quarters and six months ended September 30, 2009 and 2008.

<u>Quarter Ended September 30, 2009</u>	<u>Enterprise Service Management</u>	<u>Mainframe Service Management</u>	<u>Consolidated</u>
		(In millions)	
Revenue:			
License	\$ 106.1	\$ 67.9	\$ 174.0
Maintenance	138.9	118.5	257.4
Professional services	30.4	–	30.4
Total revenue	275.4	186.4	461.8

Direct and allocated indirect segment operating expenses

204.1

82.5

286.6

Segment operating income

71.3

103.9

175.2

Unallocated operating expenses

(40.4)

Other loss, net

(2.2)

Earnings before income taxes

\$ 132.6

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<u>Quarter Ended September 30, 2008</u>	<u>Enterprise Service Management</u>	<u>Mainframe Service Management</u> (In millions)	<u>Consolidated</u>
Revenue:			
License	\$ 104.8	\$ 70.7	\$ 175.5
Maintenance	138.1	117.4	255.5
Professional services	35.7	–	35.7
Total revenue	278.6	188.1	466.7
Direct and allocated indirect segment operating expenses	238.9	79.2	318.1
Segment operating income	39.7	108.9	148.6
Unallocated operating expenses			(43.1)
Other income, net			3.2
Earnings before income taxes			<u>\$ 108.7</u>
<u>Six Months Ended September 30, 2009</u>	<u>Enterprise Service Management</u>	<u>Mainframe Service Management</u> (In millions)	<u>Consolidated</u>
Revenue:			
License	\$ 202.7	\$ 138.3	\$ 341.0
Maintenance	274.4	234.2	508.6

Professional services	62.2	–	62.2
Total revenue	539.3	372.5	911.8
Direct and allocated indirect segment operating expenses	424.9	163.9	588.8
Segment operating income	114.4	208.6	323.0
Unallocated operating expenses			(80.0)
Other loss, net			(2.9)
Earnings before income taxes			<u>\$ 240.1</u>

<u>Six Months Ended September 30, 2008</u>	<u>Enterprise Service Management</u>	<u>Mainframe Service Management (In millions)</u>	<u>Consolidated</u>
Revenue:			
License	\$ 194.4	\$ 130.5	\$ 324.9
Maintenance	274.8	235.0	509.8
Professional services	69.5	–	69.5
Total revenue	538.7	365.5	904.2
Direct and allocated indirect segment operating expenses	481.6	163.1	644.7
Segment operating income	57.1	202.4	259.5
Unallocated operating expenses			(140.7)

Other income, net

11.3

Earnings before income taxes

\$ 130.1

(10) Severance, Exit Costs and Related Charges

We have undertaken various restructuring and process improvement initiatives in recent years through the realignment of resources to focus on growth areas and the simplification, standardization and automation of key business processes. Additionally, we undertook general workforce reductions in the latter half of fiscal 2009 and in the first half of fiscal 2010, principally as a result of macroeconomic conditions. Related to these collective actions, we recorded charges of \$0.5 million and \$1.5 million during the

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quarter and six months ended September 30, 2009, respectively, and \$1.5 million and \$7.9 million during the quarter and six months ended September 30, 2008, respectively. These expenses were attributable primarily to identified workforce reductions and associated cash separation packages.

Activity related to the above initiatives during the six months ended September 30, 2009 is summarized as follows:

	<u>Balance at March 31, 2009</u>	<u>Charged to Expense</u>	<u>Adjustments to Estimates</u>	<u>Foreign Exchange Adjustments</u>	<u>Accretion</u>	<u>Cash Payments, Net of Sublease Income</u>	<u>Balance at September 30, 2009</u>
	(In millions)						
Process and realignment initiatives:							
Severance and related costs	\$ 1.2	\$ 0.1	\$ (0.6)	\$ -	\$ -	\$ (0.1)	\$ 0.6
Facilities costs	<u>7.7</u>	<u>0.6</u>	<u>(0.2)</u>	<u>(0.1)</u>	<u>-</u>	<u>(5.1)</u>	<u>2.9</u>
	<u>8.9</u>	<u>0.7</u>	<u>(0.8)</u>	<u>(0.1)</u>		<u>(5.2)</u>	<u>3.5</u>
General workforce reduction:							
Severance and related costs	<u>7.6</u>	<u>3.3</u>	<u>(1.7)</u>	<u>0.3</u>	<u>-</u>	<u>(8.6)</u>	<u>0.9</u>
Total accrued	<u>\$ 16.5</u>	<u>\$ 4.0</u>	<u>\$ (2.5)</u>	<u>\$ 0.2</u>	<u>\$ -</u>	<u>\$ (13.8)</u>	<u>\$ 4.4</u>

The accruals for severance and related costs at September 30, 2009 represent the amounts to be paid to employees that have been terminated or identified for termination as a result of the initiatives described above. These amounts are expected to be paid during fiscal 2010. We continue to review the impact of these actions and will determine if, based on future operating results, additional actions to reduce operating expenses are necessary. The amount of any potential future charges for such actions will depend upon the nature, timing, and extent of those actions.

The accruals for facilities costs at September 30, 2009 represent the remaining fair value of lease obligations for exited locations, as determined at the cease-use dates or lease modification dates of those facilities, net of projected sublease income that could be reasonably obtained in the future, and will be paid out over the remaining lease terms, the last of which ends in fiscal 2014. Projected sublease income is based on management's estimates, which are subject to change. We may incur additional facilities charges subsequent to September 30, 2009 as a result of the initiatives described above.

(11) Recently Issued Accounting Pronouncements

In June 2009, the FASB issued new guidance on accounting for transfers of financial assets, which amended previous GAAP literature. The amendment includes: (i) elimination of the qualifying special-purpose entity concept, (ii) a new unit of account definition that must be met for transfers of portions of financial assets to be eligible for sale accounting, (iii) clarifications and changes to the derecognition criteria for a transfer to be accounted for as a sale, (iv) a change to the amount of recognized gain or loss on a transfer of financial assets accounted for as a sale when beneficial interests are received by the transferor, and (v) extensive new disclosures. This guidance will be effective for us beginning

in fiscal 2011. We have not determined whether its adoption will have a material effect on our financial position, results of operations or cash flows.

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

It is important that this Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) be read in conjunction with: (i) the attached condensed consolidated financial statements and notes thereto, (ii) the audited financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended March 31, 2009, and (iii) our discussion of risk and uncertainties included within Risk Factors in our Annual Report on Form 10-K for the year ended March 31, 2009.

This MD&A contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are identified by the use of the words "believe," "expect," "anticipate," "estimate," "will," "contemplate," "would" and similar expressions that contemplate future events. Numerous important factors, risks and uncertainties, including but not limited to those summarized under Risk Factors in our Annual Report on Form 10-K for the year ended March 31, 2009, affect our operating results and could cause our actual results to differ materially from the results implied by these or any other forward-looking statements made by us or on our behalf. There can be no assurance that future results will meet expectations.

Overview

Despite the continued challenging macroeconomic environment due to the ongoing global recession, our second quarter fiscal 2010 financial performance in terms of revenue, expense management, operating income, earnings per share and operating cash flows was strong. Additionally, the contract value of new transactions that we closed and recorded during the second quarter, which we refer to as bookings, showed sequential improvement within both of our Enterprise Service Management (ESM) and Mainframe Service Management (MSM) businesses. While we continue to see elongated sales cycles in these businesses and ongoing uncertainty remains regarding economic conditions globally, the bookings impact in the second quarter was less severe than in the first quarter, in part due to the completion of various large and more complex transactions that were originally forecasted to close in the first quarter and were delayed due to longer customer approval processes. Additionally, within our MSM business, where bookings are tied largely to the timing and size of renewals and thus are uneven from quarter to quarter, we closed multiple large renewal transactions in the second quarter that positively impacted our bookings. Overall, we believe that our financial performance for the quarter was strong, in part because of our continued ability to control and manage our expenses. Further, we believe that our ESM and MSM solutions continue to provide tangible value to our customers in both good and difficult economic times.

We also continue to invest in our business through acquisitions. In August 2009, we acquired MQSoftware, Inc. (MQSoftware), a leading provider of middleware and enterprise application transaction management software, for purchase consideration of \$26.5 million. This acquisition expanded our offerings for middleware infrastructure software.

It is important for our investors to understand that a significant portion of our operating expenses are fixed in the short-term and we plan a portion of our expense run-rate based on our expectations of future revenue. In addition, a significant amount of our license transactions are completed during the final weeks and days of each quarter and, therefore, we generally do not know whether revenue has met our expectations until after the end of the quarter. If a shortfall in revenue were to occur in any given quarter, there would be an immediate, and possibly significant, impact to our overall earnings and, most likely, our stock price.

Because our software solutions are designed for and marketed to companies looking to improve the management of their IT infrastructure and processes, demand for our products, and therefore our financial results, are dependent upon corporations continuing to value such solutions and invest in such technology. There are a number of trends that have historically influenced demand for IT management software, including, among others, business demands placed on IT, computing capacity within IT departments, complexity of IT systems and IT operational costs. Our financial results are also influenced by many economic and industry conditions, including, but not limited to, general economic and market conditions in the United States and other economies in which we market products, changes in foreign currency exchange rates, corporate spending generally, IT budgets, the competitiveness of the IT management software industry, the adoption rate for Business Service Management (BSM) and the stability of the mainframe market.

The uncertain economic conditions globally, IT spending levels and the factors discussed in the preceding paragraph may adversely impact our future revenue, operating results, financial condition and cash flows. While our operating plans include continued discipline in

controlling expenses and ongoing efforts to simplify processes and increase efficiencies, there can be no assurance that expense control efforts would offset such adverse conditions.

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Results of Operations and Financial Condition

The following table sets forth, for the periods indicated, the percentages that selected items in the condensed consolidated statements of operations and comprehensive income represent of total revenue. These financial results are not necessarily indicative of future results.

	Percentage of Total Revenue			
	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
Revenue:				
License	37.7 %	37.6 %	37.4 %	35.9 %
Maintenance	55.7 %	54.7 %	55.8 %	56.4 %
Professional services	6.6 %	7.6 %	6.8 %	7.7 %
Total revenue	100.0%	100.0%	100.0%	100.0%
Operating expenses:				
Cost of license revenue	5.7 %	6.3 %	6.0 %	6.3 %
Cost of maintenance revenue	7.9 %	10.0 %	8.1 %	9.6 %
Cost of professional services revenue	6.9 %	7.8 %	7.1 %	7.9 %
Selling and marketing expenses	28.3 %	29.3 %	28.1 %	30.6 %
Research and development expenses	9.0 %	11.5 %	10.5 %	12.8 %
General and administrative expenses	11.1 %	10.3 %	11.6 %	11.2 %
In-process research and development	–	–	–	5.6 %

Amortization of intangible assets	1.7 %	1.9 %	1.8 %	1.9 %
Severance, exit costs and related charges	0.1 %	0.3 %	0.2 %	0.9 %
Total operating expenses	70.8 %	77.4 %	73.3 %	86.9 %
Operating income	29.2 %	22.6 %	26.7 %	13.1 %
Other income (loss), net	(0.5)%	0.7 %	(0.3)%	1.2 %
Earnings before income taxes	28.7 %	23.3 %	26.3 %	14.4 %
Provision for income taxes	8.3 %	8.3 %	7.0 %	6.5 %
Net earnings	20.4 %	15.0 %	19.4 %	7.9 %

Revenue

The following table provides information regarding software license and software maintenance revenue for the quarters and six months ended September 30, 2009 and 2008:

<u>Software License Revenue</u>	<u>Quarter Ended</u> <u>September 30,</u>			<u>Six Months Ended</u> <u>September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>% Change</u>	<u>2009</u>	<u>2008</u>	<u>% Change</u>
	<u>(In millions)</u>			<u>(In millions)</u>		
Enterprise Service Management	\$106.1	\$104.8	1.2 %	\$202.7	\$194.4	4.3 %
Mainframe Service Management	67.9	70.7	(4.0)%	138.3	130.5	6.0 %
Total software license revenue	<u>\$174.0</u>	<u>\$175.5</u>	(0.9)%	<u>\$341.0</u>	<u>\$324.9</u>	5.0 %
<u>Software Maintenance Revenue</u>	<u>Quarter Ended</u> <u>September 30,</u>			<u>Six Months Ended</u> <u>September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>% Change</u>	<u>2009</u>	<u>2008</u>	<u>% Change</u>
	<u>(In millions)</u>			<u>(In millions)</u>		
Enterprise Service Management	\$138.9	\$138.1	0.6 %	\$274.4	\$274.8	(0.1)%

Mainframe Service Management

118.5 117.4 0.9 % 234.2 235.0 (0.3)%

Total software maintenance revenue

\$257.4 \$255.5 0.7 % \$508.6 \$509.8 (0.2)%

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<u>Total Software Revenue</u>	<u>Quarter Ended</u>			<u>Six Months Ended</u>		
	<u>September 30,</u>			<u>September 30,</u>		
	<u>2009</u>	<u>2008</u>	<u>% Change</u>	<u>2009</u>	<u>2008</u>	<u>% Change</u>
	<u>(In millions)</u>			<u>(In millions)</u>		
Enterprise Service Management	\$245.0	\$242.9	0.9 %	\$477.1	\$469.2	1.7 %
Mainframe Service Management	<u>186.4</u>	<u>188.1</u>	(0.9)%	<u>372.5</u>	<u>365.5</u>	1.9 %
Total software revenue	<u>\$431.4</u>	<u>\$431.0</u>	0.1 %	<u>\$849.6</u>	<u>\$834.7</u>	1.8 %

Software License Revenue

License revenue for the quarter ended September 30, 2009 was \$174.0 million, a decrease of \$1.5 million, or 0.9%, from the prior year quarter. This decrease was attributable to a license revenue decrease in our MSM segment, partially offset by a license revenue increase in our ESM segment, as further discussed below. Recognition of license revenue that was deferred in prior periods increased \$17.6 million for the quarter ended September 30, 2009 as compared to the prior year quarter. Of the license revenue transactions recorded, the percentage of license revenue recognized upfront decreased to 44% for the current quarter from 51% for the prior year quarter. During the quarter ended September 30, 2009, we closed 32 transactions with license values over \$1 million, with a total license value of \$92.2 million, compared with 35 transactions with license values over \$1 million, with a total license value of \$104.6 million, in the prior year quarter.

License revenue for the six months ended September 30, 2009 was \$341.0 million, an increase of \$16.1 million, or 5.0%, over the prior year period. This increase was attributable to license revenue increases in both our ESM and MSM segments, as further discussed below. Recognition of license revenue that was deferred in prior periods increased \$33.2 million for the six months ended September 30, 2009 as compared to the prior year period. Of the license revenue transactions recorded, the percentage of license revenue recognized upfront increased to 55% for the six months ended September 30, 2009 from 51% for the prior year period. During the six months ended September 30, 2009, we closed 50 transactions with license values over \$1 million, with a total license value of \$123.8 million, compared with 50 transactions with license values over \$1 million, with a total license value of \$155.4 million, in the prior year period.

ESM license revenue represented \$106.1 million, or 61.0%, and \$202.7 million, or 59.4%, of our total license revenue for the quarter and six months ended September 30, 2009, respectively, and \$104.8 million, or 59.7%, and \$194.4 million, or 59.8%, of our total license revenue for the quarter and six months ended September 30, 2008, respectively. ESM license revenue for the quarter ended September 30, 2009 increased by \$1.3 million, or 1.2%, over the prior year quarter. ESM license revenue for the six months ended September 30, 2009 increased by \$8.3 million, or 4.3%, over the prior year period. These period over period increases were attributable to current period increases in the recognition of previously deferred license revenue, offset by decreases in upfront license revenue recognized in connection with new transactions. The decrease in upfront license revenue recognized for the quarter ended September 30, 2009 was attributable to a lower volume of license transaction bookings along with a decline in the percentage of such bookings that were recognized upfront rather than ratably over the underlying contractual maintenance terms. The decrease in upfront license revenue recognized for the six months ended September 30, 2009 was attributable to a lower volume of license transaction bookings, partially offset by an increase in the percentage of such bookings that were recognized upfront rather than ratably over the underlying contractual maintenance terms.

MSM license revenue represented \$67.9 million, or 39.0%, and \$138.3 million, or 40.6%, of our total license revenue for the quarter and six months ended September 30, 2009, respectively, and \$70.7 million, or 40.3%, and \$130.5 million, or 40.2%, of our total license revenue for the quarter and six months ended September 30, 2008, respectively. MSM license revenue for the quarter ended September 30, 2009 decreased by \$2.8 million, or 4.0%, from the prior year quarter, due to a decrease in the amount of upfront license revenue recognized in connection with

new transactions, partially offset by a current period increase in the recognition of previously deferred license revenue. The decrease in upfront license revenue recognized was attributable to a lower percentage of license transaction bookings that were recognized as revenue upfront rather than ratably over the underlying contractual maintenance terms, partially offset by an increase in license transaction bookings. MSM license revenue for the six months ended September 30, 2009 increased by \$7.8 million, or 6.0%, over the prior year period, due to a current year increase in the recognition of previously deferred license revenue and an increase in the amount of upfront license revenue recognized in connection with new transactions. The current year increase in upfront license revenue recognized was attributable to a higher percentage of license transaction bookings that were recognized as revenue upfront rather than ratably over the underlying contractual maintenance terms, partially offset by a decrease in license transaction bookings.

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Deferred License Revenue

For the quarters and six months ended September 30, 2009 and 2008, our recognized license revenue was impacted by the changes in our deferred license revenue balance as follows:

	Quarter Ended		Six Months Ended	
	September 30,		September 30,	
	2009	2008	2009	2008
	(In millions)			
Deferred license revenue balance at beginning of period	\$550.2	\$554.0	\$610.9	\$555.4
Deferrals of license revenue	100.2	92.3	127.7	165.1
Recognition from deferred license revenue	(96.2)	(78.6)	(186.6)	(153.4)
Impact of foreign currency exchange rate changes	2.0	(2.0)	4.2	(1.4)
Deferred license revenue balance at end of period	<u>\$556.2</u>	<u>\$565.7</u>	<u>\$556.2</u>	<u>\$565.7</u>

The primary reasons for license revenue deferrals include, but are not limited to, customer transactions that include products for which the maintenance pricing is based on a combination of undiscounted license list prices, net license fees or discounted license list prices, certain arrangements that include unlimited licensing rights, time-based licenses that are recognized over the term of the arrangement, customer transactions that include products with differing maintenance periods and other transactions for which we do not have or are not able to determine vendor-specific objective evidence of the fair value of the maintenance and/or professional services. The contract terms and conditions that result in deferral of revenue recognition for a given transaction result from arm's length negotiations between us and our customers. We anticipate our transactions will continue to include such contract terms that result in deferral of the related license revenue as we expand our offerings to meet customers' product, pricing and licensing needs.

Once it is determined that license revenue for a particular contract must be deferred, based on the contractual terms and application of revenue recognition policies to those terms, we recognize such license revenue either ratably over the term of the contract or when the revenue recognition criteria are met. Because of this, we generally know the timing of the subsequent recognition of license revenue at the time of deferral. Therefore, the amount of license revenue to be recognized out of the deferred revenue balance in each future quarter is generally predictable, and our total license revenue to be recognized each quarter becomes more predictable as a larger percentage of that revenue comes from the deferred license revenue balance. At September 30, 2009, the deferred license revenue balance was \$556.2 million. As additional license revenue is deferred in future periods, the amounts to be recognized in future periods will increase. Estimated deferred license revenue that we expect to recognize in future periods as of September 30, 2009 is (in millions):

Remainder of fiscal 2010	\$187.2
Fiscal 2011	\$203.8

Software Maintenance Revenue

Maintenance revenue for the quarter ended September 30, 2009 was \$257.4 million, an increase of \$1.9 million, or 0.7%, over the prior year quarter. Maintenance revenue for the six months ended September 30, 2009 was \$508.6 million, a decrease of \$1.2 million, or 0.2%, from the prior year period. These changes were attributable to nominal increases in ESM and MSM maintenance revenue for the quarter ended September 30, 2009 and nominal decreases in ESM and MSM maintenance revenue for the six months ended September 30, 2009, as discussed below.

ESM maintenance revenue represented \$138.9 million, or 54.0%, and \$274.4 million, or 54.0%, of our total maintenance revenue for the quarter and six months ended September 30, 2009, respectively, and \$138.1 million, or 54.1%, and \$274.8 million, or 53.9%, of our total maintenance revenue for the quarter and six months ended September 30, 2008, respectively. ESM maintenance revenue for the quarter ended September 30, 2009 increased by \$0.8 million, or 0.6%, over the prior year quarter. ESM maintenance revenue for the six months ended September 30, 2009 decreased by \$0.4 million, or 0.1%, from the prior year period.

MSM maintenance revenue represented \$118.5 million, or 46.0%, and \$234.2 million, or 46.0%, of our total maintenance revenue for the quarter and six months ended September 30, 2009, respectively, and \$117.4 million, or 45.9% and \$235.0 million, or 46.1%, of our total maintenance revenue for the quarter and six months ended September 30, 2008, respectively. MSM maintenance revenue for the quarter ended September 30, 2009 increased by \$1.1 million, or 0.9%, over the prior year quarter. MSM maintenance revenue for the six months ended September 30, 2009 decreased by \$0.8 million, or 0.3%, from the prior year period.

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Deferred Maintenance Revenue

At September 30, 2009, the deferred maintenance revenue balance was \$1,127.1 million. As new customers are added and/or current contracts are renewed and additional maintenance revenue is deferred in future periods, the amounts to be recognized in future periods will increase. Estimated deferred maintenance revenue that we expect to recognize in future periods at September 30, 2009 is (in millions):

Remainder of fiscal 2010	\$379.9
Fiscal 2011	\$406.0
Fiscal 2012 and thereafter	\$341.2

Domestic vs. International Revenue

	Quarter Ended			Six Months Ended				
	September 30,		% Change	September 30,		% Change		
	2009	2008		2009	2008			
	(In millions)			(In millions)				
License:								
Domestic	\$90.6	\$98.5	(8.0)	)%	\$176.7	\$171.0	3.3	%
International	<u>83.4</u>	<u>77.0</u>	8.3	%	<u>164.3</u>	<u>153.9</u>	6.8	%
Total license revenue	<u>174.0</u>	<u>175.5</u>	(0.9)	)%	<u>341.0</u>	<u>324.9</u>	5.0	%
Maintenance:								
Domestic	140.6	138.0	1.9	%	279.0	275.9	1.1	%
International	<u>116.8</u>	<u>117.5</u>	(0.6)	)%	<u>229.6</u>	<u>233.9</u>	(1.8))%
Total maintenance revenue	<u>257.4</u>	<u>255.5</u>	0.7	%	<u>508.6</u>	<u>509.8</u>	(0.2))%
Professional services:								

Domestic	14.2	15.9	(10.7)	)%	30.1	29.8	1.0	%
International	16.2	19.8	(18.2)	)%	32.1	39.7	(19.1))%
Total professional services revenue	30.4	35.7	(14.8)	)%	62.2	69.5	(10.5))%
Total domestic revenue	245.4	252.4	(2.8)	)%	485.8	476.7	1.9	%
Total international revenue	216.4	214.3	1.0	%	426.0	427.5	(0.4))%
Total revenue	<u>\$461.8</u>	<u>\$466.7</u>	(1.0)	)%	<u>\$911.8</u>	<u>\$904.2</u>	0.8	%

We estimate that the effect of foreign currency exchange rate fluctuations on our international revenue resulted in an approximate \$5.8 million and \$18.2 million reduction in revenue for the quarter and six months ended September 30, 2009, respectively, compared to the prior year periods, on a constant currency basis.

Domestic License Revenue

Domestic license revenue represented \$90.6 million, or 52.1%, and \$176.7 million, or 51.8%, of our total license revenue for the quarter and six months ended September 30, 2009, respectively, and \$98.5 million, or 56.1%, and \$171.0 million, or 52.6%, of our total license revenue for the quarter and six months ended September 30, 2008, respectively.

Domestic license revenue for the quarter ended September 30, 2009 decreased by \$7.9 million, or 8.0%, from the prior year quarter, due to a \$7.7 million decrease in ESM license revenue and a \$0.2 million decrease in MSM license revenue.

Domestic license revenue for the six months ended September 30, 2009 increased by \$5.7 million, or 3.3%, over the prior year period, due to a \$7.0 million increase in MSM license revenue partially offset by a \$1.3 million decrease in ESM license revenue.

International License Revenue

International license revenue represented \$83.4 million, or 47.9%, and \$164.3 million, or 48.2%, of our total license revenue for the quarter and six months ended September 30, 2009, respectively, and \$77.0 million, or 43.9%, and \$153.9 million, or 47.4% of our total license revenue for the quarter and six months ended September 30, 2008, respectively.

International license revenue for the quarter ended September 30, 2009 increased by \$6.4 million, or 8.3%, over the prior year quarter, due to a \$9.1 million increase in ESM license revenue, partially offset by a \$2.7 million decrease in MSM license revenue. The ESM license revenue increase was attributable to increases of \$7.7 million and \$2.7 million in our Europe, Middle East and

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Africa (EMEA) and Canada markets, respectively, partially offset by a \$1.3 million net decrease in our other international markets. The MSM license revenue decrease was attributable to decreases of \$2.1 million and \$1.4 million in our EMEA and Latin America markets, respectively, offset by a \$0.8 million net increase in our other international markets.

International license revenue for the six months ended September 30, 2009 increased by \$10.4 million, or 6.8%, over the prior year period, due to a \$9.7 million increase in ESM license revenue and a \$0.7 million increase in MSM license revenue. The ESM license revenue increase was attributable to increases of \$5.6 million, \$3.6 million and \$1.9 million in our EMEA, Canada and Asia Pacific markets, respectively, partially offset by a \$1.4 million decrease in our Latin America market. The MSM license revenue increase was attributable to a \$2.0 million increase in our Latin America market, offset by a combined \$1.3 million decrease in our other international markets.

Domestic Maintenance Revenue

Domestic maintenance revenue represented \$140.6 million, or 54.6%, and \$279.0 million, or 54.9%, of our total maintenance revenue for the quarter and six months ended September 30, 2009, respectively, and \$138.0 million, or 54.0%, and \$275.9 million, or 54.1%, of our total maintenance revenue for the quarter and six months ended September 30, 2008, respectively.

Domestic maintenance revenue for the quarter ended September 30, 2009 increased by \$2.6 million, or 1.9%, over the prior year quarter, due to a \$2.9 million increase in MSM maintenance revenue offset by a \$0.3 million decrease in ESM maintenance revenue.

Domestic maintenance revenue for the six months ended September 30, 2009 increased by \$3.1 million, or 1.1%, over the prior year period, due to a \$2.2 million increase in MSM maintenance revenue and \$0.9 million increase in ESM maintenance revenue.

International Maintenance Revenue

International maintenance revenue represented \$116.8 million, or 45.4%, and \$229.6 million, or 45.1%, of our total maintenance revenue for the quarter and six months ended September 30, 2009, respectively, and \$117.5 million, or 46.0%, and \$233.9 million, or 45.9%, of our total maintenance revenue for the quarter and six months ended September 30, 2008, respectively.

International maintenance revenue for the quarter ended September 30, 2009 decreased by \$0.7 million, or 0.6%, from the prior year quarter, due to a \$1.9 million decrease in MSM maintenance revenue, partially offset by a \$1.2 million increase in ESM maintenance revenue. The MSM maintenance revenue decrease was attributable to a \$2.7 million decrease in our EMEA market, partially offset by a \$0.8 million net increase in our other international markets. The ESM maintenance revenue increase was attributable to a \$0.6 million increase in our Asia Pacific market and a \$0.6 million net increase in our other international markets.

International maintenance revenue for the six months ended September 30, 2009 decreased by \$4.3 million, or 1.8%, from the prior year period, due to a \$3.1 million decrease in MSM maintenance revenue and a \$1.2 million decrease in ESM maintenance revenue. The MSM maintenance revenue decrease was attributable to a \$3.5 million decrease in our EMEA market, partially offset by a \$0.4 million net increase in our other international markets. The ESM maintenance revenue decrease was attributable to a \$1.6 million decrease in our EMEA market, partially offset by a \$0.4 million net increase in our other international markets.

Professional Services Revenue

Professional services revenue for the quarter ended September 30, 2009 decreased by \$5.3 million, or 14.8%, from the prior year quarter, which is reflective of a \$3.6 million, or 18.2%, decrease in international professional services revenue and a \$1.7 million, or 10.7%, decrease in domestic professional services revenue quarter over quarter. Professional services revenue for the six months ended September 30, 2009 decreased by \$7.3 million, or 10.5%, from the prior year period, which is reflective of a \$7.6 million, or 19.1%, decrease in international professional services revenue, partially offset by a \$0.3 million, or 1.0%, increase in domestic professional services revenue period over period. These professional service revenue decreases are attributable to decreases in implementation, consulting and education service revenues period over period.

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Operating Expenses

	Quarter Ended			Six Months Ended		
	September 30,			September 30,		
	2009	2008	% Change	2009	2008	% Change
	(In millions)			(In millions)		
Cost of license revenue	\$26.5	\$29.5	(10.2)%	\$54.6	\$57.1	(4.4)%
Cost of maintenance revenue	36.7	46.6	(21.2)%	74.0	87.1	(15.0)%
Cost of professional services revenue	31.8	36.3	(12.4)%	65.0	71.5	(9.1)%
Selling and marketing expenses	130.6	136.7	(4.5)%	256.5	277.1	(7.4)%
Research and development expenses	41.7	53.7	(22.3)%	95.4	115.5	(17.4)%
General and administrative expenses	51.2	48.2	6.2 %	105.8	101.7	4.0 %
In-process research and development	–	–	–	–	50.3	(100.0)%
Amortization of intangible assets	8.0	8.7	(8.0)%	16.0	17.2	(7.0)%
Severance, exit costs and related charges	0.5	1.5	(66.7)%	1.5	7.9	(81.0)%
Total operating expenses	<u>\$327.0</u>	<u>\$361.2</u>	(9.5)%	<u>\$668.8</u>	<u>\$785.4</u>	(14.8)%

We estimate that the effect of foreign currency exchange rate fluctuations on our international operating expenses resulted in an approximate \$5.3 million and \$24.5 million reduction in operating expenses for the quarter and six months ended September 30, 2009, respectively, as compared to the prior year periods, on a constant currency basis.

Cost of License Revenue

Cost of license revenue consists primarily of the amortization of capitalized software costs for internally developed products, the amortization of acquired technology for products acquired through business combinations, license-based royalties to third parties and production and distribution costs for initial product licenses. For the quarter and six months ended September 30, 2009, cost of license revenue was \$26.5 million and \$54.6 million, respectively, representing 5.7% and 6.0% of total revenue and 15.2% and 16.0% of license revenue, respectively. For the quarter and six months ended September 30, 2008, cost of license revenue was \$29.5 million and \$57.1 million, respectively, representing 6.3% and 6.3% of total revenue and 16.8% and 17.6% of license revenue, respectively.

Cost of license revenue for the quarter ended September 30, 2009 decreased by \$3.0 million, or 10.2%, over the prior year quarter, primarily due to the conclusion of the amortization of certain acquired technology.

Cost of license revenue for the six months ended September 30, 2009 decreased by \$2.5 million, or 4.4%, over the prior year period, primarily due to the conclusion of the amortization of certain acquired technology.

Cost of Maintenance Revenue

Cost of maintenance revenue consists primarily of the costs associated with customer support and research and development personnel that provide maintenance, enhancement and support services to our customers. For the quarter and six months ended September 30, 2009, cost of maintenance revenue was \$36.7 million and \$74.0 million, respectively, representing 7.9% and 8.1% of total revenue and 14.3% and 14.5% of maintenance revenue, respectively. For the quarter and six months ended September 30, 2008, cost of maintenance revenue was \$46.6 million and \$87.1 million, respectively, representing 10.0% and 9.6% of total revenue and 18.2% and 17.1% of maintenance revenue, respectively.

Cost of maintenance revenue for the quarter ended September 30, 2009 decreased by \$9.9 million, or 21.2%, from the prior year quarter. This decrease was attributable primarily to a \$9.4 million reduction in personnel and related costs, due principally to a decrease in resources dedicated to maintenance projects and a period over period decrease in customer support headcount.

Cost of maintenance revenue for the six months ended September 30, 2009 decreased by \$13.1 million, or 15.0%, from the prior year period. This decrease was attributable primarily to an \$11.4 million reduction in personnel and related costs, due principally to a decrease in resources dedicated to maintenance projects and a period over period decrease in customer support headcount, and a \$1.0 million decrease in share-based compensation expense.

Cost of Professional Services Revenue

Cost of professional services revenue consists primarily of salaries, related personnel costs and third-party fees associated with implementation, integration and education services that we provide to our customers and the related infrastructure to support this business. For the quarter and six months ended September 30, 2009, cost of professional services revenue was \$31.8 million and \$65.0 million, respectively, representing 6.9% and 7.1% of total revenue and 104.6% and 104.5% of professional services revenue,

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respectively. For the quarter and six months ended September 30, 2008, cost of professional services revenue was \$36.3 million and \$71.5 million, respectively, representing 7.8% and 7.9% of total revenue and 101.7% and 102.9% of professional services revenue, respectively.

Cost of professional services revenue for the quarter ended September 30, 2009 decreased by \$4.5 million, or 12.4%, from the prior year quarter. This decrease was attributable primarily to a decrease in third party subcontracting fees.

Cost of professional services revenue for the six months ended September 30, 2009 decreased by \$6.5 million, or 9.1%, from the prior year period. This decrease was attributable primarily to a \$5.8 million decrease in third party subcontracting fees.

Selling and Marketing Expenses

Selling and marketing expenses consist primarily of salaries, related personnel costs, sales commissions and costs associated with advertising, marketing, industry trade shows and sales seminars. For the quarter and six months ended September 30, 2009, selling and marketing expenses were \$130.6 million and \$256.5 million, respectively, representing 28.3% and 28.1% of total revenue, respectively. For the quarter and six months ended September 30, 2008, selling and marketing expenses were \$136.7 million and \$277.1 million, respectively, representing 29.3% and 30.6% of total revenue, respectively.

Selling and marketing expenses for the quarter ended September 30, 2009 decreased by \$6.1 million, or 4.5%, from the prior year quarter. This decrease was attributable to a \$7.6 million decrease in sales personnel costs and related variable compensation expense, partially offset by a net \$1.5 million increase in other expenses.

Selling and marketing expenses for the six months ended September 30, 2009 decreased by \$20.6 million, or 7.4%, from the prior year period. This decrease was attributable to an \$17.6 million decrease in sales personnel costs and related variable compensation expense and a \$4.1 million decrease in marketing campaign expenditures, partially offset by a net \$1.1 million increase in other expenses.

Research and Development Expenses

Research and development expenses consist primarily of salaries and personnel costs related to software developers and development support personnel, including software programmers, testing and quality assurance personnel and writers of technical documentation, such as product manuals and installation guides. These expenses also include computer hardware and software costs, telecommunications costs and personnel costs associated with our development and production labs. For the quarter and six months ended September 30, 2009, research and development expenses were \$41.7 million and \$95.4 million, respectively, representing 9.0% and 10.5% of total revenue, respectively. For the quarter and six months ended September 30, 2008, research and development expenses were \$53.7 million and \$115.5 million, respectively, representing 11.5% and 12.8% of total revenue, respectively.

Research and development expenses for the quarter ended September 30, 2009 decreased by \$12.0 million, or 22.3%, from the prior year quarter. This decrease was attributable primarily to a \$12.5 million increase in research and development personnel and related costs allocated to software development projects that were capitalized.

Research and development expenses for the six months ended September 30, 2009 decreased by \$20.1 million, or 17.4%, from the prior year period. This decrease was attributable to a \$12.9 million increase in research and development personnel and related costs allocated to software development projects that were capitalized, a \$6.3 million decrease in research and development personnel and related costs associated with lower average headcount levels and a higher percentage of headcount in lower cost regions and a \$2.2 million decrease in share-based compensation expense, partially offset by a net \$1.3 million increase in other expenses.

General and Administrative Expenses

General and administrative expenses consist primarily of salaries and related personnel costs of executive management, finance and accounting, facilities management, legal and human resources. Other costs included in general and administrative expenses include fees paid for outside accounting and legal services, consulting projects and insurance. For the quarter and six months ended September 30, 2009, general and administrative expenses were \$51.2 million and \$105.8 million, respectively, representing 11.1% and 11.6% of total revenue, respectively. For

the quarter and six months ended September 30, 2008, general and administrative expenses were \$48.2 million and \$101.7 million, respectively, representing 10.3% and 11.2% of total revenue, respectively.

General and administrative expenses for the quarter ended September 30, 2009 increased by \$3.0 million, or 6.2%, over the prior year quarter. This increase was attributable primarily to a \$2.9 million increase in incentive compensation and a \$1.2 million increase in share-based compensation expense, partially offset by a net \$1.1 million decrease in other expenses consisting principally of reduced consulting and professional fees.

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General and administrative expenses for the six months ended September 30, 2009 increased by \$4.1 million, or 4.0%, over the prior year period. This increase was attributable primarily to a \$2.0 million increase in share-based compensation expense, a \$1.6 million increase in incentive compensation and a net \$0.5 million increase in other expenses.

In-process Research and Development

The amounts allocated to in-process research and development (IPR&D) represent the estimated fair values, based on risk-adjusted cash flows and historical costs expended, related to acquired core research and development projects that were incomplete and had neither reached technological feasibility nor been determined to have an alternative future use pending achievement of technological feasibility as of the date of acquisition. During the six months ended September 30, 2008, we expensed acquired IPR&D totaling \$50.3 million in connection with our acquisition of BladeLogic, Inc. (BladeLogic).

Amortization of Intangible Assets

Amortization of intangible assets consists primarily of the amortization of finite-lived customer contracts and relationships and tradenames recorded in connection with acquisitions consummated in prior years. Amortization of intangible assets for the quarter ended September 30, 2009 decreased by \$0.7 million, or 8.0%, from the prior year quarter. This decrease was due to a \$1.1 million reduction in amortization associated with intangible assets acquired in connection with earlier acquisitions that became fully amortized, partially offset by a \$0.4 million in additional amortization associated with intangibles acquired in connection with our fiscal 2010 and 2009 acquisitions. Amortization of intangible assets for the six months ended September 30, 2009 decreased by \$1.2 million, or 7.0%, from the prior year period. This decrease was due to a \$2.9 million reduction in amortization associated with intangible assets acquired in connection with earlier acquisitions that became fully amortized, partially offset by \$1.7 million in additional amortization associated with intangibles acquired in connection with our fiscal 2010 and 2009 acquisitions.

Severance, Exit Costs and Related Charges

We have undertaken various restructuring and process improvement initiatives in recent years through the realignment of resources to focus on growth areas and the simplification, standardization and automation of key business processes. Additionally, we undertook general workforce reductions in the latter half of fiscal 2009 and in the first half of fiscal 2010, principally as a result of macroeconomic conditions. Related to these collective actions, we recorded charges of \$0.5 million and \$1.5 million during the quarter and six months ended September 30, 2009, respectively, and \$1.5 million and \$7.9 million during the quarter and six months ended September 30, 2008, respectively. These expenses were attributable primarily to identified workforce reductions and associated cash separation packages paid or accrued by us. While we will reduce future operating expenses as a result of these actions, we anticipate that these reductions will be substantially offset by incremental personnel-related expenses due to headcount growth in strategic areas. We will continue to evaluate additional actions that may be necessary in the future to achieve our business goals.

Other Income (Loss), Net

Other income (loss), net, consists primarily of interest earned, realized gains and losses on investments and interest expense on our \$300.0 million of face value senior unsecured notes due 2018 (the Notes) and capital leases. Other income (loss), net, was \$(2.2) million and \$(2.9) million for the quarter and six months ended September 30, 2009, respectively, and was \$3.2 million and \$11.3 million for the quarter and six months ended September 30, 2008, respectively.

Other income (loss), net, for the quarter ended September 30, 2009 decreased by \$5.4 million, or 168.8%, from the prior year quarter. This decrease was attributable primarily to a \$5.6 million decrease in interest income, resulting from lower average investment yields, partially offset by slightly higher average investment balances.

Other income (loss), net, for the six months ended September 30, 2009 decreased by \$14.2 million, or 125.7%, from the prior year period. This decrease was attributable primarily to a \$12.7 million decrease in interest income, resulting from lower average investment yields.

Income Taxes

We recorded income tax expense of \$38.4 million and \$63.5 million for the quarter and six months ended September 30, 2009, respectively, resulting in an effective tax rate of 29.0% and 26.4%, respectively. Income tax expense was \$38.9 million and \$59.1 million for the quarter and six months ended September 30, 2008, respectively, resulting in an effective tax rate of 35.8% and 45.4%, respectively. The effective tax rate is impacted primarily by the worldwide mix of consolidated earnings before taxes and our policy of indefinitely re-investing earnings from certain low tax jurisdictions, additional accruals and changes in estimates related to our uncertain tax positions, benefits associated with income attributable to both domestic production activities and the extraterritorial income exclusion and the non-deductible write-off of IPR&D expense associated with certain acquisitions. The higher effective tax rate for the six months ended September 30, 2008 was attributable primarily to the non-deductible write-off of IPR&D expense in connection with our BladeLogic acquisition.

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Liquidity and Capital Resources

At September 30, 2009, we had \$1.3 billion in cash, cash equivalents and investments, approximately 43% of which was held by our international subsidiaries and was largely generated from our international operations. Our international operations have generated \$258.6 million of earnings that we have determined will be invested indefinitely in those operations. Were such earnings to be repatriated, we would incur a United States federal income tax liability that is not currently accrued in our financial statements.

At September 30, 2009, we held auction rate securities with a par value of \$70.4 million, of which securities with a par value of \$53.1 million were classified as available-for-sale and a par value of \$17.3 million were classified as trading. The total estimated fair value was \$60.9 million and \$60.0 million at September 30, 2009 and March 31, 2009, respectively. Our auction rate securities consist entirely of bonds issued by public agencies that are backed by student loans with at least a 97% guarantee by the federal government under the United States Department of Education's Federal Family Education Loan Program. Substantially all of these bonds are currently rated investment grade by Moody's or Standard and Poor's. Auctions for these securities began failing in early 2008 and have continued to fail through October 2009, resulting in our continuing to hold such securities and the issuers paying interest at the maximum contractual rates. We do not believe that any of the underlying issuers of these auction rate securities are presently at risk or that the underlying credit quality of the assets backing the auction rate security investments has been impacted by the reduced liquidity of these investments. Based on our current ability to access cash and other short-term investments, our expected operating cash flows, and other sources of cash that we expect to be available, we do not anticipate the recent lack of liquidity of these investments to have a material impact on our business strategy, financial condition, results of operations or cash flows. Additionally, in November 2008, we entered into a put agreement with a bank from which we have acquired certain auction rate securities with a remaining par value of \$17.3 million and an estimated fair value of \$15.4 million at September 30, 2009. Under the terms of the agreement, we have the ability to put these auction rate securities to the bank at par value at any time during the period beginning June 30, 2010 and ending June 30, 2012. The bank also has the right to repurchase these auction rate securities at par value on or before June 30, 2010.

We believe that our existing cash and investment balances and funds generated from operating and investing activities will be sufficient to meet our working and other capital requirements for the foreseeable future. In the normal course of business, we evaluate the merits of acquiring technology or businesses, or establishing strategic relationships with or investing in these businesses. We may elect to use available cash and investments to fund such activities in the future. In the event additional needs for cash arise, we might find it advantageous to utilize third-party financing sources based on factors such as our then available cash and its source (i.e., cash held in the United States versus international locations), the cost of financing and our internal cost of capital.

We may from time to time seek to repurchase or retire securities, including outstanding debt and equity securities, in open market repurchases, unsolicited or solicited privately negotiated transactions or in such other manner as will comply with the provisions of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Such repurchases or exchanges, if any, will depend on a number of factors, including, but not limited to, prevailing market conditions, our liquidity requirements and contractual restrictions, if applicable. The amount of repurchases, which is subject to management discretion, may be material and may change from period to period.

Our cash flows for the six months ended September 30, 2009 and 2008 were:

	Six Months Ended	
	September 30,	
	2009	2008
	(In millions)	
Net cash provided by operating activities	\$248.7	\$226.6
Net cash used in investing activities	(71.2)	(842.5)

Net cash provided by (used in) financing activities	(89.1)	157.0
Effect of exchange rate changes on cash and cash equivalents	<u>26.1</u>	<u>(19.1)</u>
Net change in cash and cash equivalents	<u>\$114.5</u>	<u>\$(478.0)</u>

Cash Flows from Operating Activities

Our primary method for funding operations and growth has been through cash flows generated from operating activities. Net cash provided by operating activities for the six months ended September 30, 2009 increased by \$22.1 million over the prior year period, reflective of an increase in net earnings before non-cash expenses (principally depreciation, amortization, share-based compensation expense and IPR&D) offset by the net impact of working capital changes.

Cash Flows from Investing Activities

Net cash used in investing activities for the six months ended September 30, 2009 decreased by \$771.3 million from the prior year period. This decrease was attributable primarily to cash expended in the prior period for our acquisition of BladeLogic and a period over period increase in proceeds from maturities and sales of investments, partially offset by a period over period increase in investment purchases.

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Cash Flows from Financing Activities

Net cash used in financing activities for the six months ended September 30, 2009 was \$89.1 million, as compared to net cash provided by financing activities of \$157.0 million during the six months ended September 30, 2008. This difference was attributable primarily to net proceeds received related to the issuance of our Notes in the prior year period and a period over period decrease in cash received from stock option exercises, partially offset by a period over period decrease in treasury stock purchases.

Treasury Stock Purchases

Our Board of Directors had previously authorized a total of \$3.0 billion to repurchase common stock. During the quarter and six months ended September 30, 2009, we purchased 2.1 million and 3.6 million shares, respectively, for \$75.0 million and \$125.0 million, respectively. In addition, during the quarter and six months ended September 30, 2009, we repurchased 0.1 million and 0.2 million shares, respectively, for \$2.4 million and \$7.3 million, respectively, to satisfy employee tax withholding obligations upon the lapse of restrictions on nonvested stock grants. At September 30, 2009, approximately \$219.8 million remains authorized in the stock repurchase program, which does not have an expiration date. The repurchase of stock will continue to be funded primarily with cash generated from domestic operations and, therefore, affects our overall domestic versus international liquidity balances. See *PART II, Item 2. Unregistered Sales of Equity Securities and Use of Proceeds* below for a monthly detail of treasury stock purchases for the quarter ended September 30, 2009.

Critical Accounting Policies

The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses. We base our estimates on historical experience and various other assumptions that are believed to be reasonable under the circumstances; the results of which form the basis for making judgments about amounts and timing of revenue and expenses, the carrying values of assets and the recorded amounts of liabilities that are not readily apparent from other sources. Actual results may differ from these estimates and such estimates may change if the underlying conditions or assumptions change. We have discussed the development and selection of the critical accounting policies with the Audit Committee of our Board of Directors, and the Audit Committee has reviewed our related disclosures. The critical accounting policies related to the estimates and judgments are discussed in our Annual Report on Form 10-K for the year ended March 31, 2009 under Management's Discussion and Analysis of Financial Condition and Results of Operations. There have been no changes to our critical accounting policies during the six months ended September 30, 2009.

Recently Adopted Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (FASB) issued a new accounting standard which defines fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. In February 2008, the FASB delayed the effective date of this standard to April 1, 2009 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (that is, at least annually). We adopted the new standard relating to assets and liabilities recognized or disclosed in the financial statements at fair value on a recurring basis on April 1, 2008, and on April 1, 2009 with regard to non-financial assets and non-financial liabilities. The adoption of these provisions did not have a material impact on our financial position, results of operations or cash flows.

In December 2007, the FASB issued a revision to previously issued accounting literature which changes the accounting for business combinations including: (i) the measurement of acquirer shares issued in consideration for a business combination, (ii) the recognition of contingent consideration, (iii) the accounting for preacquisition gain and loss contingencies, (iv) the recognition of capitalized in-process research and development (IPR&D), (v) the accounting for acquisition-related restructuring costs, (vi) the treatment of acquisition-related transaction costs, and (vii) the recognition of changes in the acquirer's income tax valuation allowance. This guidance applies prospectively to all business combinations beginning in fiscal 2010. The impact of adoption on our financial position, results of operations or cash flows will be dependent upon the nature and terms of business combinations that we may consummate in fiscal 2010 and thereafter.

In April 2008, the FASB issued guidance that amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In June 2008, the FASB issued guidance clarifying that unvested share-based payment awards with a right to receive nonforfeitable dividends are participating securities and providing information on how to allocate earnings to participating securities to allow computation of basic and diluted earnings per share using the two-class method. This guidance was effective for us beginning in fiscal 2010 and requires retrospective application for periods prior to the effective date. The adoption of this guidance did not have a material impact on our computation of earnings per share. Refer to Note 7 for further information related to our computation of earnings per share.

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In April 2009, the FASB issued guidance for estimating fair value when the volume or level of activity in a market for an asset or liability has decreased significantly. This guidance also provides information on identifying circumstances that indicate a transaction is not orderly (i.e., a forced liquidation or distressed sale). This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In April 2009, the FASB issued guidance that applies to investments in debt securities for which other-than-temporary impairments may be recorded. If an entity's management asserts that it does not have the intent to sell a debt security and it is more likely than not that it will not be required to sell the security before recovery of its cost basis, then an entity may separate other-than temporary impairments into two components: (i) the amount related to credit losses (recorded in earnings) and (ii) all other amounts (recorded in other comprehensive income). This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In April 2009, the FASB issued guidance that requires disclosures about fair value of financial instruments in interim financial statements. This guidance was effective for us beginning in fiscal 2010, and because it applies only to financial statement disclosures, it did not have any impact on our financial position, results of operations or cash flows.

In May 2009, the FASB issued guidance that provides general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued. This topic was previously addressed only in auditing literature. This guidance was effective for us beginning in fiscal 2010 and did not have a material impact on our financial position, results of operations or cash flows.

In July 2009, the FASB released the final version of its new "Accounting Standards Codification" (Codification) as the single authoritative source for GAAP. While not intended to change GAAP, the Codification significantly changes the way in which the accounting literature is organized, combining all authoritative standards into a comprehensive, topically organized database. All existing accounting standard documents were superseded and all other accounting literature not included in the Codification is considered nonauthoritative. The Codification is effective for interim and annual periods ending on or after September 15, 2009. We adopted the Codification in our interim financial statements for the second quarter of fiscal 2010, which had no impact on our financial position, results of operations or cash flows.

Recently Issued Accounting Pronouncements

In June 2009, the FASB issued new guidance on accounting for transfers of financial assets, which amended previous GAAP literature. The amendment includes: (i) elimination of the qualifying special-purpose entity concept, (ii) a new unit of account definition that must be met for transfers of portions of financial assets to be eligible for sale accounting, (iii) clarifications and changes to the derecognition criteria for a transfer to be accounted for as a sale, (iv) a change to the amount of recognized gain or loss on a transfer of financial assets accounted for as a sale when beneficial interests are received by the transferor, and (v) extensive new disclosures. This guidance will be effective for us beginning in fiscal 2011, and we have not determined whether its adoption will have a material effect on our financial position, results of operations or cash flows.

Available Information

Our internet website address is <http://www.bmc.com>. Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act) are available through the investor relations page of our internet website free of charge as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (SEC). Our internet website and the information contained therein or connected thereto are not intended to be incorporated into this Quarterly Report on Form 10-Q.

Item 3. *Quantitative and Qualitative Disclosures about Market Risk*

We are exposed to a variety of risks, including foreign currency exchange rate fluctuations and changes in the market value of our investments in marketable securities. In the normal course of business, we employ established policies and procedures to manage these risks including the use of derivative instruments. There have been no material changes in our foreign exchange risk management strategy or our

portfolio management strategy subsequent to March 31, 2009; therefore, the risk profile of our market risk sensitive instruments remains substantially unchanged from the description in our Annual Report on Form 10-K for the year ended March 31, 2009.

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Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Based on management's evaluation (with the participation of our Chief Executive Officer (CEO) and Chief Financial Officer (CFO)), at the end of the period covered by this report, our CEO and CFO have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), are effective.

Changes in Internal Control over Financial Reporting

There were no changes to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the second quarter of fiscal 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

In previous public filings, including our Quarterly Report for the period ended June 30, 2009, we disclosed and described pending class action litigation against our wholly-owned subsidiary, Marimba, Inc., certain of Marimba's officers and directors and certain underwriters of Marimba's initial public offering. On April 2, 2009, a stipulation and agreement of settlement between the plaintiffs, issuer defendants and underwriter defendants was submitted to the U.S. District Court for the Southern District of New York (the Court) for preliminary approval. This settlement requires no financial contribution from Marimba or us. The Court granted the plaintiffs' motion for preliminary approval and preliminarily certified the settlement classes on June 10, 2009. The settlement "fairness" hearing was held on September 10, 2009. The Court granted the plaintiffs' motion for final approval of the settlement and certified the settlement classes on October 5, 2009. The Court determined that the settlement is fair to the class members, approved the settlement and dismissed, with prejudice, the case against Marimba and its individual defendants. An appeal of the final approval decision must be filed within 30 days of the date judgment is entered. Due to the inherent uncertainties of litigation and because the time to file an appeal has not run, the ultimate outcome of the matter is uncertain.

Item 1A. Risk Factors

There have been no material changes to the risk factors as presented in our Annual Report on Form 10-K for the year ended March 31, 2009, dated May 15, 2009.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

Issuer Purchases of Equity Securities

<u>Period</u>	<u>Total Number of Shares Purchased(1)</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of a Publicly Announced Program(2)</u>	<u>Total Dollar Value of Shares Purchased as Part of a Publicly Announced Program(2)</u>	<u>Approximate Dollar Value of Shares that may yet be Purchased Under the Program(2)</u>
July 1-31, 2009	495,890	\$ 33.02	495,400	\$ 16,358,282	\$ 278,510,030
August 1-31, 2009	897,243	\$ 34.72	831,400	28,869,981	\$ 249,640,049
September 1- 30, 2009	814,420	\$ 36.62	813,828	29,803,806	\$ 219,836,243

Total	<u>2,207,553</u>	\$ 35.05	<u>2,140,628</u>	<u>\$ 75,032,069</u>	\$ 219,836,243
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(1)

Includes 66,925 shares of our common stock withheld by us to satisfy employee withholding obligations.

(2)

Our Board of Directors had previously authorized a total of \$3.0 billion to repurchase common stock. At September 30, 2009, approximately \$219.8 million remains authorized in this stock repurchase program and the program does not have an expiration date.

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Item 4. Submission of Matters to a Vote of Security Holders

At our Annual Meeting of Stockholders held on July 28, 2009, the following proposals were adopted by the margins indicated:

	NUMBER OF SHARES	
	VOTED FOR	WITHHELD
1. To elect our nine directors, each to serve until the next annual meeting or until his/her respective successor has been duly elected and qualified.		
Robert E. Beauchamp	141,542,022	25,112,287
B. Garland Cupp	141,820,164	24,834,145
Jon E. Barfield	144,069,198	22,585,111
Gary L. Bloom	104,267,937	62,386,372
Meldon K. Gafner	104,169,909	62,484,400
P. Thomas Jenkins	104,293,705	62,360,604
Louis J. Lavigne, Jr.	144,051,702	22,602,607
Kathleen A. O' Neil	144,038,410	22,615,899
Tom C. Tinsley	103,928,606	62,725,703

	NUMBER OF SHARES		
	VOTED FOR	AGAINST	ABSTAIN
2. To ratify the appointment by our Audit Committee of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending March 31, 2010.	165,981,269	573,502	99,538

NUMBER OF SHARES			
			BROKER
VOTED FOR	AGAINST	ABSTAIN	NON-VOTE

3. To approve an amendment to the BMC Software, Inc. 2007 Incentive Plan to increase the number of shares of our common stock reserved for issuance under such plan by 8,000,000 shares.

116,457,728 38,476,270 154,875 11,565,436

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Item 6. Exhibits

(a)

Exhibits.

- 10.10 Amended and Restated BMC Software, Inc. Short-Term Incentive Performance Award Program.
- 10.11 Amended and Restated BMC Software, Inc. Long-Term Incentive Performance Award Program.
- 10.17 Executive Employment Agreement between BMC Software, Inc. and Hollie S. Castro.
- 31.1 Certification of the Chief Executive Officer of BMC Software, Inc. pursuant to Section 13a-14(a) of the Securities Exchange Act of 1934.
- 31.2 Certification of the Chief Financial Officer of BMC Software, Inc. pursuant to Section 13a-14(a) of the Securities Exchange Act of 1934.
- 32.1 Certification of the Chief Executive Officer of BMC Software, Inc. pursuant to Section 13a-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350.
- 32.2 Certification of the Chief Financial Officer of BMC Software, Inc. pursuant to Section 13a-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350.
- 101.INS XBRL Instance Document.
- 101.SCH XBRL Taxonomy Extension Schema Document.
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document.
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document.

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Exhibits

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- 101.LAB XBRL Taxonomy Extension Label Linkbase Document.
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document.

BMC SOFTWARE, INC.
SHORT-TERM INCENTIVE PERFORMANCE AWARD PROGRAM

[As Amended and Restated Effective as of April 1, 2009]

I. RESTATEMENT AND PURPOSE OF PROGRAM

1.1 Restatement of Program. The Compensation Committee of the Board of Directors of BMC Software, Inc., a Delaware corporation (the “Company”), has previously adopted the BMC Software, Inc. Short-Term Incentive Performance Award Program (the “Program”) to implement in part the Performance Award provisions of the BMC Software, Inc. 2002 Employee Incentive Plan (as amended from time to time, the “2002 Employee Incentive Plan”). Subsequently, the Company adopted the BMC Software, Inc. 2007 Incentive Plan (the “Plan”). The Compensation Committee of the Company’s Board of Directors now desires to amend and restate the Program to update the terms of the Program so that the Program implements in part the Performance Award provisions of the Plan in place of the 2002 Employee Incentive Plan, effective as of April 1, 2009.

1.2 Purpose of Program. The Program is intended to provide a method for attracting, motivating, and retaining key employees to assist in the development and growth of the Company and its Affiliates. The Program and Awards hereunder shall be subject to the terms of the Plan, including the limitations on the maximum value of Awards contained therein.

II. DEFINITIONS AND CONSTRUCTION

2.1 Definitions. Capitalized terms contained in the Program, unless otherwise defined herein, shall have the meaning ascribed to them in the Plan. Where the following words and phrases are used in the Program, they shall have the respective meanings set forth below, unless the context clearly indicates to the contrary:

(a) “Award” means, with respect to each Participant for a Performance Period, such Participant’s opportunity to earn a Payment Amount for such Performance Period upon the satisfaction of the terms and conditions of the Program.

(b) “Award Notice” means a written notice issued by the Company to a Participant evidencing such Participant’s receipt of an Award with respect to a Performance Period.

(c) “Base Amount” means, with respect to each Participant and each Performance Period, the annual base rate of pay paid or payable in cash by the Company and the Affiliates to or for the benefit of the Participant for services rendered or labor performed as in effect on the earlier of (i) the date of the Participant’s termination of employment with the Company if a Change in Control occurs during such Performance Period and the Participant’s employment with the Company terminates on or after the date of such Change in Control and during such Performance Period, (ii) the date of the Participant’s termination of employment with the Company if such termination is by reason of death or Disability, or (iii) the last day of such Performance Period; provided, however, that if “Base Amount” is to be determined pursuant to

clause (i) of this sentence, then in no event shall such amount be less than the Participant's annual base rate of pay paid or payable in cash by the Company and the Affiliates to or for the benefit of the Participant for services rendered or labor performed as in effect on the day immediately preceding the date of the Change in Control. Base Amount shall be determined without reduction for amounts a Participant could have received in cash in lieu of (A) elective deferrals under the Company's Executive Deferred Compensation Plan or (B) elective contributions made on such Participant's behalf by the Company or an Affiliate pursuant to a qualified cash or deferred arrangement (as defined in section 401(k) of the Code) or pursuant to a plan maintained under section 125 of the Code.

(d) "Base Amount Multiplier" means, with respect to each Participant and each Performance Period, a percentage assigned to such Participant by the Committee for such Performance Period.

(e) "Change in Control" means the occurrence of one or more of the following events:

(1) the acquisition, directly or indirectly, by any person or related group of persons (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing at least fifty percent (50%) of the total combined voting power of the Company's outstanding securities;

(2) a change in the composition of the Board such that a majority of the Board members ceases by reason of one or more contested elections for Board membership to be comprised of individuals who either (i) are Board members as of the Effective Date (the "Incumbent Directors") or (ii) after the Effective Date, are elected or nominated for election as Board members by at least a majority of the Incumbent Directors who are still in office at the time such election or nomination is approved by the Board (such individuals will also be considered "Incumbent Directors" upon election to the Board), but excluding for purposes of clauses (i) and (ii) any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest (within the meaning of Rule 14a-11 of the Exchange Act) with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors;

(3) a merger, consolidation, or similar corporate transaction in which the Company's shareholders immediately prior to the transaction do not own more than sixty percent (60%) of the voting stock of the surviving corporation in the transaction;

(4) shareholder approval of the Company's liquidation, dissolution, or sale of substantially all of its assets; or

(5) if the Participant's primary employment duties are with a subsidiary, division, or business unit of the Company, the sale, merger, contribution, transfer or any other transaction in conjunction with which the Company's ownership interest in the subsidiary, division, or business unit decreases below a majority interest.

(f) “Effective Date” means April 1, 2009, as to this amendment and restatement of the Program. The original effective date of the Program was April 1, 2003.

(g) “Eligible Employee” means any individual who is an employee of the Company or an Affiliate.

(h) “Participant” means an Eligible Employee who has received an Award under the Program with respect to a Performance Period pursuant to Section 4.1.

(i) “Participation Fraction” means, with respect to each Participant and each Performance Period:

(i)

if the Participant has been continuously employed by the Company from the first day of such Participant’s commencement of participation in the Program for such Performance Period through the last day of such Performance Period, a fraction, the numerator of which is the number of days in the period beginning on the first day of such Participant’s commencement of participation in the Program for such Performance Period and ending on the last day of such Performance Period (but excluding any days in such period during which the Participant is on a voluntary personal leave of absence), and the denominator of which is the number of days in such Performance Period; and

(ii)

if (A) the Participant’s employment with the Company terminates during such Performance Period by reason of death or Disability or (B) a Change in Control occurs during such Performance Period and the Participant’s employment with the Company terminates on or after the date of such Change in Control and during such Performance Period for any reason whatsoever, a fraction, the numerator of which is the number of days in the period beginning on the first day of such Participant’s commencement of participation in the Program for such Performance Period and ending on the date of such Participant’s termination of employment (but excluding any days in such period during which the Participant is on a voluntary personal leave of absence), and the denominator of which is the number of days in such Performance Period.

(j) “Payment Amount” means, with respect to each Participant and each Award for a Performance Period, an amount that the Participant will be paid under the Program if the Performance Goals with respect to such Award are satisfied; provided, however, that a Participant’s Payment Amount for an Award shall be subject to reduction as provided in Section 6.1 and the Payment Amount for an Award, together with the amount paid pursuant to any Award under the Company’s Long-Term Incentive Program, which may be paid in any calendar year in may not exceed the amount specified in Section 6.5. A Participant’s Payment Amount with respect to a particular Award for a Performance Period shall be determined as provided in the Program Schedule for such Performance Period.

(k) "Performance Goal" means, with respect to each Participant and each Award, a goal that must be achieved by the Company and/or its Affiliates in order for the Participant to receive a Payment Amount with respect to such Award. Performance Goals shall be established by the Committee and, to the extent an Award is intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, shall be based on one or more of the performance measures specified in Section 1.1(t) of the Plan.

(l) "Performance Period" means a period of time established by the Committee over which a Performance Goal shall be measured.

(m) "Program" means this BMC Software, Inc. Short-Term Incentive Performance Award Program, as amended from time to time.

(n) "Program Schedule" means a schedule that constitutes a part of the Program and details certain particulars with respect to the Program and Awards hereunder for one or more Performance Periods. Each Program Schedule shall be adopted by the Committee or shall be prepared by the appropriate officers of the Company based on resolutions, minutes or consents adopted by the Committee. There may be more than one Program Schedule under the Program. Each Program Schedule is incorporated herein by reference and thereby made a part of the Program, and references herein to the Program shall include the Program Schedules.

2.2 Number, Gender, Headings, and Periods of Time. Wherever appropriate herein, words used in the singular shall be considered to include the plural, and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Program, shall be deemed to include the feminine gender. The headings of Articles, Sections, and Paragraphs herein are included solely for convenience. If there is any conflict between such headings and the text of the Program, the text shall control. All references to Articles, Sections, and Paragraphs are to this Program unless otherwise indicated. Any reference in the Program to a period or number of days, weeks, months, or years shall mean, respectively, calendar days, calendar weeks, calendar months, or calendar years unless expressly provided otherwise.

III. ADMINISTRATION

3.1 Administration by the Committee. The Program shall be administered by the Committee.

3.2 Powers of the Committee. The Committee shall supervise the administration and enforcement of the Program according to the terms and provisions hereof and shall have the sole discretionary authority and all of the powers necessary to accomplish these purposes. The Committee shall have all of the powers specified for it under the Program, including, without limitation, the power, right, or authority: (a) to designate an Eligible Employee as a Participant with respect to a Performance Period in accordance with Section 4.1, (b) from time to time to establish rules and procedures for the administration of the Program, which are not inconsistent

with the provisions of the Program or the Plan, and any such rules and procedures shall be effective as if included in the Program, (c) to construe in its discretion all terms, provisions, conditions, and limitations of the Program and any Award, (d) to correct any defect or to supply any omission or to reconcile any inconsistency that may appear in the Program in such manner and to such extent as the Committee shall deem appropriate, and (e) to make all other determinations necessary or advisable for the administration of the Program. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Program or in any Award or Award Notice in the manner and to the extent it shall deem expedient to carry it into effect.

3.3 Committee Decisions Conclusive; Standard of Care. The Committee shall, in its sole discretion exercised in good faith (which, for purposes of this Section 3.3, shall mean the application of reasonable business judgment), make all decisions and determinations and take all actions necessary in connection with the administration of the Program. All such decisions, determinations, and actions by the Committee shall be final, binding, and conclusive upon all persons. The Committee shall not be liable for any action or determination taken or made in good faith or upon reliance in good faith on the records of the Company or information presented to the Committee by the Company's officers, employees, or other persons (including the Company's outside auditors) as to matters the Committee reasonably believes are within such other person's professional or expert competence. If a Participant disagrees with any decision, determination, or action made or taken by the Committee, then the dispute will be limited to whether the Committee has satisfied its duty to make such decision or determination or take such action in good faith. No liability whatsoever shall attach to or be incurred by any past, present or future stockholders, officers or directors, as such, of the Company or any of its Affiliates, under or by reason of the Program or the administration thereof, and each Participant, in consideration of receiving benefits and participating hereunder, expressly waives and releases any and all claims relating to any such liability.

IV. PARTICIPATION AND AWARD NOTICES

4.1 Participation. The Committee shall, from time to time, in its sole discretion designate the Eligible Employees who shall become Participants in the Program with respect to a Performance Period; provided, however, that an Eligible Employee may not be selected for participation in the Program with respect to a particular Performance Period after the last day of such Performance Period. An Award to a Participant shall designate the type of such Award and the Performance Period or Performance Periods to which such Award relates. The Committee shall designate the Base Amount Multiplier that shall apply to each Participant with respect to his participation in the Program. In addition, if the effective date of a Participant's participation in the Program with respect to a Performance Period for which such Participant receives an Award is after the first day of such Performance Period, then the Committee shall designate the effective date of such Participant's participation in the Program with respect to such Performance Period.

4.2 Award Notices. The Company shall provide an Award Notice to each Eligible Employee who becomes a Participant under the Program as soon as administratively feasible after such Eligible Employee becomes a Participant. An Award Notice may specify one or more

Performance Periods and/or types of Awards with respect to which the Participant may participate in the Program. Further, an Award Notice may provide that the Participant shall continue to participate in the Program for successive Performance Periods until notified otherwise by the Committee or, if earlier, the date upon which he terminates employment with the Company. An Award Notice shall specify the Participant's Base Amount Multiplier, which may be changed on a prospective basis by the Committee upon written notice to the Participant at any time prior to the commencement of a Performance Period.

V. PERFORMANCE GOALS

5.1 Establishment of Performance Goals. The Committee shall, in its sole discretion, establish the Performance Goal or Goals that shall apply with respect to each Award for a Performance Period. The Performance Goals with respect to an Award shall be established by the Committee not later than 90 days after the commencement of the period of service to which the Performance Goals relate; provided, however, that if the Performance Goals for an Award with respect to a Performance Period are established on or after the first day of such Performance Period and the Award is intended to qualify as qualified performance-based compensation under Section 162(m) of the Code, then (a) the outcome with respect to the satisfaction of such Performance Goals must be substantially uncertain at the time such Performance Goals are so established and (b) in no event may such Performance Goals be established after 25% of the period of service has elapsed. Further, if the Committee has established Performance Goals with respect to a particular Award, then the Committee may, in its sole discretion, revise any of such Performance Goals so long as such revision is made on or before the last date upon which the Committee could have originally established such Performance Goals as described in the preceding sentence. Subject to the foregoing, the Performance Goals established by the Committee for an Award with respect to a Performance Period may include alternative targets that are contingent on the occurrence or non-occurrence of a specified event. For example, the Performance Goals for an Award may include (i) one set of targets that will apply if an acquisition, divestiture or other specified corporate event occurs during the related Performance Period and (ii) a separate set of targets that will apply if such acquisition, divestiture or other specified corporate event does not occur during such Performance Period.

5.2 Adjustments.

(a) If, prior to the last day of a Performance Period, the Company shall effect a nonreciprocal transaction with the holders of capital stock of the Company that causes the per share value of the shares of the Company's common stock to change, such as a stock dividend, stock split, spin-off, rights offering, or recapitalization through a large, nonrecurring cash dividend (each, an "Equity Restructuring"), then the number of shares as to which an Award pertains shall be proportionately adjusted by the Committee in a manner that reflects such event. The Committee may also proportionally adjust any Performance Goal for an Award with respect to such Performance Period that is based on or measured by a per share of common stock criteria in a manner that reflects such Equity Restructuring; provided, however, that no such adjustment shall be made if the Performance Goals established by the Committee for such Performance Period reflect that the Committee considered such event in establishing such targets.

(b) The Committee may appropriately adjust any evaluation of performance under a Performance Goal to remove the effect of equity compensation expense under FAS 123R, amortization of acquired technology and intangibles, asset write-downs; litigation or claim judgments or settlements; the effect of changes in or provisions under tax law, accounting principles or other such laws or provisions affecting reported results; accruals for reorganization and restructuring programs; discontinued operations; and any items that are extraordinary, unusual in nature, non-recurring or infrequent in occurrence, except where such action would result in the loss of the otherwise available exemption of the Award under Section 162(m) of the Code, if applicable.

VI. AWARD PAYMENTS

6.1 Determinations and Certification by the Committee. As soon as administratively feasible after the end of each Performance Period, the Committee shall determine whether the Performance Goals applicable to Awards for such Performance Period were satisfied and, if such Performance Goals were satisfied in whole or in part, the Payment Amount, if any, for each Participant holding such an Award. Notwithstanding any provision herein to the contrary, at any time prior to the date an amount is paid to or for the benefit of a Participant pursuant to Section 6.2 with respect to a Performance Period, the Committee may, in its sole discretion, reduce the Payment Amount that would otherwise be payable pursuant to Section 6.2 (but not Section 6.3) to such Participant for such Performance Period based on the Committee's view of such Participant's performance and/or the Company's performance during such Performance Period. Any such reduction may be made with respect to one or more Participants and not other Participants, and the magnitude of such reductions may vary among individual Participants. The Committee's determinations pursuant to the preceding provisions of this Section 6.1 for each Performance Period and any other material terms relating to the payment of an Award shall be certified by the Committee in writing and delivered to the Secretary of the Company no later than six weeks after the last day of such Performance Period. For purposes of the preceding sentence, approved minutes of the Committee meeting in which the certification is made shall be treated as a written certification.

6.2 Eligibility for Payment of Awards. Upon the Committee's written certification in accordance with Section 6.1 that a Payment Amount for an Award with respect to a Performance Period is due under the Program, each Participant who has received an Award with respect to such Performance Period and who has remained continuously employed by the Company or an Affiliate (or was on a voluntary personal leave of absence approved by the Company) from the effective date as of which such Participant received such Award until the last day of such Performance Period shall be entitled to the Payment Amount applicable to such Participant's Award for such Performance Period. Further, if a Participant received an Award with respect to such Performance Period and his employment with the Company terminated during such Performance Period by reason of death or Disability, then such Participant shall be entitled to the Payment Amount applicable to such Participant's Award for such Performance

Period; Except as provided in the preceding sentence or in Section 6.3, if a Participant's employment with the Company terminates for any reason whatsoever prior to the last day of a Performance Period, then such Participant shall not be entitled to receive any payment under the Program with respect to his or her Award for such Performance Period. Without limiting the scope of the preceding sentence, if a Participant's employment with the Company terminates during a Performance Period by reason of death or Disability, then such Participant shall not be entitled to any payment under the Program with respect to any Performance Period that begins after the date of such termination of employment. Payment of the amount to which a Participant becomes entitled pursuant to this Section 6.2 shall be made by the Company as soon as administratively feasible after the Committee's written certification that a Payment Amount is due under the Program.

6.3 Change in Control. Upon the occurrence of a Change in Control, the provisions of Sections 6.1 and 6.2 shall cease to apply with respect to Awards for the Performance Period during which such Change in Control occurs and the Company shall be required to pay a Payment Amount (as determined below) for such Awards to each Participant who is employed by the Company on the day immediately prior to the Change in Control (or who is on a voluntary personal leave of absence at such time that has been approved by the Company or who has terminated employment with the Company during such Performance Period and prior to such Change in Control by reason of death or Disability. For purposes of this Section 6.3, the Payment Amount for each Participant who is entitled to a payment pursuant to this Section 6.3 shall be calculated as if the Performance Goal or Goals applicable to an affected Award were achieved at a level specified in the Program Schedule for purposes of this Section 6.3. The Payment Amount determined under this Section 6.3 shall be paid to each eligible Participant as soon as administratively feasible after the last day of the Performance Period in which the Change in Control occurs; provided, however, that (a) with respect to a Participant whose employment with the Company terminated during such Performance Period and prior to the Change in Control by reason of death or Disability, then such payment shall be paid to such Participant as soon as administratively feasible after the date of the Change in Control, and (b) with respect to a Participant whose employment with the Company terminated during such Performance Period and on or after the date of the Change in Control for any reason whatsoever, then such payment shall be paid to such Participant as soon as administratively feasible after the date of his termination of employment.

6.4 Form of Payment of Awards. All payments to be made under the Program to a Participant with respect to an Award for a Performance Period shall be paid in a single lump sum cash payment.

6.5 Maximum Payment Amount. In no event shall the Payment Amount that is paid to or on behalf of any one individual under this Program, together with the amount paid to such individual under the Company's Long-Term Incentive Performance Award Program, exceed \$10,000,000 in any calendar year; provided, however, that all Payment Amounts for Awards hereunder shall be subject to the limitations set forth in Section 2.4 of the Plan.

VII. TERMINATION AND AMENDMENT OF PROGRAM

The Committee may amend the Program at any time and from time to time; provided, however, that the Program may not be amended after the last day of a Performance Period in a manner that would impair the rights of any Participant with respect to any outstanding Award pertaining to such Performance Period without the consent of such Participant. The Committee may at any time prior to the last day of a Performance Period terminate the Program (in its entirety or as it applies to one or more specified Affiliates) with respect to such Performance Period and subsequent Performance Periods. Notwithstanding the foregoing, the Program may not be amended or terminated in contemplation of or in connection with a Change in Control, nor may any Participant's participation herein be terminated in contemplation of or in connection with a Change in Control, unless adequate and effective provision for the making of all payments otherwise payable pursuant to Section 6.3 of the Program with respect to such Change in Control shall be made in connection with any such amendment or termination. The Committee shall remain in existence after the termination of the Program for the period determined necessary by the Committee to facilitate the termination of the Program, and all provisions of the Program that are necessary, in the opinion of the Committee, for equitable operation of the Program during such period shall remain in force.

VIII. MISCELLANEOUS PROVISIONS

8.1 No Effect on Employment Relationship. For all purposes of the Program, a Participant shall be considered to be in the employment of the Company as long as he remains employed on a full-time basis by the Company or any Affiliate. Without limiting the scope of the preceding sentence, it is expressly provided that a Participant shall be considered to have terminated employment with the Company at the time of the termination of the "Affiliate" status under the Program of the entity or other organization that employs the Participant. Nothing in the adoption of the Program, the grant of Awards, or the payment of amounts under the Program shall confer on any person the right to continued employment by the Company or any Affiliate or affect in any way the right of the Company (or an Affiliate, if applicable) to terminate such employment at any time. Unless otherwise provided in a written employment agreement, the employment of each Participant shall be on an at-will basis, and the employment relationship may be terminated at any time by either the Participant or the Participant's employer for any reason whatsoever, with or without cause. Any question as to whether and when there has been a termination of a Participant's employment for purposes of the Program, and the reason for such termination, shall be determined solely by and in the discretion of the Committee, and its determination shall be final, binding, and conclusive on all parties.

8.2 Prohibition Against Assignment or Encumbrance. No Award or other right, title, interest, or benefit hereunder shall ever be assignable or transferable, or liable for, or charged with any of the torts or obligations of a Participant or any person claiming under a Participant, or be subject to seizure by any creditor of a Participant or any person claiming under a Participant. No Participant or any person claiming under a Participant shall have the power to anticipate or dispose of any Award or other right, title, interest, or benefit hereunder in any manner until the same shall have actually been distributed free and clear of the terms of the

Program. Payments with respect to an Award shall be payable only to the Participant (or (a) in the event of a Disability that renders such Participant incapable of conducting his or her own affairs, any payment due under the Program to such Participant shall be made to his or her duly appointed legal representative and (b) in the event of the death of a Participant, any payment due under the Program to such Participant shall be made to his or her estate). The provisions of the Program shall be binding on all successors and permitted assigns of a Participant, including without limitation the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant's creditors.

8.3 Unfunded, Unsecured Program. The Program shall constitute an unfunded, unsecured obligation of the Company to make payments of incentive compensation to certain individuals from its general assets in accordance with the Program. Each Award granted under the Program merely constitutes a mechanism for measuring such incentive compensation and does not constitute a property right or interest in the Company, any Affiliate, or any of their assets. Neither the establishment of the Program, the granting of Awards, nor any other action taken in connection with the Program shall be deemed to create an escrow or trust fund of any kind.

8.4 No Rights of Participant. No Participant shall have any security or other interest in any assets of the Company or any Affiliate or in the securities issued by the Company or any Affiliate as a result of participation in the Program. Participants and all persons claiming under Participants shall rely solely on the unsecured promise of the Company set forth herein, and nothing in the Program, an Award or an Award Notice shall be construed to give a Participant or anyone claiming under a Participant any right, title, interest, or claim in or to any specific asset, fund, entity, reserve, account, or property of any kind whatsoever owned by the Company or any Affiliate or in which the Company or any Affiliate may have an interest now or in the future; but each Participant shall have the right to enforce any claim hereunder in the same manner as a general creditor. Neither the establishment of the Program nor participation hereunder shall create any right in any Participant to make any decision, or provide input with respect to any decision, relating to the business of the Company or any Affiliate.

8.5 Tax Withholding. The Company and the Affiliates shall deduct and withhold, or cause to be withheld, from a Participant's payment made under the Program, or from any other payment to such Participant, an amount necessary to satisfy any and all tax withholding obligations arising under applicable local, state, federal, or foreign laws associated with such payment. The Company and the Affiliates may take any other action as may in their opinion be necessary to satisfy all obligations for the payment and withholding of such taxes.

8.6 No Effect on Other Compensation Arrangements. Nothing contained in the Program or any Participant's Award or Award Notice shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements affecting any Participant. Nothing in the Program shall be construed to affect the provisions of any other compensation plan or program maintained by the Company or any Affiliate.

8.7 Affiliates. The Company may require any Affiliate employing a Participant to assume and guarantee the Company' s obligations hereunder to such Participant, either at all times or solely in the event that such Affiliate ceases to be an Affiliate.

8.8 Governing Law. The Program shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the undersigned officer of the Company acting pursuant to authority granted to her by the Committee has executed this instrument as of the 1st day of September, 2009, effective as of the Effective Date.

BMC SOFTWARE, INC.

By:

/s/ DONNA HARRIGAN

Name: Donna Harrigan

Title: Vice President

BMC SOFTWARE, INC
LONG-TERM INCENTIVE PERFORMANCE AWARD PROGRAM

[As Amended and Restated Effective as of April 1, 2009]

I. RESTATEMENT AND PURPOSE OF PROGRAM

1.1 Restatement of Program. The Compensation Committee of the Board of Directors of BMC Software, Inc., a Delaware corporation (the “Company”), has previously adopted the BMC Software, Inc. Long-Term Incentive Performance Award Program (the “Program”) to implement in part the Performance Award provisions of the BMC Software, Inc. 2002 Employee Incentive Plan (as amended from time to time, the “2002 Employee Incentive Plan”). Subsequently, the Company adopted the BMC Software, Inc. 2007 Incentive Plan (the “Plan”). The Compensation Committee of the Company’s Board of Directors now desires to amend and restate the Program to update the terms of the Program so that the Program implements in part the Performance Award provisions of the Plan in place of the 2002 Employee Incentive Plan, effective as of April 1, 2009.

1.2 Purpose of Program. The Program is intended to provide a method for attracting, motivating, and retaining key employees to assist in the development and growth of the Company and its Affiliates. The Program and Awards hereunder shall be subject to the terms of the Plan, including the limitations on the maximum value of Awards contained therein.

II. DEFINITIONS AND CONSTRUCTION

2.1 Definitions. Capitalized terms contained in the Program, unless otherwise defined herein, shall have the meaning ascribed to them in the Plan. Where the following words and phrases are used in the Program, they shall have the respective meanings set forth below, unless the context clearly indicates to the contrary:

(a) “Award” means, with respect to each Participant for a Performance Period, such Participant’s opportunity to earn a Payment Amount for such Performance Period upon the satisfaction of the terms and conditions of the Program. Awards hereunder constitute Performance Awards (as such term is defined in the Plan) under the Plan.

(b) “Award Notice” means a written notice issued by the Company to a Participant evidencing such Participant’s receipt of an Award with respect to a Performance Period.

(c) “Base Bonus Amount” means, with respect to each Participant for a Performance Period, a target bonus amount assigned to such Participant by the Committee for such Performance Period.

(d) “Change in Control” means the occurrence of one or more of the following events:

(1) the acquisition, directly or indirectly, by any person or related group of persons (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing at least fifty percent (50%) of the total combined voting power of the Company’ s outstanding securities;

(2) a change in the composition of the Board such that a majority of the Board members ceases by reason of one or more contested elections for Board membership to be comprised of individuals who either (i) are Board members as of the Effective Date (the “Incumbent Directors”) or (ii) after the Effective Date, are elected or nominated for election as Board members by at least a majority of the Incumbent Directors who are still in office at the time such election or nomination is approved by the Board (such individuals will also be considered “Incumbent Directors” upon election to the Board), but excluding for purposes of clauses (i) and (ii) any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest (within the meaning of Rule 14a-11 of the Exchange Act) with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors;

(3) a merger, consolidation, or similar corporate transaction in which the Company’ s shareholders immediately prior to the transaction do not own more than sixty percent (60%) of the voting stock of the surviving corporation in the transaction;

(4) shareholder approval of the Company’ s liquidation, dissolution, or sale of substantially all of its assets; or

(5) if the Participant’ s primary employment duties are with a subsidiary, division, or business unit of the Company, the sale, merger, contribution, transfer or any other transaction in conjunction with which the Company’ s ownership interest in the subsidiary, division, or business unit decreases below a majority interest.

(e) “Effective Date” means April 1, 2009, as to this amendment and restatement of the Program. The original effective date of the Program was April 1, 2003.

(f) “Eligible Employee” means any individual who is an employee of the Company or an Affiliate.

(g) “Industry Group” means, with respect to each Performance Period, the companies determined in accordance with the provisions of Article V of this Program for such Performance Period.

(h) “Market Value per Share” means, with respect to each company in the Industry Group and as of any specified date, the closing sales price of such company’ s common stock on that date (or, if there are no sales on that date, the last preceding date on which there was a sale) in the principal securities market in which such common stock is then traded.

(i) “Participant” means an Eligible Employee who has received an Award under the Program with respect to a Performance Period pursuant to Section 4.1.

(j) “Participation Fraction” means, with respect to each Participant for a Performance Period:

(i) subject to clause (iii) below, if the Participant has been continuously employed by the Company from the effective date of his participation in the Program with respect to such Performance Period through the last day of such Performance Period, a fraction, the numerator of which is the number of days in the period beginning on the effective date of the Participant’ s participation in the Program with respect to such Performance Period and ending on the last day of such Performance Period (but excluding any days in such period during which the Participant is on a voluntary personal leave of absence), and the denominator of which is the number of days in such Performance Period;

(ii) subject to clause (iii) below, if the Participant’ s employment with the Company terminates during such Performance Period by reason of death or Disability, a fraction, the numerator of which is the number of days in the period beginning on the effective date of the Participant’ s participation in the Program with respect to such Performance Period and ending on the date of such Participant’ s termination of employment (but excluding any days in such period during which the Participant is on a voluntary personal leave of absence), and the denominator of which is the number of days in such Performance Period; and

(iii) if a Change in Control occurs during such Performance Period and if the Participant has been continuously employed by the Company from the effective date of his participation in the Program with respect to such Performance Period through the day immediately preceding the date upon which a Change in Control occurs (or, if earlier, the date his employment with the Company terminates by reason of death or Disability), a fraction, the numerator of which is the number of days in the period beginning on the effective date of the Participant’ s participation in the Program with respect to such Performance Period and ending on the day immediately preceding the date upon which a Change in Control occurs (or, if earlier, the date his employment with the Company terminates by reason of death or Disability) (but excluding any days in such period during which the Participant is on a voluntary personal leave of absence), and the denominator of which is 1095 (provided, however, that the denominator shall be 549 with respect to the 18-month Performance Period commencing on the Effective Date).

(k) "Payment Amount" means, with respect to each Participant for a Performance Period, an amount equal to (A) such Participant's Base Bonus Amount for such Performance Period multiplied by (B) the Payout Percentage for such Performance Period multiplied by (C) such Participant's Participation Fraction for such Performance Period.

(l) "Payout Percentage" means, with respect to a Performance Period, a percentage determined in accordance with the following schedule based on the percentile ranking of the Company for such Performance Period when comparing the Total Shareholder Return for such Performance Period for all companies comprising the Industry Group as of the last day of such Performance Period:

Company's Percentile Ranking for the Performance Period	Payout Percentage for the Performance Period
80th Percentile or Above	150%
70th Percentile	125%
65th Percentile	100%
50th Percentile	75%
35th Percentile	40%
30th Percentile or Below	0%

Notwithstanding the above schedule, if the percentile ranking actually achieved for the Performance Period exceeds a particular threshold set forth in the left column of the above schedule for the Performance Period but is less than the next highest threshold, then the Payout Percentage for the Performance Period shall be an interpolated percentage that is between the relevant percentages set forth in the above schedule. To illustrate, if the Company ranks in the 75th percentile for a Performance Period, then the Payout Percentage would equal 137.5% for such Performance Period.

(m) "Performance Period" means

(i) with respect to a Participant who receives an initial Award under the Program pursuant to Section 4.1 there shall be two Performance Periods, with the Base Bonus Amount under the Award divided equally between the two Performance Periods. The first of such Performance Periods shall be the 18-month period commencing on the date specified by the Committee in the Award to the Participant, and the second of such Performance Periods shall be the three-year period commencing on the date specified by the Committee in the Award to the Participant; or

(ii) with respect to a Participant who has previously received an Award under the Program pursuant to Section 4.1, the three-year period commencing on the date specified in the Award to the Participant.

(iii) Notwithstanding the foregoing, (A) no new Performance Period shall commence on or after the date upon which a Change in Control occurs, unless otherwise determined by the Committee, and (B) each Performance Period that began prior to the date of a Change in Control and which has not ended as of such date shall be deemed to have ended as of such date as provided in Section 6.3.

(m) “Program” means this BMC Software, Inc. Long-Term Incentive Performance Award Program, as amended from time to time.

(o) “Total Shareholder Return” means, with respect to each company in the Industry Group and each Performance Period, the rate of return over the Performance Period for such company from changes in the price of such company’s common stock and any dividends and other distributions paid by such company with respect to its common stock during the Performance Period, calculated by (i) assuming one share of such company’s common stock is purchased on the first day of the Performance Period at the Market Value per Share of such stock on such date, (ii) adding the aggregate number of shares, if any, of such company’s common stock that would be accumulated over the Performance Period due to stock dividends or stock splits to such initial share of stock, (iii) multiplying the number of shares calculated in clause (ii) by the Market Value per Share of such stock on the last day of the Performance Period and adding to such value the aggregate amount of all, if any, cash dividends paid on a single share of stock during the Performance Period (with the Committee adjusting as appropriate to reflect any changes in capital stock of such company (e.g. stock splits, subdivision or consolidation of shares) that occurs during the Performance Period), and (iv) determining the rate of return over the Performance Period between the Market Value per Share set forth in clause (i) and the value resulting from the computation in clause (iii).

Example 1: Assume that Company X closes at \$1 per share on the first day of the Performance Period. During the Performance Period, Company X declares two cash dividends of \$.10 per share and \$.05 per share. On the last day of the Performance Period, Company X closes at \$2 per share. To determine the rate of return during the Performance Period, compare \$2.15 (\$2 + \$.10 + \$.05) to \$1 which results in a rate of return of 115%.

Example 2: Assume Company Y closes at \$1 per share on the first day of the Performance Period. During the Performance Period, Company Y declares a two-for-one stock split and affects the stock split by issuing one new share for each outstanding share. Later during the Performance Period, Company Y declares a \$.15 per share cash dividend. On the last day of the Performance Period, Company Y closes at \$1 per share. To determine the rate of return during the Performance Period, first determine the ending Market Value per Share by multiplying 2 shares by \$1 and then adding the amount of the dividend per share (\$.15) to get a resulting value of \$2.30. Then, compare \$2.30 to \$1 which results in a rate of return of 130%.

2.2 Number, Gender, Headings, and Periods of Time. Wherever appropriate herein, words used in the singular shall be considered to include the plural, and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Program, shall be deemed to include the feminine gender. The headings of Articles, Sections, and Paragraphs herein are included solely for convenience. If there is any conflict between such headings and the text of the Program, the text shall control. All references to Articles, Sections, and Paragraphs are to this Program unless otherwise indicated. Any reference in the Program to a period or number of days, weeks, months, or years shall mean, respectively, calendar days, calendar weeks, calendar months, or calendar years unless expressly provided otherwise.

III. ADMINISTRATION

3.1 Administration by the Committee. The Program shall be administered by the Committee.

3.2 Powers of the Committee. The Committee shall supervise the administration and enforcement of the Program according to the terms and provisions hereof and shall have the sole discretionary authority and all of the powers necessary to accomplish these purposes. The Committee shall have all of the powers specified for it under the Program, including, without limitation, the power, right, or authority: (a) to designate an Eligible Employee as a Participant with respect to a Performance Period in accordance with Section 4.1, (b) from time to time to establish rules and procedures for the administration of the Program, which are not inconsistent with the provisions of the Program or the Plan, and any such rules and procedures shall be effective as if included in the Program, (c) to construe in its discretion all terms, provisions, conditions, and limitations of the Program and any Award, (d) to correct any defect or to supply any omission or to reconcile any inconsistency that may appear in the Program in such manner and to such extent as the Committee shall deem appropriate, and (e) to make all other determinations necessary or advisable for the administration of the Program. The Committee may correct any defect or supply any omission or reconcile any inconsistency in the Program or in any Award or Award Notice in the manner and to the extent it shall deem expedient to carry it into effect.

3.3 Committee Decisions Conclusive; Standard of Care. The Committee shall, in its sole discretion exercised in good faith (which, for purposes of this Section 3.3, shall mean the application of reasonable business judgment), make all decisions and determinations and take all actions necessary in connection with the administration of the Program. All such decisions, determinations, and actions by the Committee shall be final, binding, and conclusive upon all persons. The Committee shall not be liable for any action or determination taken or made in good faith or upon reliance in good faith on the records of the Company or information presented to the Committee by the Company's officers, employees, or other persons (including the Company's outside auditors) as to matters the Committee reasonably believes are within such other person's professional or expert competence. If a Participant disagrees with any decision, determination, or action made or taken by the Committee, then the dispute will be limited to whether the Committee has satisfied its duty to make such decision or determination or take such action in good faith. No liability whatsoever shall attach to or be incurred by any past, present or future stockholders, officers or directors, as such, of the Company or any of its Affiliates, under or by reason of the Program or the administration thereof, and each Participant, in consideration of receiving benefits and participating hereunder, expressly waives and releases any and all claims relating to any such liability.

IV. PARTICIPATION AND AWARD NOTICES

4.1 Participation. The Committee shall, from time to time, in its sole discretion designate the Eligible Employees who shall become Participants in the Program with respect to a Performance Period and shall designate the Performance Period applicable to such Participants; provided, however, that any such designation with respect to a Performance Period must be made on or before the 90th day of such Performance Period. The Committee shall specify the effective date of participation in the Program for each individual who becomes a Participant pursuant to the preceding sentence. In addition, the Committee shall designate the Base Bonus Amount that shall apply to each Participant with respect to his participation in the Program.

4.2 Award Notices. The Company shall provide an Award Notice to each Eligible Employee who becomes a Participant under the Program as soon as administratively feasible after such Eligible Employee becomes a Participant. An Award Notice may specify one or more Performance Periods with respect to which the Participant may participate in the Program and the date each such Performance Period commences. Further, an Award Notice may provide that the Participant shall continue to participate in the Program for successive Performance Periods until notified otherwise by the Committee or, if earlier, the date upon which he terminates employment with the Company. An Award Notice shall specify the Participant's Base Bonus Amount, which may be changed on a prospective basis by the Committee upon written notice to the Participant at any time prior to the commencement of a Performance Period.

V. INDUSTRY GROUP

5.1 Initial Designation. The Industry Group for a Performance Period shall consist of the Company and such other companies as may be designated by the Committee on or before the date that is 90 days after the first day of a Performance Period and shall be subject to adjustment as provided in Section 5.2.

5.2 Adjustment to the Industry Group During a Performance Period. Except as otherwise provided in this Section 5.2, no company shall be added to, or removed from, the Industry Group for a Performance Period during such period; provided, however, that a company (other than the Company) shall be removed from the Industry Group for a Performance Period if (a) during such period, (i) the common stock of such company ceases to be publicly traded on an established securities market, (ii) such company ceases to maintain publicly available statements of operations prepared in accordance with United States generally accepted accounting principles, consistently applied, (iii) such company is not the surviving entity in any merger, consolidation, or other reorganization (or survives only as a subsidiary of an entity other than a previously wholly owned subsidiary of such company), (iv) such company sells, leases, or exchanges all or substantially all of its assets to any other person or entity (other than a previously wholly owned subsidiary of such company), or (v) such company is dissolved and liquidated, or (b) more than 33% of such company's revenues (determined on a consolidated basis based on the regularly prepared and publicly available statements of operations of such company prepared in accordance with United States generally accepted accounting principles, consistently applied) for any fiscal year of such company that ends during such Performance Period are attributable to the operation of businesses other than such company's computer software business.

VI. AWARD PAYMENTS

6.1 Determinations and Certification by the Committee. As soon as administratively feasible after the end of each Performance Period, the Committee shall determine (a) with respect to each company comprising the Industry Group as of the last day of such Performance Period, the Total Shareholder Return for such company for such Performance Period, (b) the percentile ranking of the Company for such Performance Period when comparing the Total Shareholder Return for such Performance Period for all companies comprising the Industry Group as of the last day of such Performance Period, (c) the Payout Percentage for such Performance Period, and (d) the Payment Amount, if any, with respect to such Performance Period for each Participant. The Committee's determinations pursuant to the preceding provisions of this Section 6.1 for each Performance Period and any other material terms relating to the payment of an Award shall be certified by the Committee in writing and delivered to the Secretary of the Company no later than six weeks after the last day of such Performance Period. For purposes of the preceding sentence, approved minutes of the Committee meeting in which the certification is made shall be treated as a written certification.

6.2 Eligibility for Payment of Awards. Upon the Committee's written certification in accordance with Section 6.1 that a Payment Amount for a Performance Period is due under the Program, each Participant who has received an Award with respect to such Performance Period and who has remained continuously employed by the Company or an Affiliate (or was on a voluntary personal leave of absence approved by the Company) from the effective date of such Participant's participation in the Program with respect to such Performance Period until the last day of such Performance Period shall be entitled to the Payment Amount applicable to such Participant's Award for such Performance Period. Further, if a Participant received an Award with respect to such Performance Period and his employment with the Company terminated during such Performance Period by reason of death or Disability, then such Participant shall be entitled to the Payment Amount applicable to such Participant's Award for such Performance Period. Except as provided in the preceding sentence or in Section 6.3, if a Participant's employment with the Company terminates for any reason whatsoever prior to the last day of a Performance Period, then such Participant shall not be entitled to receive any payment under the Program with respect to his or her Award for such Performance Period. Without limiting the scope of the preceding sentence, if a Participant's employment with the Company terminates during a Performance Period by reason of death or Disability, then such Participant shall not be entitled to any payment under the Program with respect to any Performance Period that begins after the date of such termination. Payment of the amount to which a Participant becomes entitled pursuant to this Section 6.2 shall be made by the Company as soon as administratively feasible after the Committee's written certification that a Payment Amount is due under the Program.

6.3 Change in Control. Upon the occurrence of a Change in Control, (a) each Performance Period that began prior to the date of such Change in Control and which has not ended as of such date shall be deemed to have ended on the date of such Change in Control, (b) the provisions of Sections 6.1 and 6.2 shall cease to apply with respect to each such Performance Period, and (c) the Company shall be required to pay a Payment Amount (as determined below) for each such Performance Period to each Participant who is employed by the Company on the day immediately prior to the Change in Control (or who is on a voluntary personal leave of absence at such time that has been approved by the Company or who has terminated employment with the Company during such Performance Period and prior to such Change in Control by reason of death or Disability). For purposes of this Section 6.3, the Payment Amount with respect to each such Performance Period for each Participant who is entitled to a payment pursuant to this Section 6.3 shall be calculated in the same manner as provided in Section 6.1 except that (i) each such Performance Period shall be deemed to have ended on the date of such Change in Control and (ii) the Participation Fraction for each eligible Participant for each such Performance Period shall be determined in accordance with Section 2.1(j)(iii). The Payment Amount determined under this Section 6.3 for each such Performance Period shall be paid to each eligible Participant as soon as administratively feasible after the date upon which the Change in Control occurs.

6.4 Timing and Form of Payment of Awards. All payments to be made under the Program to a Participant with respect to an Award for a Performance Period shall be paid in a single lump sum cash payment, within sixty (60) days after the Committee certifies in writing its determinations pursuant to Section 6.1. Notwithstanding the foregoing, payment of the Award shall be made to the Participant no later than 2 1/2 months following the later of the end of the Company's fiscal year in which the Performance Period ends or the end of the calendar year in which the Performance Period ends.

6.5 Maximum Payment Amount. In no event shall the Payment Amount that is paid to or on behalf of any one individual under this Program, together with the amount paid to such individual under the Company's Short-Term Incentive Performance Award Program, exceed \$10,000,000 in any calendar year; provided, however, that all Payment Amounts for Awards hereunder shall be subject to the limitations set forth in Section 2.4 of the Plan.

VII. TERMINATION AND AMENDMENT OF PROGRAM

The Committee may amend the Program at any time and from time to time; provided, however, that the Program may not be amended with respect to a Performance Period after one-third of such Performance Period has transpired in a manner that would impair the rights of any Participant with respect to any outstanding Award pertaining to such Performance Period without the consent of such Participant. The Committee may at any time prior to the date upon which one-third of a Performance Period has transpired terminate the Program (in its entirety or as it applies to one or more specified Affiliates) with respect to such Performance Period and subsequent Performance Periods. Notwithstanding the foregoing, the Program may not be amended or terminated in contemplation of or in connection with a Change in Control, nor may any Participant's participation herein be terminated in contemplation of or in connection with a Change in Control, unless adequate and effective provision for the making of all payments otherwise payable pursuant to Section 6.3 of the Program with respect to such Change in Control shall be made in connection with any such amendment or termination. The Committee shall remain in existence after the termination of the Program for the period determined necessary by the Committee to facilitate the termination of the Program, and all provisions of the Program that are necessary, in the opinion of the Committee, for equitable operation of the Program during such period shall remain in force.

VIII. MISCELLANEOUS PROVISIONS

8.1 No Effect on Employment Relationship. For all purposes of the Program, a Participant shall be considered to be in the employment of the Company as long as he remains employed on a full-time basis by the Company or any Affiliate. Without limiting the scope of the preceding sentence, it is expressly provided that a Participant shall be considered to have terminated employment with the Company at the time of the termination of the "Affiliate" status under the Program of the entity or other organization that employs the Participant. Nothing in the adoption of the Program, the grant of Awards, or the payment of amounts under the Program shall confer on any person the right to continued employment by the Company or any Affiliate or affect in any way the right of the Company (or an Affiliate, if applicable) to terminate such employment at any time. Unless otherwise provided in a written employment agreement, the employment of each Participant shall be on an at-will basis, and the employment relationship may be terminated at any time by either the Participant or the Participant's employer for any reason whatsoever, with or without cause. Any question as to whether and when there has been a termination of a Participant's employment for purposes of the Program, and the reason for such termination, shall be determined solely by and in the discretion of the Committee, and its determination shall be final, binding, and conclusive on all parties.

8.2 Prohibition Against Assignment or Encumbrance. No Award or other right, title, interest, or benefit hereunder shall ever be assignable or transferable, or liable for, or charged with any of the torts or obligations of a Participant or any person claiming under a Participant, or be subject to seizure by any creditor of a Participant or any person claiming under a Participant. No Participant or any person claiming under a Participant shall have the power to anticipate or dispose of any Award or other right, title, interest, or benefit hereunder in any manner until the same shall have actually been distributed free and clear of the terms of the Program.

Payments with respect to an Award shall be payable only to the Participant (or (a) in the event of a Disability that renders such Participant incapable of conducting his or her own affairs, any payment due under the Program to such Participant shall be made to his or her duly appointed legal representative and (b) in the event of the death of a Participant, any payment due under the Program to such Participant shall be made to his or her estate). The provisions of the Program shall be binding on all successors and permitted assigns of a Participant, including without limitation the estate of such Participant and the executor, administrator or trustee of such estate, or any receiver or trustee in bankruptcy or representative of the Participant's creditors.

8.3 Unfunded, Unsecured Program. The Program shall constitute an unfunded, unsecured obligation of the Company to make payments of incentive compensation to certain individuals from its general assets in accordance with the Program. Each Award granted under the Program merely constitutes a mechanism for measuring such incentive compensation and does not constitute a property right or interest in the Company, any Affiliate, or any of their assets. Neither the establishment of the Program, the granting of Awards, nor any other action taken in connection with the Program shall be deemed to create an escrow or trust fund of any kind.

8.4 No Rights of Participant. No Participant shall have any security or other interest in any assets of the Company or any Affiliate or in the securities issued by the Company or any Affiliate as a result of participation in the Program. Participants and all persons claiming under Participants shall rely solely on the unsecured promise of the Company set forth herein, and nothing in the Program, an Award or an Award Notice shall be construed to give a Participant or anyone claiming under a Participant any right, title, interest, or claim in or to any specific asset, fund, entity, reserve, account, or property of any kind whatsoever owned by the Company or any Affiliate or in which the Company or any Affiliate may have an interest now or in the future; but each Participant shall have the right to enforce any claim hereunder in the same manner as a general creditor. Neither the establishment of the Program nor participation hereunder shall create any right in any Participant to make any decision, or provide input with respect to any decision, relating to the business of the Company or any Affiliate.

8.5 Tax Withholding. The Company and the Affiliates shall deduct and withhold, or cause to be withheld, from a Participant's payment made under the Program, or from any other payment to such Participant, an amount necessary to satisfy any and all tax withholding obligations arising under applicable local, state, federal, or foreign laws associated with such payment. The Company and the Affiliates may take any other action as may in their opinion be necessary to satisfy all obligations for the payment and withholding of such taxes.

8.6 No Effect on Other Compensation Arrangements. Nothing contained in the Program or any Participant's Award or Award Notice shall prevent the Company or any Affiliate from adopting or continuing in effect other or additional compensation arrangements affecting any Participant. Nothing in the Program shall be construed to affect the provisions of any other compensation plan or program maintained by the Company or any Affiliate.

8.7 Affiliates. The Company may require any Affiliate employing a Participant to assume and guarantee the Company' s obligations hereunder to such Participant, either at all times or solely in the event that such Affiliate ceases to be an Affiliate.

8.8 Governing Law. The Program shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the undersigned officer of the Company acting pursuant to authority granted to her by the Committee has executed this instrument as of the 1st day of September, 2009, effective as of the Effective Date.

BMC SOFTWARE, INC.

By: /s/ DONNA HARRIGAN

Name: Donna Harrigan

Title: Vice President

EXECUTIVE EMPLOYMENT AGREEMENT

This Executive Employment Agreement (this “Agreement”) is made as of September 23, 2009 (the “Effective Date”), by and between BMC Software, Inc., a Delaware corporation (the “Employer”), and Hollie Castro (the “Executive”). The Employer and the Executive are each a “party” and are together “parties” to this Agreement.

BACKGROUND

The Employer desires to employ the Executive as the Senior Vice President, Administration, of the Employer, and the Executive desires to accept such employment.

The Employer and the Executive desire to enter into an employment agreement to set forth the terms and conditions of the Executive’s employment.

AGREEMENT

In consideration of the employment compensation to be paid to the Executive and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1.

DEFINITIONS

For the purposes of this Agreement, the following terms have the meanings specified or referred to in this Section 1.

“**Affiliate**” means a person or entity that directly or indirectly controls, is controlled by, or is under common control with, the Employer.

“**Agreement**” refers to this Executive Employment Agreement, including all Exhibits attached hereto, as amended from time to time.

“**Base Salary**” as defined in Section 3.1.

“**Benefits**” as defined in Section 3.3.

“**Board of Directors**” refers to the board of directors of the Employer.

“**Cause**” as defined in Section 6.3(a).

“**Change of Control**” means the occurrence of one or more of the following events:

(a) the acquisition, directly or indirectly, by any person or related group of persons (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing at least fifty percent (50%) of the total combined voting power of the Employer’s outstanding securities;

(b) a change in the composition of the Board of Directors such that a majority of the Board members ceases by reason of one or more contested elections for Board membership to be comprised of individuals who either (i) are Board members as of the Effective Date (the “Incumbent Directors”) or (ii) after the Effective Date, are elected or nominated for election as Board members by at least a majority of the Incumbent Directors who are still in office at the time such election or nomination is approved by the Board (such individuals will also be considered “Incumbent Directors” upon election to the Board), but excluding for purposes of clauses (i) and (ii) any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest (within the meaning of Rule 14a-11 of the Exchange Act) with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors;

(c) a merger, consolidation, or similar corporate transaction in which the Employer’s shareholders immediately prior to the transaction do not own more than sixty percent (60%) of the voting stock of the surviving corporation in the transaction;

(d) shareholder approval of the Employer’s liquidation, dissolution, or sale of substantially all of its assets; or

(e) if Executive’s primary employment duties are with a subsidiary, division, or business unit of the Employer, the sale, merger, contribution, transfer or any other transaction in conjunction with which the Employer’s ownership interest in the subsidiary, division, or business unit decreases below a majority interest.

“**Confidential Information**” means any and all:

(a) Trade Secrets (as defined herein) concerning the business and affairs of the Employer, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current, and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures, and architectures (and related formulae, compositions, processes, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, however documented, that is a trade secret;

(b) information which has value in the Employer’s business and which the Employer takes reasonable steps to keep confidential; this consists of information concerning the business and affairs of the Employer, such as, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, marketing and sales plans, business plans, the names and backgrounds of key personnel, personnel training and techniques and materials, however documented; and

(c) notes, analysis, compilations, studies, summaries, and other material prepared by or for the Employer containing or based, in whole or in part, on any information included in the foregoing.

“**Disability**” as defined in Section 6.2.

“Effective Date” is September 23, 2009, the date mutually agreed upon by the Executive and the Employer as the date Executive’s employment with the Employer commences.

“Employee Invention” shall mean any idea, invention, technique, modification, process, or improvement (whether patentable or not), any industrial design (whether registerable or not), any mask work, however fixed or encoded, that is suitable to be fixed, embedded or programmed in a semiconductor product (whether recordable or not), and any work of authorship (whether or not copyright protection may be obtained for it) created, conceived, or developed by the Executive, either solely or in conjunction with others, during the Employment Period, or a period that includes a portion of the Employment Period, that relates in any reasonable way to, or is useful in any manner in, the business then being conducted or proposed to be conducted by the Employer, and any such item created by the Executive, either solely or in conjunction with others, following termination of the Executive’s employment with the Employer, that is based upon or uses Confidential Information.

“Employer Group” shall mean the Employer and any other corporation or trade or business required to be aggregated with the Employer which constitutes a single employer under Code Section 414(b) or Code Section 414(c) with the Employer, except that in applying Code Section 1563(a)(1), (2), and (3), the language “at least 50 percent” is used instead of “at least 80 percent”.

“Employment Period” is the term of the Executive’s employment under this Agreement.

“Fiscal Year” shall mean the Employer’s fiscal year, which shall end on March 31 of each calendar year, or as changed from time to time.

“Good Reason” as defined in Section 6.3(b).

“Person” is any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, or governmental body.

“Proprietary Items” as defined in Section 7.2(a)(iv).

“Separation from Service” shall mean the Executive’s termination of employment with the Employer Group for any reason which constitutes a “separation from service” under Code Section 409A. Notwithstanding the foregoing, the Executive’s employment relationship with the Employer Group is considered to remain intact while the individual is on military leave, sick leave or other bona fide leave of absence if there is a reasonable expectation that the Executive will return to perform services for the Employer Group and the period of such leave does not exceed six months, or if longer, so long as the Executive retains a right to reemployment with the Employer under applicable law or contract. Solely for purposes of determining whether a Separation from Service has occurred, the Employer will determine whether the Executive has terminated employment with the Employer Group based on whether it is reasonably anticipated by the Employer and the Executive that the Executive will permanently cease providing services to the Employer Group, whether as an employee or independent contractor, or that the services to be performed by the Executive, whether as an employee or independent contractor, will permanently decrease to no more than 20% of the average level of bona fide services performed, whether as an employee or independent contractor, over the immediately preceding 36-month period or such shorter period during which the Executive was performing services for the Employer Group. If a leave of absence occurs during such 36-month or shorter period which is not considered a Separation from Service, unpaid leaves of absence shall be disregarded and the level of services provided during any paid leave of absence shall be presumed to be the level of services required to receive the compensation paid with respect to such leave of absence.

“Trade Secrets” shall mean the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

2.

EMPLOYMENT TERMS AND DUTIES

2.1

EMPLOYMENT

The Employer hereby employs the Executive, and the Executive hereby accepts employment by the Employer, upon the terms and conditions set forth in this Agreement.

2.2

EMPLOYMENT PERIOD

Subject to the provisions of Section 6, the term of the Executive’s employment under this Agreement will commence upon the Effective Date and shall continue in effect through the third anniversary of the Effective Date (the “Employment Period”); provided, however, that, subject to the provisions of Section 6, commencing on the day following the Effective Date and on each day thereafter, the Employment Period shall be automatically extended for one additional day unless the Employer shall give written notice to Executive that the Employment Period shall cease to be so extended, in which event the Employment Period shall terminate on the third anniversary of the date such notice is given.

2.3

DUTIES

The Executive will have such duties as are assigned or delegated to the Executive by the Chief Executive Officer of the Company, and will initially serve as the Employer’s Senior Vice President, Administration. The Executive will devote her entire business time, attention, skill, and energy exclusively to the business of the Employer, will use her best efforts to promote the success of the Employer’s business, and will cooperate fully with the Chief Executive Officer of the Company in the advancement of the best interests of the Employer. The Executive’s employment will be subject to the policies maintained and established by the Employer, from time to time. Nothing in this Section 2.3, however, will prevent the Executive from engaging in additional activities in connection with passive personal investments and community affairs that are not inconsistent with the Executive’s duties under this Agreement. Additionally, nothing in this Section 2.3 will prevent the Executive from serving on the board of directors of other companies or organizations, or engaging in other activities, so long as such participation does not conflict with the interests or business of Employer or require such involvement as to interfere with the performance of the Executive’s duties hereunder and has been expressly approved by the Chief Executive Officer of Employer. If the Executive is elected as a director of the Employer or as a director or officer of any of its Affiliates, the Executive will fulfill her duties as such director or officer without additional compensation. The Executive acknowledges and agrees that she owes a fiduciary duty of loyalty, fidelity and allegiance to act at all times in the best interests of the Employer.

3.

COMPENSATION

3.1

BASE SALARY

During the Employment Period, the Employer shall pay Executive an annual base salary in the amount of Four Hundred Thousand Dollars (\$400,000), less applicable taxes and withholdings, payable in accordance with the Employer's standard payroll practices and procedure (the "Base Salary"). Executive's Base Salary shall be reviewed at least annually and, if deemed appropriate in the sole discretion of the Compensation Committee of the Board of Directors, shall be increased from time to time.

3.2

SIGNING BONUS

(a) Cash Bonus. The Executive shall receive a cash sign-on bonus equal to \$200,000, which shall be paid in a lump sum amount within sixty (60) days after the Effective Date, less applicable taxes and withholdings. If the Executive voluntarily terminates employment with the Employer prior to the second (2nd) anniversary of the Effective Date, the Executive shall promptly repay the Employer the full \$200,000 sign-on bonus paid pursuant to this Section 3.2(a).

(b) Equity Bonus. The Executive will receive, upon execution of this Agreement and approval by the Board of Directors, a one-time grant of 3,500 restricted stock units as a sign-on bonus. Such restricted stock units will become fully vested on the first (1st) anniversary of the grant date, provided the Executive remains continuously employed by the Employer during such one-year period commencing on the Effective Date, and will be subject to such other terms and conditions as may be provided in the restricted stock unit award agreement and the incentive plan maintained by the Employer pursuant to which the Compensation Committee grants the restricted stock units. The actual grant date will be established by the Compensation Committee when the Compensation Committee awards the restricted stock units in accordance with the Employer's current policy for granting such awards.

3.3

BENEFITS

The Executive will, during the Employment Period, be permitted to participate in such pension, profit sharing, life insurance, hospitalization, major medical, and other employee benefit plans of the Employer that may be in effect from time to time, to the extent the Executive is eligible under the terms of those plans (collectively, the "Benefits").

3.4

CASH BONUS

Executive will be eligible for cash bonuses as described in Attachment A incorporated herein by reference.

3.5

EQUITY

(a) Time-Based Vesting. The Executive will receive, upon execution of this Agreement and approval by the Board of Directors, a grant of restricted stock units with a value on the date of grant equal to \$1,650,000. The actual number of restricted stock units granted will be determined based on the fair market value of the stock price of the Employer at grant. The actual grant date will be established by the Compensation Committee when the Compensation Committee awards the restricted stock units in accordance with the Employer's current policy for granting such awards. Such restricted stock units will vest annually over a period of three years in equal, one-third (1/3) increments on the anniversary of the grant date, provided the Executive remains continuously employed by the Employer during such three-year period. The restricted stock units will be subject to such other terms and conditions as may be provided by the Compensation

Committee in the award agreement and the incentive plan maintained by the Employer pursuant to which the Compensation Committee grants the restricted stock units.

(b) Performance-Based Vesting. The Executive will receive, upon execution of this Agreement and approval by the Board of Directors, a grant of 10,000 performance-based restricted stock units. The actual grant date will be established by the Compensation Committee when the Compensation Committee awards the restricted stock units in accordance with the Employer's current policy for granting such awards. Such restricted stock units will vest based on the Employer's performance against a predetermined target, with such performance determined at the end of the Employer's fiscal year 2011. These restricted stock units will be subject to such other terms and conditions as may be provided by the Compensation Committee in the award agreement and the incentive plan maintained by the Employer pursuant to which the Compensation Committee grants the restricted stock units.

(c) Future Awards. The Executive will be entitled to receive future awards granted by the Compensation Committee of the Board of Directors pursuant to any equity program or long-term incentive plan that may be maintained by the Employer from time to time.

3.6

RELOCATION EXPENSES

The Employer will reimburse the Executive for expenses incurred in connection with the Executive's relocation to the Houston, Texas, area, in accordance with the Employer's U.S. Domestic Relocation Policy - Homeowners (Vice President and above), or such other written policy for reimbursing senior level new hires for such relocation expenses as may be in effect from time to time.

4.

FACILITIES AND EXPENSES

4.1

FACILITIES

During the Employment Period, the Employer will furnish the Executive office space, equipment, supplies, and such other facilities and personnel as the Employer deems reasonably necessary or appropriate for the performance of the Executive's duties under this Agreement.

4.2

EXPENSES

The Employer will pay on behalf of the Executive (or reimburse the Executive in a timely manner for) reasonable expenses incurred by the Executive at the request of, or on behalf of, the Employer in the performance of the Executive's duties pursuant to this Agreement, and in accordance with the Employer's employment policies, including reasonable expenses incurred by the Executive in attending business meetings, in appropriate business entertainment activities, and for promotional expenses. The Executive must file expense reports with respect to such expenses in accordance with the Employer's policies then in effect.

TIMING

All in-kind benefits provided and expenses eligible for reimbursement under this Section 4 must be provided by the Employer or incurred by the Executive during the term of this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

5.**VACATIONS AND HOLIDAYS**

The Executive will be entitled to paid vacation during the Employment Period in accordance with the vacation policies of the Employer in effect for its employees from time to time. The Executive will also be entitled to the paid holidays and other paid leave set forth in the Employer's policies.

6.**TERMINATION**

6.1

EVENTS OF TERMINATION

The Employment Period, the Executive's Base Salary and any and all other rights of the Executive under this Agreement or otherwise as an employee of the Employer will terminate (except as otherwise provided in this Section 6):

- (a) upon the death of the Executive;
- (b) upon the Disability of the Executive immediately upon notice from either party to the other;
- (c) upon termination by the Employer for Cause;
- (d) upon the voluntary retirement from or voluntary resignation of employment by the Executive without Good Reason;
- (e) upon termination by the Employer for any reason other than those set forth in Section 6.1(a) through 6.1(d) above; or
- (f) upon voluntary resignation of employment by the Executive for Good Reason.

Upon termination of the Employment Period, as provided above or otherwise, Executive's rights respecting benefits, restricted stock, stock options, other equity incentives, and cash bonus, will be determined under the applicable plan or program providing the same.

DEFINITION OF DISABILITY

For purposes hereof, the term “Disability” shall mean an incapacity by accident, illness or other circumstances which renders the Executive mentally or physically incapable of performing the duties and services required of the Executive hereunder on a full-time basis for a period of at least 180 consecutive days.

DEFINITION OF “CAUSE” AND “GOOD REASON”

(a) Definition of “Cause”. For all purposes under this Agreement, “Cause” shall mean the occurrence of any one or more of the following events:

- (i) the Executive’s continued and material failure to perform her obligations under this Agreement;
- (ii) the Executive’s material failure to adhere to any Employer policy or code of conduct;
- (iii) the appropriation (or attempted appropriation) of a material business opportunity of the Employer, including attempting to secure or securing any personal profit in connection with any transaction entered into on behalf of the Employer;
- (iv) the Executive’s engaging in conduct that is materially injurious to the Employer;
- (v) the misappropriation (or attempted misappropriation) of any of the Employer’s funds or property;
- (vi) the conviction of or the entering of a guilty plea or plea of no contest with respect to, a felony, the equivalent thereof, or any other crime with respect to which imprisonment is a punishment; or
- (vii) the conviction of the Executive by a court of competent jurisdiction of a crime involving moral turpitude.

The determination of whether the Executive’s employment is terminated for Cause shall be made solely by the Employer, which shall act in good faith in making such determination.

(b) Definition of “Good Reason”. For all purposes under this Agreement, “Good Reason” means the occurrence of one or more of the following events arising without the express written consent of the Executive, but only if the Executive notifies the Employer in writing of the event within sixty (60) days following the occurrence of the event, the event remains uncured after the expiration of thirty (30) days from receipt of such notice, and the Executive resigns effective no later than thirty (30) days following the Employer’s failure to cure the event:

- (i) the occurrence, prior to a Change of Control or on or after the date which is twelve (12) months after a Change of Control occurs, of any one or more of the following events that results in a material negative change in the Executive’s employment relationship with the Employer:

(A) a reduction in the Executive' s Base Salary or target bonus opportunity from that provided to her immediately on the Effective Date of this Agreement or as the same may be increased from time to time; or

(B) a diminution in employee benefits (including but not limited to medical, dental, life insurance and long-term disability plans) and perquisites applicable to the Executive from those substantially similar to the employee benefits and perquisites provided by the Employer (including subsidiaries) to executives with comparable duties, as such benefits may be modified from time to time; or

(ii) the occurrence, within twelve (12) months after the date upon which a Change of Control occurs, of any one or more of the following events:

(A) a material diminution in the Executive' s Base Salary;

(B) a material diminution in the Executive' s authority, duties, or responsibilities;

(C) a material diminution in the authority, duties, or responsibilities of the supervisor to whom the Executive is required to report, including a requirement that the Executive report to a corporate officer or employee instead of reporting directly to the board of directors of the Employer;

(D) a material diminution in the budget over which the Executive retains authority;

(E) the Employer or a subsidiary thereof requiring the Executive to be permanently based anywhere other than within fifty (50) miles of the Executive' s job location immediately prior to the reassignment;

(F) any other action that constitutes a material breach by the Employer of the Agreement; or

(G) the occurrence of one or more of the following events that results in a material negative change in the Executive' s employment relationship with the Employer:

(1) a reduction in the Executive' s target bonus opportunity as in effect immediately prior to the Change of Control or as the same may be increased from time to time;

(2) a change in the eligibility requirements or performance criteria under any bonus, incentive or compensation plan, program or arrangement under which the Executive is covered immediately prior to the Change of Control which adversely affects the Executive;

(3) without replacement by a plan providing benefits to Executive equal to or greater than those discontinued, the failure by the Employer or a subsidiary thereof to continue in effect, within its maximum stated term, any pension, bonus, incentive, stock ownership, purchase, option, life insurance, health, accident, disability, or any other employee benefit plan, program or arrangement in which Executive is participating at the time of the Change of Control, or the taking of any action by the Employer or a subsidiary thereof that would adversely affect Executive's participation or materially reduce Executive's benefits under any of such plans; or

(4) the taking of any action by the Employer or a subsidiary thereof that would materially adversely affect the physical conditions existing at the time of the Change of Control in or under which Executive performs her employment duties.

6.4

SEVERANCE

Should the Executive experience a termination of employment during the Employment Period pursuant to Section 6.1(e) or Section 6.1(f) above, then, subject to Executive executing, and failing to revoke during any applicable revocation period, a general release of all claims against Employer and its Affiliates in a form acceptable to the Employer within forty-five (45) days after Executive's termination of employment, the Executive shall be entitled to:

- (a) a lump sum payment equal to one (1) times her then current Base Salary; and
- (b) a lump sum payment equal to one (1) times her then current cash bonus target amount.

Subject to Section 6.7, such lump sum payments under this Section will be made no later than sixty (60) days following the Executive's Separation from Service on or after the date the Executive's employment is terminated. Severance payments do not result in extending employment beyond the termination date.

6.5

CHANGE OF CONTROL

(a) If, within 12 months after a Change of Control, the Executive's position is eliminated or the Executive's employment is terminated pursuant to Section 6.1(e) or 6.1(f) above, then, subject to Executive executing, and failing to revoke during any applicable revocation period, a general release of all claims against Employer and its Affiliates in a form acceptable to the Employer within forty-five (45) days after termination of the Executive's employment, the Executive shall be entitled to the following in lieu of the amounts set forth in Section 6.4:

- (i) a lump sum payment equal to one (1) times her then current Base Salary;
- (ii) a lump sum payment equal to one (1) times her then current cash bonus target amount;

(iii) vesting of Executive' s equity awards, if any, to the extent provided for under the terms and conditions of the equity award agreements;

(iv) a lump sum payment equal to the cost of COBRA coverage for eighteen (18) months for continued medical benefits for the Executive and her dependents (including her spouse) who were covered as of such termination event under the medical benefit plan as in effect for employees of the Employer during the coverage period, or the substantial equivalence; and

(v) a lump sum payment equal to the aggregate of eighteen (18) months of premiums for the Executive' s individual basic life insurance policy provided by the Employer' s group life insurance carrier upon conversion of the Executive' s coverage under the Employer' s group life insurance plan to an individual policy as of such termination event, provided the Executive timely elects (but in no event later than sixty (60) days after the Executive' s Separation from Service) to convert her life insurance coverage provided under the Employer' s group life insurance plan to an individual policy.

Subject to Section 6.7, such lump sum payments under this Section shall be made no later than sixty (60) days following the Executive' s Separation from Service on or after the date the Executive' s employment is terminated. Severance payments do not result in extending employment beyond the termination date.

(b) Notwithstanding anything to the contrary in this Agreement, if the Executive is a "disqualified individual" (as defined in Section 280G(c) of the Internal Revenue Code of 1986, as amended (the "Code")), and the severance benefits provided for in this Section 6.5, together with any other payments and benefits which the Executive has the right to receive from the Employer and its Affiliates (the "Aggregate Severance"), would be subject to the excise tax imposed by Section 4999 of the Code, including any interest and penalties imposed with respect to such excise tax (the "Excise Tax"), then the severance benefits provided hereunder shall be either (1) reduced (but not below zero) so that the present value of the Aggregate Severance equals the Safe Harbor Amount (as defined below) and so that no portion of the Aggregate Severance shall be subject to the Excise Tax, or (2) paid in full, whichever produces the better net after-tax position to the Executive (taking into account the Excise Tax and any other applicable taxes).

The determination as to whether any such reduction in the Aggregate Severance is necessary shall be made initially by the Employer in good faith. If applicable, the reduction of the amounts payable hereunder in accordance with clause (1) of the first sentence of the preceding paragraph shall be made by first reducing the cash payments pursuant to this Section, and in any event shall be made in such a manner as to maximize the value of the Aggregate Severance paid to the Executive. If the Aggregate Severance is reduced in accordance with the preceding sentence and through error or otherwise the Aggregate Severance exceeds the Safe Harbor Amount, the Executive shall immediately repay such excess to the Employer upon notification that an overpayment has been made.

For purposes of this Section, "Safe Harbor Amount" means an amount equal to one dollar (\$1.00) less than three (3) times the Executive's "base amount" for the "base period," as those terms are defined under Section 280G of the Code.

6.6

NO MITIGATION

Any remuneration received by the Executive from a third party following the Employment Period shall not apply to reduce the Employer's obligations to make payments hereunder.

6.7

CODE SECTION 409A

Notwithstanding any provision to the contrary in this Agreement, if the Executive is deemed at the time of her Separation from Service from the Employer to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code and if any amounts otherwise payable pursuant to this Agreement within the first six (6) months following the Executive's Separation from Service would be subject to the excise tax imposed by Section 409A of the Code, then payment of such portion of the benefits subject to the excise tax shall be suspended and shall be paid in a lump sum to the Executive on the first business day following the expiration of six (6) months from the date of the Executive's Separation from Service.

7.

NON-DISCLOSURE COVENANT; EMPLOYEE INVENTIONS

7.1

ACKNOWLEDGMENTS BY THE EXECUTIVE

The Executive acknowledges that (a) prior to and during the Employment Period and as a part of her employment, the Executive has been and will be afforded access to Confidential Information; (b) public disclosure of such Confidential Information could have an adverse effect on the Employer and its business; (c) because the Executive possesses substantial technical expertise and skill with respect to the Employer's business, the Employer desires to obtain exclusive ownership of each Employee Invention, and the Employer will be at a substantial competitive disadvantage if it fails to acquire exclusive ownership of each Employee Invention; and (d) the provisions of this Section 7 are reasonable and necessary to prevent the improper use or disclosure of Confidential Information and to provide the Employer with exclusive ownership of all Employee Inventions.

7.2

AGREEMENTS OF THE EXECUTIVE

In consideration of the compensation and benefits to be paid or provided to the Executive by the Employer under this Agreement, the Executive covenants the following:

(a)

Confidentiality.

(i) The Executive will hold in confidence the Confidential Information and will not disclose it to any person except with the specific prior written consent of the Employer or except as otherwise expressly permitted by the terms of this Agreement.

(ii) Any Trade Secrets of the Employer will be entitled to all of the protections and benefits under any applicable law. If any information that the Employer deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information will, nevertheless, be considered Confidential Information for purposes of this Agreement. The Executive hereby waives any requirement that the Employer submit proof of the economic value of any trade secret or post a bond or other security.

(iii) None of the foregoing obligations and restrictions applies to any part of the Confidential Information that the Executive demonstrates was or became generally available to the public other than as a result of a disclosure by the Executive.

(iv) The Executive will not remove from the Employer's premises (except to the extent such removal is for purposes of the performance of the Executive's duties at home or while traveling, or except as otherwise specifically authorized by the Employer) any document, record, notebook, plan, model, component, device, or computer software or code, whether embodied in a disk or in any other form (collectively, the "Proprietary Items"). The Executive recognizes that, as between the Employer and the Executive, all of the Proprietary Items, whether or not developed by the Executive, are the exclusive property of the Employer. Upon termination of this Agreement by either party, or upon the request of the Employer during the Employment Period, the Executive will return to the Employer all of the Proprietary Items in the Executive's possession or subject to the Executive's control, and the Executive shall not retain any copies, abstracts, sketches, or other physical embodiment of any of the Proprietary Items.

(b) Employee Inventions. Each Employee Invention will belong exclusively to the Employer. The Executive acknowledges that all of the Executive's writing, works of authorship, and other Employee Inventions are works made for hire and the property of the Employer, including any copyrights, patents, or other intellectual property rights pertaining thereto. If it is determined that any such works are not works made for hire, the Executive hereby assigns to the Employer all of the Executive's right, title, and interest, including all rights of copyright, patent, and other intellectual property rights, to or in such Employee Inventions. The Executive covenants that she will promptly:

(i) disclose to the Employer in writing any Employee Invention;

(ii) assign to the Employer or to a party designated by the Employer, at the Employer's request and without additional compensation, all of the Executive's rights to the Employee Invention for the United States and all foreign jurisdictions;

(iii) execute and deliver to the Employer such applications, assignments, and other documents as the Employer may request in order to apply for and obtain patents or other registrations with respect to any Employee Invention in the United States and any foreign jurisdictions;

(iv) sign all other papers necessary to carry out the above obligations; and

(v) give testimony and render any other assistance in support of the Employer's rights to any Employee Invention.

(c) Notice of Intent to Resign. Except in the event of a resignation for Good Reason, Executive agrees to provide Employer with 90 days advance notice of her intention to resign ("Notice Period"). During the Notice Period, Executive shall continue in the diligent fulfillment of all duties of her position and this Agreement. Should Executive fail to provide Employer with the full Notice Period, Executive shall forfeit that portion of her earned pro-rata yearly cash bonus as follows:

$(90 - (\text{number of full days of advance notice}) / 90) \times (\text{times}) \text{ pro-rata earned yearly cash bonus} = \text{amount forfeited by Executive.}$

Pro-rata earned yearly cash bonus is: (unconditional portion of yearly cash bonus, if any, targeted for Executive in the current Fiscal Year) X (number of full months worked in the current Fiscal Year / 12).

(d) NonDisparagement. Executive shall not disparage the Employer or any of its shareholders, directors, officers, employees, or agents.

(e) Creative Works. Executive shall not create, assist with or consult on any creative works which discuss, describe or reference Employer or any executive of Employer. Creative works includes but is not limited to novels, nonfiction writings, any authored work, plays, screenplays, musicals or the like.

7.3

DISPUTES OR CONTROVERSIES

The Executive recognizes that should a dispute or controversy arising from or relating to this Agreement be submitted for adjudication to any court, arbitration panel, or other third party, the preservation of the secrecy of Confidential Information may be jeopardized. All pleadings, documents, testimony, and records relating to any such adjudication will be maintained in secrecy and will be available for inspection by the Employer, the Executive, and their respective attorneys and experts, who will agree, in advance and in writing, to receive and maintain all such information in secrecy, except as may be limited by them in writing.

8.

NON-COMPETITION AND NON-INTERFERENCE

8.1

ACKNOWLEDGMENTS BY THE EXECUTIVE

The Executive acknowledges that: (a) the services to be performed by her under this Agreement are of a special, unique, unusual, extraordinary, and intellectual character; (b) the Employer's business is international in scope and its products are marketed throughout the United States and the world; (c) the Employer competes with other businesses that are or could be located in any part of the United States or the world; (d) the provisions of this Section 8 are reasonable and necessary to protect the Employer's business; and (e) in connection with the fulfillment of her duties hereunder and as an employee of the Employer, the Employer will provide Executive with Confidential Information necessitating the execution of the covenants contained in this Section 8.

8.2

COVENANTS OF THE EXECUTIVE

In consideration of the acknowledgments by the Executive, and in consideration of the compensation and benefits to be paid or provided to the Executive by the Employer, the Executive covenants that during and for eighteen (18) months following the termination of her employment for any reason, she will not, directly or indirectly:

(a) except in the course of her employment hereunder, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, associated with, or in any manner connected with, lend the Executive' s name or any similar name to, lend Executive' s credit to or render services or advice to, any business whose products or activities compete in whole or in part with the products or activities of the Employer anywhere in the world, provided, however, that the Executive may purchase or otherwise acquire up to (but not more than) five percent (5%) of any class of securities of any enterprise (but without otherwise participating in the activities of such enterprise) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Securities Exchange Act of 1934, as amended;

(b) whether for the Executive' s own account or for the account of any other person, solicit business of the same or similar type being carried on by the Employer, from any person known by the Executive to be a customer or a potential customer of the Employer, whether or not the Executive had personal contact with such person during and by reason of the Executive' s employment with the Employer;

(c) whether for the Executive' s own account or the account of any other person, (i) solicit, employ, or otherwise engage as an employee, independent contractor, or otherwise, any person who is an employee (or was an employee within two (2) years of the date in question) of the Employer at any time during the Employment Period or in any manner induce or attempt to induce any employee of the Employer to terminate her or her employment with the Employer; or (ii) interfere with the Employer' s relationship with any person, including any person who at any time during the Employment Period was an employee, contractor, supplier, or customer of the Employer; or

If any covenant in this Section 8.2 is held to be unreasonable, arbitrary, or against public policy, such covenant will be considered to be divisible with respect to scope, time, and geographic area, and such lesser scope, time, or geographic area, or all of them, as a court of competent jurisdiction may determine to be reasonable, not arbitrary, and not against public policy, will be effective, binding, and enforceable against the Executive.

The period of time applicable to any covenant in this Section 8.2 will be extended by the duration of any violation by the Executive of such covenant.

9.

GENERAL PROVISIONS

9.1

INJUNCTIVE RELIEF AND ADDITIONAL REMEDY

The Executive acknowledges that the injury that would be suffered by the Employer as a result of a breach of the provisions of this Agreement (including any provision of Sections 7 and 8) would be irreparable and that an award of monetary damages to the Employer for such a breach would be an inadequate remedy. Consequently, the Employer will have the right, in addition to any other rights it may have, to obtain injunctive relief to restrain any breach or threatened breach or otherwise to specifically enforce any provision of this Agreement, and the Employer will not be obligated to post bond or other security in seeking such relief.

COVENANTS OF SECTIONS 7 AND 8 ARE ESSENTIAL AND INDEPENDENT COVENANTS

The covenants by the Executive in Sections 7 and 8 are essential elements of this Agreement, and without the Executive's agreement to comply with such covenants, the Employer would not have entered into this Agreement or employed the Executive. The Employer and the Executive have independently consulted with their respective counsel and have been advised in all respects concerning the reasonableness and propriety of such covenants, with specific regard to the nature of the business conducted by the Employer.

If the Executive's employment hereunder expires or is terminated, this Agreement will continue in full force and effect as is necessary or appropriate to enforce the covenants and agreements of the Executive in Sections 7 and 8.

REPRESENTATIONS AND WARRANTIES BY THE EXECUTIVE

The Executive represents and warrants to the Employer that the execution and delivery by the Executive of this Agreement do not, and the performance by the Executive of the Executive's obligations hereunder will not, with or without the giving of notice or the passage of time, or both: (a) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to the Executive; or (b) conflict with, result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Executive is a party or by which the Executive is or may be bound. The Executive further specifically represents and warrants that she is not subject to, nor will she violate, any agreement not to compete upon the execution and delivery by her of this Agreement.

The Executive represents and warrants that she will not utilize or divulge any proprietary materials or information from her previous employers and acknowledges that Employer has prohibited Executive from bringing any such materials on to Employer's premises and has advised Executive that Executive's failure to adhere to these prohibitions will subject Executive to immediate termination.

OBLIGATIONS CONTINGENT ON PERFORMANCE

The obligations of the Employer hereunder, including its obligation to pay the compensation provided for herein, are contingent upon the Executive's performance of the Executive's obligations hereunder.

WAIVER

The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement.

BINDING EFFECT; DELEGATION OF DUTIES PROHIBITED

This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors, assigns, heirs, and legal representatives, including any entity with which the Employer may merge or consolidate or to which all or substantially all of its assets may be transferred. The duties and covenants of the Executive under this Agreement, being personal, may not be delegated or assigned.

NOTICES

All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested and signed for by the party required to receive notice, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

If to Employer:

BMC Software, Inc.
2101 CityWest Blvd
Houston, Texas 77042
Telephone No.: (713) 918-8800
Facsimile No.: 713-918-1110
Attn: General Counsel

If to the Executive:

Hollie S. Castro
[Withheld]
Houston, TX

ENTIRE AGREEMENT; AMENDMENTS

Except as provided in (a) plans and programs of the Employer referred to in Sections 3.2 through 3.6, and (b) any signed written agreement contemporaneously or hereafter executed by the Employer and the Executive, this Agreement contains the entire agreement between the parties with respect to the subject matter hereof. All prior understandings and agreements relating to the subject matter of this Agreement, **including, without limitation, the letter dated August 7, 2009**, are hereby superseded and expressly terminated. Notwithstanding the foregoing, this Agreement shall not be construed to supersede any stock option agreements or restricted stock agreements entered into between Executive and Employer at any time prior to the execution of this Agreement. This Agreement may not be amended orally, but only by an agreement in writing signed by the parties hereto.

GOVERNING LAW

This Agreement will be governed by the laws of the State of Texas without regard to conflicts of laws principles.

ARBITRATION

In the event that there shall be any dispute arising out of or in any way relating to this Agreement, the contemplated transactions, any document referred to or incorporated herein by reference or centrally related to the subject matter hereof, or the subject matter of any of the same, the parties covenant and agree as follows:

(a) The parties shall first use their reasonable best efforts to resolve such dispute among themselves, with or without mediation.

(b) If the parties are unable to resolve such dispute among themselves, such dispute shall be submitted to binding arbitration in Houston, Texas, under the auspices of, and pursuant to the rules of, the American Arbitration Association's Commercial Arbitration Rules as then in effect, or such other procedures as the parties may agree to at the time, before a tribunal of three (3) arbitrators, one of which shall be selected by the Executive, one of which shall be selected by the Employer, and the third of which shall be selected by the two (2) arbitrators so selected. Any award issued as a result of such arbitration shall be final and binding between the parties, and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought. A ruling by the arbitrators shall be non-appealable. The parties agree to abide by and perform any award rendered by the arbitrators. If either the Executive or Employer seeks enforcement of the terms of this Agreement or seeks enforcement of any award rendered by the arbitrators, then the prevailing party (designated by the arbitrators) to such proceeding(s) shall be entitled to recover its costs and expenses (including applicable travel expenses) from the non-prevailing party, in addition to any other relief to which it may be entitled. If a dispute arises and one party fails or refuses to designate an arbitrator within thirty (30) days after receipt of a written notice that an arbitration proceeding is to be held, then the dispute shall be resolved solely by the arbitrator designated by the other party and such arbitration award shall be as binding as if three (3) arbitrators had participated in the arbitration proceeding. Either the Executive or the Employer may cause an arbitration proceeding to commence by giving the other party notice in writing of such arbitration. Executive and the Employer covenant and agree to act as expeditiously as practicable in order to resolve all disputes by arbitration. Notwithstanding anything in this section to the contrary, neither Executive nor the Employer shall be precluded from seeking court action in the event the action sought is either injunctive action, a restraining order or other equitable relief. The arbitration proceeding shall be held in English.

(c) Legal process in any action or proceeding referred to in the preceding section may be served on any party anywhere in the world.

(d) Except as expressly provided herein and except for injunctions and other equitable remedies that are required in order to enforce this Agreement, no action may be brought in any court of law and EACH OF THE PARTIES WAIVES ANY RIGHTS THAT IT MAY HAVE TO BRING A CAUSE OF ACTION IN ANY COURT OR IN ANY PROCEEDING INVOLVING A JURY TO THE MAXIMUM EXTENT PERMITTED BY LAW. Each party acknowledges that it has been represented by legal counsel of its own choosing and has been advised of the intent, scope and effect of this Section 9.10 and has voluntarily entered into this Agreement and this Section 9.10.

(e) Excluded from this Section 9.10 are any claims for temporary injunctive relief to enforce Sections 7 and 8 of this Agreement.

9.11

SECTION HEADINGS, CONSTRUCTION

The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise specified. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

9.12

SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

9.13

COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

9.14

WAIVER OF JURY TRIAL

THE PARTIES HERETO HEREBY WAIVE A JURY TRIAL IN ANY LITIGATION WITH RESPECT TO THIS AGREEMENT.

9.15

WITHHOLDING OF TAXES AND OTHER EMPLOYEE DEDUCTIONS

The Employer may withhold from any payments and benefits made pursuant to this Agreement all federal, state, city, and other taxes as may be required pursuant to any law or governmental regulation or ruling and all other normal deductions made with respect to the Employer's employees generally.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

EMPLOYER:

BMC Software, Inc.

By: /s/ ROBERT E. BEAUCHAMP

Name: Robert E. Beauchamp

Title: President & Chief Executive Officer

EXECUTIVE:

/s/ HOLLIE S. CASTRO

Hollie Castro

BMC SOFTWARE, INC.
Executive Employment Agreement
Cash Bonus Description

Executive Incentive Plan

The Executive will, during the Employment Period, be permitted to participate in the BMC Annual Executive Incentive Plan that may be in effect from time to time. During the Employment Period, the Executive will be eligible to receive a target incentive, which currently is 100% of base salary. The actual amount received is not guaranteed and is dependent on the performance of the Company and the Executive in accordance with the BMC Annual Executive Incentive Plan established for each fiscal year during the Employment Period.

Each fiscal year, the Executive will receive a detailed description of the BMC Annual Executive Incentive Plan and the targeted measures and objectives for that year.

Notwithstanding the foregoing, for purposes of the performance period commencing on October 1, 2009, and ending on March 31, 2010, the Executive will receive a cash bonus equal to at least one-half (1/2) of the Executive's target bonus opportunity for such period, regardless of the performance of the Employer during such performance period. If the performance of the Employer during such performance period would entitle the Executive to a greater cash bonus for such period, as determined in accordance with this Attachment A and the terms of the BMC Annual Executive Incentive Plan, the Executive will receive the greater cash bonus.

Long-Term Incentive Plan

The Executive will, during the Employment Period, be permitted to participate in the BMC Long-Term Incentive Plan that may be in effect from time to time. During the Employment Period, the Executive will be eligible to receive a target incentive as determined by the Compensation Committee. The actual amount received is not guaranteed and is dependent on the performance of the Company and the Executive in accordance with the BMC Long-Term Incentive Plan established for each fiscal year during the Employment Period.

Each fiscal year, the Executive will receive a detailed description of the BMC Long-Term Incentive Plan and the targeted measures and objectives for that year.

Notwithstanding the foregoing, the initial target award granted to the Executive pursuant to the Long-Term Incentive Plan will be equal to \$400,000 and will be granted at the beginning of the next fiscal year of the Employer commencing after the Effective Date, in accordance with the Employer's normal practices for granting such awards. As a first-time participant in the LTIP, 50% of the LTIP Target Amount (\$200,000) will be eligible for a payout based on the performance period beginning April 1, 2010 and ending September 30, 2011. The remaining 50% (\$200,000) will be eligible for a payout based on the performance period beginning April 1, 2010 and ending March 31, 2013. Each actual payout will be determined based upon corporate performance as determined under the LTIP and continued employment.

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
OF BMC SOFTWARE, INC.

I, Robert E. Beauchamp, certify that:

1.
I have reviewed this quarterly report on Form 10-Q of BMC Software, Inc. (the “registrant”);
2.
Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3.
Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4.
The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a.
Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b.
Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c.
Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d.
Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5.
The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2009

By:

/s/ ROBERT E. BEAUCHAMP

Robert E. Beauchamp (Chief Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
OF BMC SOFTWARE, INC.

I, Stephen B. Solcher, certify that:

1.
I have reviewed this quarterly report on Form 10-Q of BMC Software, Inc. (the “registrant”);
2.
Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3.
Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4.
The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a.
Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b.
Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c.
Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d.
Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5.
The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 30, 2009

By:

/s/ STEPHEN B. SOLCHER

Stephen B. Solcher (Chief Financial Officer)

CERTIFICATION OF
CHIEF EXECUTIVE OFFICER
OF BMC SOFTWARE, INC.
PURSUANT TO 18 U.S.C. § 1350

Based on my knowledge, I, Robert E. Beauchamp, Chief Executive Officer of BMC Software, Inc. (the “Company”), hereby certify that the accompanying report on Form 10-Q for the period ending September 30, 2009 and filed with the Securities and Exchange Commission on the date hereof pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the “Report”) by the Company fully complies with the requirements of that section.

Based on my knowledge, I further certify that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ ROBERT E. BEAUCHAMP

Robert E. Beauchamp

October 30, 2009

CERTIFICATION OF
CHIEF FINANCIAL OFFICER
OF BMC SOFTWARE, INC.
PURSUANT TO 18 U.S.C. § 1350

Based on my knowledge, I, Stephen B. Solcher, Chief Financial Officer of BMC Software, Inc. (the “Company”), hereby certify that the accompanying report on Form 10-Q for the period ending September 30, 2009 and filed with the Securities and Exchange Commission on the date hereof pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the “Report”) by the Company fully complies with the requirements of that section.

Based on my knowledge, I further certify that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ STEPHEN B. SOLCHER

Stephen B. Solcher

October 30, 2009