

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT2653221

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	07/07/2013
CONVEYING PARTY DATA	
Name	Execution Date
PARTNERPEDIA SOLUTIONS, INC.	08/28/2013
RECEIVING PARTY DATA	
Name:	BMC PARIS ACQUISITION ULC
Street Address:	355 BURRARD STREET, SUITE 1800
City:	VANCOUVER, BC
State/Country:	CANADA
Postal Code:	V6C 2G8
PROPERTY NUMBERS Total: 3	
Property Type	Number
Application Number:	12684036
Application Number:	61143068
Application Number:	61745511
CORRESPONDENCE DATA	
Fax Number:	(612)332-8352
Phone:	2024706450
Email:	alison@brakehughes.com
<i>Correspondence will be sent via US Mail when the email attempt is unsuccessful.</i>	
Correspondent Name:	BRAKE HUGHES BELLERMANN LLP
Address Line 1:	C/O CPA GLOBAL
Address Line 2:	P.O. BOX 52050
Address Line 4:	MINNEAPOLIS, MINNESOTA 55402
ATTORNEY DOCKET NUMBER:	0081-321P01, 321001 &320P
NAME OF SUBMITTER:	EDWARD P. SMITH

OP \$120.00 12684036

Signature:	/Edward P. Smith Reg. No. 62,496/
Date:	12/18/2013
Total Attachments: 11 source=Asset Purchase Agreement and Property Rights Assig#page1.tif source=Asset Purchase Agreement and Property Rights Assig#page2.tif source=Asset Purchase Agreement and Property Rights Assig#page3.tif source=Asset Purchase Agreement and Property Rights Assig#page4.tif source=Asset Purchase Agreement and Property Rights Assig#page5.tif source=Asset Purchase Agreement and Property Rights Assig#page6.tif source=Asset Purchase Agreement and Property Rights Assig#page7.tif source=Asset Purchase Agreement and Property Rights Assig#page8.tif source=Asset Purchase Agreement and Property Rights Assig#page9.tif source=Asset Purchase Agreement and Property Rights Assig#page10.tif source=Asset Purchase Agreement and Property Rights Assig#page11.tif	

ASSET PURCHASE AGREEMENT
and
INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT
Between
BMC PARIS ACQUISITION ULC and BMC SOFTWARE ACQUISITION, L.L.C.

THIS ASSET PURCHASE AGREEMENT and INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT (“Agreement”) is made and entered into effective as of July 7, 2013 (“Effective Date”), by and between BMC Paris Acquisition ULC, an unlimited company established under the laws of British Columbia, Canada (“ULC” or “Seller”) and BMC Software Acquisition, L.L.C., a limited liability company formed under the laws of Delaware (“Purchaser”). Both Purchaser and Seller are subsidiaries of BMC Software, Inc. (“BMC”).

RECITALS

WHEREAS, on June 18, 2013, BMC and BladeLogic, Inc., a subsidiary of BMC, contributed equal shares of the capital in return for fifty percent (50%) each of the ownership in Purchaser;

WHEREAS, on June 19, 2013, Purchaser formed ULC under the laws of British Columbia, Canada;

WHEREAS, on July 1, 2013, Purchaser contributed an additional Twenty-five Million Six Hundred and Forty Two Thousand Seven Hundred Fifty Four U.S. Dollars (\$25,642,754.00) into ULC in exchange for Twenty-five Million Six Hundred and Forty Two Thousand Seven Hundred Fifty Four (25,642,754) shares of ULC’s stock;

WHEREAS, 0865192 BC Ltd. (“Number Co”) owned a certain number of shares of Partnerpedia Solutions, Inc. (“Partnerpedia”), which is in the business of providing the AppZone Marketplace (next-generation catalog and commercial platform that has the capability of tying into back-end systems) and the AppZone Manager (a cloud-based enterprise application software store providing easy, efficient and secure access to a wide array of cloud, mobile, custom and desktop applications) product and services (“Partnerpedia Business”);

WHEREAS, effective July 2, 2013, in a Share Purchase Agreement entered into on June 24, 2013, ULC purchased all capital shares of Number Co and of Partnerpedia;

WHEREAS, as of July 2, 2013, ULC directly owned one hundred percent (100%) of Number Co, and ULC directly and indirectly owned one hundred percent (100%) of Partnerpedia;

WHEREAS, on July 4, 2013, Number Co amalgamated into ULC, with ULC being the surviving entity;

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*Asset Purchase Agreement and Intellectual Property Rights Assignment between
BMC Paris Acquisition ULC and BMC Software Acquisition, L.L.C.*

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WHEREAS, on July 5, 2013, Partnerpedia amalgamated into ULC, with ULC being the surviving entity and as a result of the amalgamation, succeeded in the ownership of all rights, title, and interest related to Partnerpedia Assets (as defined below);

WHEREAS, ULC wishes to sell to Purchaser, and Purchaser wishes to purchase from ULC, the entire rights, title and interest in the Partnerpedia Assets (such sale and purchase being hereinafter referred to as the "Acquisition"); and

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

ARTICLE I DEFINITIONS

1.1 Certain Defined Terms For all purposes of and under this Agreement, the following terms shall have the following respective meanings:

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under direct or indirect common control with, such Person. For the purposes of this definition, "control," when used with respect to any specified Person, shall mean the possession of the power, directly or indirectly, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise, to direct, or cause the direction of the management and policies of such Person. The terms "controlling" and "controlled" shall have correlative meanings.

"Agreement" has the meaning set forth in the first paragraph of this document.

"Acquisition" has the meaning set forth in the ninth paragraph of the Recitals Section of this Agreement.

"Business Day" means any day that is not a Saturday, a Sunday, or other day on which banks are required or authorized by Law to be closed in the State of Texas.

"Consideration" has the meaning set forth in Section 2.2 of this Agreement.

"Copyrightable Content" has the meaning set forth in the definition of Intellectual Property of this Section.

"Data Collections" has the meaning set forth in the definition of Intellectual Property of this Section.

"Documentation" means all materials that set forth, specify, or otherwise document the functionality, performance, or features of the Software, including design or development specifications; product specifications; end user, system, and operational manuals; installation guides; and online help.

"EDI" has the meaning set forth in Section 2.4 of this Agreement.

"Effective Date" has the meaning set forth in the first paragraph of this Agreement.

"Encumbrance" means any lien, pledge, option, charge, claim, mortgage, encumbrance or other similar restriction.

"Governmental Authority" means any federal, state, provincial, local or foreign court of competent jurisdiction, administrative agency, commission, or other governmental authority or instrumentality.

"Intellectual Property" means any or all of the following:

(a) inventions and conceptions (whether patentable or not), technology, designs, models, and improvements ("Patentable Assets");

(b) non-public proprietary information of any nature, including, but not limited to:

- (i) that of a business, technical, or financial nature,
- (ii) trade secrets,
- (iii) confidential information and
- (iv) other non-public information, including, but not limited to:
 - A. know how,
 - B. business methods, processes, procedures, and methodologies, and
 - C. non-published patent applications

(collectively, hereinafter referred to as "Trade Secrets");

(c) works of authorship, including, but not limited to, the Software; the Source Code of the Software; computer programs (in Source Code, object code, or script form); data; files; records; schematics; drawings; diagrams; tools; utilities; Documentation; Marketing Materials; and other content, whether in electronic, digital, or tangible form and in whatever media ("Copyrightable Content");

(d) databases and data collections ("Data Collections");

(e) the Trademarks; and

(f) any similar or equivalent embodiments, representations, or manifestations of property issuing from intellect.

"Intellectual Property Rights" means the rights to Intellectual Property afforded by any Laws, international treaties or conventions, and rights arising from contractual rights, including:

(a) with respect to Patentable Assets, (i) patent applications (including the provisional patent applications) listed in Exhibit A, reissue applications, divisions or divisional applications, continuation applications, and continuation-in-part applications; (ii) any patents that grant from the applications listed in (i) of this Section (a); (iii) extensions and reexaminations of such patents; and (iv) statutory invention registrations;

(b) with respect to Trade Secrets, rights arising from trade secret and unfair competition laws and from laws that protect non-public competitive information;

(c) with respect to Copyrightable Content, copyright rights, applications for copyright registration, and copyright registrations, including rights of first publication, whether or not registered, and moral rights (to the extent such moral rights are owned, controlled by, or may be granted or transferred to another by the employer of an author who created the Copyrightable Content);

(d) with respect to Data Collections, rights arising from database protection laws;

(e) with respect to the Trademarks, rights arising under trademark laws; and

(f) any other rights that protect embodiments, representations, or manifestations of property issuing from intellect.

"Laws" means all laws, statutes, orders, rules, regulations and ordinances of any country or political subdivision thereof including reported decisions of any court thereof having the effect of law in each such jurisdiction.

"Marketing Materials" means advertisements, product literature, and other materials of a marketing nature relating to the Software.

"Partnerpedia Assets" means all Intellectual Property and Intellectual Property Rights therein associated with the Partnerpedia Business.

"Partnerpedia Business" has the meaning set forth in the fourth paragraph of the Recitals Section of this Agreement.

"Patentable Assets" has the meaning set forth in the definition of Intellectual Property of this Section.

"Permits" means all franchises, permits, licenses, qualifications, municipal and other approvals, authorizations, orders, consents and other rights from, and filings with, any Governmental Authority.

"Person" means any corporation, partnership, joint venture, limited liability company, organization, entity, association, business trust or natural person.

"Software" means, collectively:

- (a) the Software used in Partnerpedia Business;
- (b) all other computer programs in Source Code, object code, or script form that are owned by Seller on the Effective Date;
- (c) any Third Party's computer program that is licensed by Seller from such Third Party and made available by Seller to licensed users of Seller's computer programs as a part of such computer programs, from time to time during the term of this Agreement; and
- (d) the programs, scripts, and definitions that are used for installing and uninstalling the computer programs of subsection (a) of this definition.

"Source Code" means a series of computer programming instructions, statements, or definitions, whether (a) in an English-like high-level computer language such as C, C++, Visual Basic, or Java; (b) in a low-level language such as the assembly language for a particular processor; (c) in a script language such as Perl, JavaScript, or Shell Script; (d) in a markup language such as Flex; or (e) in any other programming model, and, including (i) complete instructions for compiling and linking every part of such instructions into executable forms; (ii) the precise identification of all compilers, library packages, linkers, and tools used to generate executable code; and (iii) complete instructions for building an entire product, including but not limited to, all programs and configuration files, into a format suitable for shipping a working product for installation by an end user of the product.

"Third Party" means any Person other than Seller or Purchaser, or any of their respective Affiliates.

"Trademarks" means all domain names and "*Partnerpedia*" and any other trademarks or service marks that are owned by Seller and under which Seller makes available Software or with respect to which Seller has developed goodwill.

"Trade Secrets" has the meaning set forth in the definition of Intellectual Property of this Section.

ARTICLE II THE ACQUISITION OF ASSETS AND IP ASSIGNMENT

2.1 Purchase and Sale. Seller hereby assigns, transfers, sells and conveys to Purchaser at fair market value (i) all rights, title, and interest in and to the Partnerpedia Assets free and clear of any and all Encumbrances, (ii) all risks related to the Partnerpedia Assets, (iii) the right to sue for and collect damages for any and all past, present, and future infringement of the Partnerpedia Assets, (iv) the goodwill connected with the use of and symbolized by the Trademarks, and (v) all invoices, records, and other business information that relate to the Partnerpedia Assets.

2.2 Consideration. The consideration for Purchaser's purchase of the Partnerpedia Assets shall be at fair market value and shall be Twenty-Four Million Nine Hundred Thirty Six Thousand One Hundred and Fifteen U.S. Dollars (\$24,936,115) (the "Consideration").

2.3 Adjustment. Purchaser and Seller hereby confirm that the Consideration is intended to be equal to the fair market value of the Partnerpedia Assets as of the Effective Date. If any Governmental Authority having jurisdiction asserts, by assessment or reassessment, proposed assessment or reassessment, or otherwise, that the fair market value of the Partnerpedia Assets differs from the Consideration, including an assessment or reassessment of tax on the basis that any gift, benefit, or advantage is or has been conferred on any person by reason of the Acquisition (a "proceeding"), the Consideration shall be increased or decreased, as the case may be, to an amount equal to the fair market value of the Partnerpedia Assets that:

- (i) is agreed upon by such Governmental Authority, Purchaser, and Seller in settlement of such proceeding;
- (ii) serves as the basis for such proceeding against which no defense or appeal is taken; or
- (iii) is established by a court or tribunal of competent jurisdiction on the defense of or appeal from such proceeding after all rights of appeal have been exhausted or after all times for appeal have expired, without appeals having been taken by any of the parties hereto or such Governmental Authority.

The Consideration as so adjusted will be deemed to be and always to have been the amount so determined.

2.4 Instruments of Conveyance and Transfer. Seller will take such steps as may be necessary to put Purchaser in actual possession and operating control of the Partnerpedia Assets within ten (10) days of the Effective Date. To the extent practicable, the Partnerpedia Assets shall be delivered to Purchaser through electronic data interchange ("EDI") or other electronic methods, as directed by Purchaser.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 Consents and Approvals. The execution, delivery and performance of the obligations arising from this Agreement by Seller do not require Seller to obtain any material consent, license, Permit, approval, waiver, authorization, order, or other action by, or to make any filing with or notification to, any Governmental Authority or, to the knowledge of Seller, any Third Party.

3.2 Compliance with Laws. Seller has conducted its business in accordance with all material applicable Laws, regulations, and other requirements of all Governmental Authorities having jurisdiction over Seller and which could have any material adverse effect on Purchaser's interest in the Partnerpedia Assets. Seller has received no notification of any asserted present or past failure by Seller to comply with such Laws or regulations in connection with its business and operations or in connection with the Partnerpedia Assets.

3.3 Intellectual Property Rights.

(a) None of the Partnerpedia Assets are subject to any outstanding judgment, decree or order of any court or other Governmental Authority of competent jurisdiction or agreement restricting in any material manner the sale or transfer thereof by Seller. Seller has not entered into any agreement to indemnify any Third Party against any charge of infringement by any of the Partnerpedia Assets, or of any Intellectual Property Rights of any Third Party, except such indemnities as have been agreed to in the ordinary course of business included in agreements regarding the Software or services offered to customers as of the date hereof or proposed to be offered to customers at any time within a year after the date hereof, or under development as of the date hereof. Seller has not entered into any agreement granting any Third Party the right to bring infringement actions with respect to, or otherwise to enforce any rights with respect to, any of the Partnerpedia Assets. Seller has the exclusive right to file, prosecute and maintain all applications and registrations with respect to any of the Partnerpedia Assets.

(b) Seller has taken reasonable measures to protect the confidentiality of the Source Code, all technical Documentation thereof, and the trade secrets and confidential information of Seller. None of the Source Code or such confidential information has been disclosed or provided to anyone except to employees and contractors of Seller pursuant to signed, written agreements that impose a duty of confidentiality on such employees and contractors with respect to such Source Code. To the knowledge of Seller, no portion of any of the Software or Source Code and confidential information has been incorporated in software products (whether in development, commercially available, or otherwise) of any Third Party.

(c) There are no outstanding material disputes between Seller and its respective customers or suppliers, and no material customer or supplier has notified Seller in writing that it will not do business with Seller.

3.4 Taxes. Purchaser shall pay or reimburse to Seller all taxes, charges, fees, levies, duties, imposts, or other assessments or charges of any kind that are imposed by and required to be paid by law or Governmental Authority, in connection with the Consideration for the Acquisition, including, without limitation, sales, use, value-added, excise, customs duties, withholding, property, and other similar taxes, but not taxes based on Seller's income.

3.5 Additional Documents Relating to Proprietary Rights and Title. Seller shall execute, without additional consideration from Purchaser, any and all additional and proper copyright, patent, trademark, and trade secret documents reasonably requested and prepared by Purchaser, including, without limitation, registration applications, recordation documents and/or conveyance documents reasonably necessary for the purposes of protecting or perfecting Purchaser's right, title, and interest to the Partnerpedia Assets.

ARTICLE IV GENERAL PROVISIONS

4.1 Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made and shall be deemed to have been duly given or made if delivered in person by courier service, facsimile, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 4.1):

(a) if to Seller:

BMC Paris Acquisition ULC
1690 West Broadway, Suite 202
Vancouver, British Columbia, V6J1X6
Canada
Attention: Alithea Berger

(b) if to Purchaser:

BMC Software Acquisition, L.L.C.
2101 CityWest Blvd.
Houston, TX 77042
United States
Attention: Stephen B. Solcher

Notice by facsimile will be deemed delivered on the first Business Day after the date the sender receives facsimile confirmation that such notice was received at the facsimile number of the addressee. Notice given by mail as set forth above will be deemed received three Business Days after the same is postmarked.

4.2 Entire Agreement. This Agreement and any schedules or exhibits hereto constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, by and between, the parties with respect to the subject matter hereof and except as otherwise expressly provided herein. This Agreement may not be amended or modified except by an instrument in writing signed by Purchaser and Seller.

4.3 Assignment. This Agreement shall not be assigned by operation of law or otherwise, except that Purchaser may transfer or assign in whole or from time to time in part, to one or more of its Affiliates its rights or obligations under this Agreement, but no such transfer or assignment will relieve Purchaser of its obligations under this Agreement.

4.4 No Third-Party Beneficiaries. Except as provided in this Article IV, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.


4.5 Governing Law. The validity, construction, and performance of this Agreement shall be governed by and construed in accordance with the Laws of the State of Texas and the United States in all respects.

4.6 Waiver. The waiver, express or implied, by either of the parties hereto of any right arising hereunder or of any failure to perform or breach hereof by the other party hereto shall not constitute or be deemed to be a waiver of any other right hereunder or of any other similar failure to perform or breach hereof by such other party, whether of a similar or dissimilar nature thereto.

4.7 Force Majeure. A party hereto shall not be liable to the other party hereto for any loss, injury, delay, damages, or other casualty suffered or incurred by the latter due to strikes, riots, storms, fires, explosions, acts of God, war, acts of terrorism, breaches of cyber security, hurricane, action of any government or any other cause similar thereto which is beyond the reasonable control of the former, and any failure or delay by either party hereto in performance of any of its obligations under this Agreement due to one or more of the foregoing causes shall not be considered a breach of this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

BMC Paris Acquisition ULC

By: 
Name: T. Cory BLEIER
Title: DIRECTOR
Date: 08/28/2013

BMC Software Acquisition, L.L.C.


By: 
Name: T. Cory BLEIER
Title: MANAGER
Date: 08/28/2013

EXHIBIT A

US Patent Application No. 12/684,036 -- INFORMATION PORTAL BASED ON PARTNER
INFORMATION

US Patent Application No. 13/359,236 -- NETWORK BASED APPLICATION
MANAGEMENT

US Provisional Patent Application -- Serial No. 61/745,511 -- APPLICATION WRAPPING
SYSTEM AND METHOD