

## **PRODUCT ONLINE END USER LICENSE AGREEMENT NOTICE**

If BMC accepts this agreement ("**Agreement**"), it is an Agreement between the entity or individual entering into this agreement ("**User**") and BMC Software, Inc., a Delaware corporation located at 2103 CityWest Blvd., Houston, Texas 77042, USA, or its local licensing affiliate ("**BMC**"). If BMC accepts this Agreement, then this Agreement is effective on the date it is communicated to User.

**Territory:** The country where User acquired the license.

**Product:** The BMC software product and/or subscription service for which a temporary license is being granted in accordance with terms of this Agreement.

**Technology:** The Product, solution, and/or demonstration environment being installed, accessed and/or used by User pursuant to the terms of this Agreement, and all related software, systems, platforms or networks.

1. **TRIAL LICENSE.** BMC grants User a non-exclusive, non-transferable, temporary license to access and use the Technology for a 30 day time period, unless otherwise provided by BMC ("**Trial Period**"), only (a) to internally evaluate and determine whether to acquire a license to the Products for a fee, or (b) if User is an authorized BMC Partner or a Service Provider, to demonstrate to the prospective customer for the prospective customer's internal evaluation purposes.

2. **RESTRICTIONS ON USE.** User will not: (a) copy, operate or use any Product in any manner other than as set forth in the trial license above; (b) use the Technology to process production data, or for development, commercial, production, or database management purposes; (c) use the Technology with data or information that has not been backed up; (d) modify, copy or create derivative works based on the Product; (e) create Internet "links" to or reproduce any content forming part of the Product, other than for its own internal non-production business purposes; (f) use any components provided with the Technology separately from the Product; (g) attempt to gain unauthorized access to the Product or its related software, systems, platforms or networks; (g) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("**Identification**") from any Product; (h) copy any Product or any portion of any Product without reproducing all Identification on each copy or partial copy; (i) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code or access it in order to copy any ideas, features, content, functions or graphics of the Product, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (j) sell, distribute, rent, lease, sublicense, display, modify, time share, outsource or otherwise provide the Product to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (k) access the Product for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (l) release any results of performance tests related to Product to any third party without BMC's prior written consent; (m) attempt to disable or circumvent any of the licensing mechanisms within the Product or Technology; (n) interfere with or disrupt the integrity or performance of the Product; (o) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Product; (p) send or store viruses or malicious code via the Product; (q) violate any other usage restrictions contained in the Documentation; or (r) make any representations to prospective customers which are not made by BMC in this Agreement. User is responsible for maintaining the confidentiality of any passwords assigned to User. User will immediately notify BMC if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. User will be responsible for any and all activities under User's account and/or using User passwords. User will (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Product, and notify BMC promptly of any such unauthorized access or use, and (ii) comply with all applicable laws in using the Product.

3. **OWNERSHIP AND LIMITATIONS ON COPYING.** All title and copyrights in and to the Technology are owned by BMC and/or its affiliates and licensors, and are protected by both United States copyright law and applicable international copyright treaties. User acknowledges that the Products contain valuable trade secrets of BMC and/or its affiliates and licensors. User may not copy the Products for any purposes, except to the extent expressly permitted by applicable law or treaty notwithstanding this limitation. User agrees not to claim or assert title to or ownership of the Technology, or modifications thereto. User shall not remove or alter any copyright or proprietary notice from copies of the Products.

4. **NO WARRANTY AND LIMITATION OF LIABILITY. THE TECHNOLOGY IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY, INCLUDING WITHOUT LIMITATION NO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT. NEITHER BMC, NOR ITS AFFILIATES, SUPPLIERS OR LICENSORS ARE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES FROM ANY CAUSE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE TECHNOLOGY OR THIS AGREEMENT. BMC'S, IT'S AFFILIATES', SUPPLIERS' AND LICENSORS' LIABILITY FOR DIRECT DAMAGES RESULTING FROM THE USE OF THE TECHNOLOGY OR THIS AGREEMENT IS LIMITED TO US \$500.**

5. **ACTIONS UPON EXPIRATION OF TRIAL PERIOD.** Upon termination of this Agreement or expiration of a Trial Period: (a) User will immediately cease using the Technology; (b) if User has installed the Product on its system, then User will delete it immediately; (c) if User is accessing the Product via an Internet-based demonstration site, BMC may disable User's access; (d) If User desires to acquire a paid-for license to access and use the Product, then User must acquire a license to use and access the Product under the then-current subscription service or software license terms, as applicable, with BMC or its appropriate subsidiary or affiliate; and (e) BMC may delete all User Collected Data input into the Product during the trial period. At BMC's sole discretion, a new Trial Period may be activated by User by following instructions provided with the Product and/or Technology. This agreement creates no obligation on the part of User to purchase a license to any Products or for BMC to provide such license to User. Further, this Agreement creates no obligation on the part of BMC to make any Internet-based demonstration site available to User.

6. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) BMC, its Affiliates or licensors retain all right, title and interest to the Technology and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. User may not remove any product identification, copyright, trademark or other notice from the Product. BMC reserves any rights not expressly granted to User in this Agreement. (b) **"Confidential Information"** means all proprietary or confidential information that is disclosed to User by BMC, and includes, among other things (i) any and all information relating to products or services, including, without limitation, software code, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC, and its licensors, the Product (excluding portions of the Documentation that BMC makes publically available) and any third party software provided with the Product; and (iii) the terms of this Agreement. Confidential Information does not include information that User can show: (a) was rightfully in User's possession without any obligation of confidentiality before receipt from BMC; (b) is or becomes a matter of public knowledge through no fault of User; (c) is rightfully received by User from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for User. User may not disclose Confidential Information of BMC to any third party or use the Confidential Information in violation of this Agreement. User (i) will exercise the same degree of care and protection with respect to the Confidential Information of BMC that it exercises with respect to its own Confidential Information and (ii) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of BMC. Notwithstanding the foregoing, User may disclose BMC's Confidential Information to User's employees and agents who have the need to know provided that such employees and agents have legal obligations of confidentiality substantially the same (and in no case less protective) as the provisions of this Agreement. (c) **Notification Obligation.** If User becomes aware of any unauthorized use or disclosure of BMC's Confidential Information, then User will promptly and fully notify BMC of all facts known to it concerning such unauthorized use or disclosure. In addition, if User or any of its employees or agents are required (by oral questions, interrogatories, requests for information, or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of BMC's Confidential Information, User will not disclose BMC's Confidential Information without providing BMC with commercially reasonable advance prior written notice to allow BMC to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, User will exercise its commercially reasonable efforts to preserve the confidentiality of BMC's Confidential Information, including, without limitation, cooperating with BMC to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. **"Documentation"** means the technical publications relating to the software, such as release notes, reference, user, installation, systems administrator and technical guidelines, included with the Product.

7. **DATA PROTECTION.** (a) User acknowledges that BMC neither requires nor needs User to (i) send BMC any personal data collected by User ("**User Collected Data**") or (ii) give BMC access to any User Collected Data. Consequently, User remains responsible for either filtering, making anonymous, encrypting such User Collected Data or for having proper procedures in place to prevent User Collected Data from being sent to or accessed by BMC. (b) In the course of normal business, BMC may collect and process personal information related to the User (mainly contact and related information) in order to perform its obligations under this Agreement and/or under an Order, such information being referred to hereinafter as "**User Contact Information**". Where the User Contact Information is to be processed by BMC, BMC will comply with its Controller and Processor Binding Corporate Rules Policy found at <http://media.cms.bmc.com/documents/External+Privacy+Binding+Coporate+Rules+Policy+--+Aug+04.pdf> (the "**BCR**") with respect to compliance with data protection laws and/or regulations. The BCR policy is incorporated into a BMC corporate wide policy, requiring all BMC entities, employees and third party providers to comply with and respect the BCR policy which is governing the collection, use, access, storage and transfer of Personal Data among BMC entities and third-party sub-processors. The details of the BCR approval of BMC Software are available at [http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr\\_cooperation/index\\_en.htm](http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr_cooperation/index_en.htm). BMC shall in particular: (i) allow User to access, modify, correct or erase User Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of User Contact Information and to prevent its unauthorized access, use, or disclosure; and (iii) refrain from using User Contact Information for any other purpose than performing its obligations under this Agreement and/or any Order. User is responsible for complying with all legal requirements, including applicable privacy laws and regulations, relating to the collection, use, processing and transfer of User Collected Data.

8. **EXPORT CONTROLS.** User represents and warrants that it: a) will comply with the United States Export Administration Regulations and other U.S. or foreign export regulations; b) no individual accessing or using the Technology is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Technology under such regulations; d) will not acquire the Technology for a person who is restricted under such regulations; e) will not use the Technology in contradiction to such regulations; and f) will not use the Technology for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Technology exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use items and technology, and it is declared that this Technology is intended for civil purposes only. Therefore, User agrees to comply with both the U.S. regulations and those E.U. regulations and will not export in violation of the regulations and without all proper licenses. Any failure to comply with these regulations will result in User forfeiting all rights to the Technology.

9. **GOVERNING LAW AND DISPUTE RESOLUTION.** Either party shall provide notice of any controversy, dispute or claim arising out of or relating to this Agreement, or to the formation, interpretation, breach, termination, or validity thereof ("Controversy"). The parties shall seek to resolve the Controversy through good faith negotiations. Only in the event that the Controversy is not resolved within 30 days of the sending of written notice of Controversy, the Controversy may be submitted to litigation or binding arbitration, based on the place of incorporation of the parties, as follows:

(i) If both parties to this Agreement are entities incorporated under the law of any state in the United States, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both sides hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens.

(ii) If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the arbitration shall be held in Amsterdam, Netherlands under the then-applicable rules of the International Chamber of Commerce and the substantive laws of the Netherlands will govern.

(iii) If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the arbitration shall be held in Singapore under the then-applicable rules of the Singapore International Arbitration Centre and the substantive laws of Singapore will govern.

(iv) In all other instances, the arbitration shall be held in New York City, New York, under the then-applicable international rules of the American Arbitration Association and the substantive laws of the State of Texas will govern.

For all arbitrations conducted hereunder: (a) the arbitration shall be conducted in English; (b) the relevant arbitral institution shall determine the number of arbitrators, but any Controversy in which the amount in dispute is greater than \$10 million USD shall be decided by three arbitrators, with each party having the right to select one arbitrator; (c) the costs of such arbitration shall be borne equally, pending the arbitrator's award; (d) the arbitration award rendered shall be final and binding on the parties, shall not be subject to appeal to any court and shall be enforceable in any court having jurisdiction over the Parties; (e) the arbitration proceedings, award and pleadings shall all be confidential, unless disclosure of particular information is required for purposes of enforcing/challenging the award or to meet local securities law requirements; and (f) the party prevailing in arbitration shall be entitled to recover its reasonable attorneys' fees and the necessary costs incurred in connection with the arbitration.

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

10. **U.S. FEDERAL ACQUISITIONS.** This Section applies only to acquisitions of the commercial Product and Documentation subject to this Agreement by or on behalf of the United States Government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the United States Government. In the event the Products are delivered to the United States Government, the United States Government hereby agrees that the Products qualify as "commercial items" within the meaning of the Federal acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the United States Government's use and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions. The following additional statement applies only to acquisitions governed by DFARS Subpart 227.4 (October 1988): "Restricted Rights – Use, duplication and disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 (Oct. 1988)."

11. **MISCELLANEOUS TERMS.** This is the entire agreement of the parties, and it supersedes and replaces all prior and contemporaneous agreements and negotiations with respect to this subject matter. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may only be amended by a signed writing of the parties. Either party may terminate this Agreement at any time upon two weeks prior notice. User may not assign or transfer this Agreement without BMC's prior written consent. No failure or delay by either party in exercising any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise thereof preclude any other or further exercise, or the exercise of any right, power or privilege under this Agreement. User agrees that BMC and its affiliates may refer to User as a customer of BMC, both internally and in externally published media. The BMC Products may contain third party software which is delivered to User as part of the Product and may not be taken out of the Product or used separately from the Product and for which additional terms may be included in the Documentation. The Product may contain hyperlinks to websites controlled by parties other than BMC. BMC is not responsible for and does not endorse the content or accept any responsibility for Customer's use of these websites. Customer should refer to the policies posted by other websites regarding data privacy and other topics before using them. Any additional documents presented to a BMC representative by Customer for signature as a condition for going on a Customer's site will be governed by this Agreement and to the extent that such document presents additional terms or conflicts with this Agreement, it shall be considered null and void. The parties have agreed that this Agreement and the documents related thereto be drawn up in the English language. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

**YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.**