

BMC SOFTWARE
PRERELEASE AGREEMENT

**The Prerelease Code is still under development and testing.
BMC has NOT made any Prerelease Code generally available as a
formal BMC software product to its customers.
You should not place any Prerelease Code into a production environment.**

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU REJECT THIS AGREEMENT, YOU WILL NOT ACQUIRE ANY RIGHT TO USE THE PRERELEASE CODE.

If BMC accepts this agreement ("**Agreement**"), it is an agreement between the entity or individual entering into this agreement ("**Customer**") 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 Customer.

Prerelease Code: The BMC beta, alpha, or other preliminary version of the software product and/or subscription service for which a temporary license and/or access right is being granted in accordance with terms of this Agreement.

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

This Agreement was last updated on April 22, 2020.

1. **PRERELEASE ACCESS RIGHTS.** Subject to the terms of this Agreement, BMC grants Customer, from time to time and effective upon each delivery of Technology, a non-exclusive, non-transferable, temporary right to access and use the Technology delivered to Customer by BMC, in accordance with all the terms of this Agreement, solely for the purpose of performing internal testing of the Technology. Customer may not access or use the Technology if it is a direct competitor of BMC, except with BMC's prior written consent.

2. **RESTRICTIONS ON USE.** Customer will not: (a) operate or use any Technology in any manner other than as set forth in the prerelease 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 Prerelease Code; (e) create Internet "links" to or reproduce any content forming part of the Prerelease Code, other than for its own internal non-production business purposes; (f) use any components provided with the Technology separately from the Prerelease Code; (g) attempt to gain unauthorized access to the Prerelease Code or its related software, systems, platforms or networks; (g) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("**Identification**") from any Technology; (h) copy the Technology for any purposes, except to the extent expressly permitted by applicable law or treaty notwithstanding this limitation; (i) disassemble, reverse engineer, decompile or otherwise attempt to derive any Prerelease Code source code from object code or access it in order to copy any ideas, features, content, functions or graphics of the Prerelease Code, 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 Prerelease Code to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (k) access the Prerelease Code 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 Prerelease Code to any third party without BMC's prior written consent; (m) attempt to disable or circumvent any of the licensing mechanisms within the Prerelease Code or Technology; (n) interfere with or disrupt the integrity or performance of the Prerelease Code; (o) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Prerelease Code; or (p) send or store viruses or malicious code via the Prerelease Code; (q) violate any other usage restrictions contained in the Documentation. Customer is responsible for maintaining the confidentiality of any passwords assigned to Customer. Customer will immediately notify BMC if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. Customer will be responsible for any and all activities under Customer's

account and/or using Customer passwords. Customer will (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Prerelease Code, and notify BMC promptly of any such unauthorized access or use, and (ii) comply with all applicable laws in using the Prerelease Code.

3. **OWNERSHIP.** 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. Customer acknowledges that the Technology contains valuable trade secrets of BMC and/or its affiliates and licensors. Customer agrees not to claim or assert title to or ownership of the Technology, or modifications thereto.

4. **FEEDBACK.** Customer shall promptly provide to BMC any relevant feedback on the functionality and performance of the Technology and any test results (together, the "**Feedback**"). Customer agrees to provide the Feedback in writing if requested by BMC. BMC or its affiliates owns all Feedback related to the Technology. Customer hereby assigns to BMC all rights, title and interest in the Feedback and all intellectual property rights herein. If requested by BMC, Customer agrees to execute such further instruments as BMC may reasonably request confirming BMC's ownership of such Feedback.

5. **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, ITS AFFILIATES', SUPPLIERS' AND LICENSORS' LIABILITY FOR DIRECT DAMAGES RESULTING FROM THE USE OF THE TECHNOLOGY OR THIS AGREEMENT IS LIMITED TO US \$500.**

6. **TERMINATION.** The rights granted in Section 1 of this Agreement terminate on the earlier of (i) 90 days after Customer's receipt of the Technology, or (ii) immediately upon BMC's notice to Customer of its termination for convenience. Upon such termination: (a) Customer will immediately cease using the Technology; (b) if Customer has installed the Prerelease Code on its system, then Customer will delete it immediately; (c) if Customer is accessing the Prerelease Code via an Internet-based demonstration site, BMC may disable Customer's access; and (d) BMC may permanently delete all data input or imported into the Prerelease Code during the trial period. If a generally available product ("**GA Product**") is announced that replaces Prerelease Code and Customer desires to acquire the rights to use that GA Product, Customer must purchase such rights for such GA Product under the then-current terms with BMC or its appropriate subsidiary or affiliate.

7. **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 Prerelease Code and all third party software provided with the Prerelease Code are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC reserves any rights not expressly granted to Customer in this Agreement. (b) "**Confidential Information**" means all proprietary or confidential information that is disclosed to Customer 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 Prerelease Code (excluding portions of the Documentation that BMC makes publicly available) and any third party software provided with the Prerelease Code; and (iii) the terms of this Agreement. Confidential Information does not include information that Customer can show: (a) was rightfully in Customer's possession without any obligation of confidentiality before receipt from BMC; (b) is or becomes a matter of public knowledge through no fault of Customer; (c) is rightfully received by Customer from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for Customer. Customer may not disclose Confidential Information of BMC to any third party or use the Confidential Information in violation of this Agreement. Customer (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, Customer may disclose BMC's Confidential Information to Customer'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 Customer becomes aware of any unauthorized use or disclosure of BMC's Confidential Information, then Customer will promptly and fully notify BMC of all facts known to it concerning such unauthorized use or disclosure. In addition, if Customer 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, Customer 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, Customer 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 Prerelease Code. Customer agrees to destroy or return to BMC all copies of Confidential Information promptly upon the expiration or termination of this Agreement.

9. **DATA PROTECTION.** The processing of personal data under this Agreement is governed by the Data Processing Agreement referenced below, unless BMC already has a signed Data Processing Agreement with Customer for such BMC offerings; in which case, the signed version governs the processing of personal data. In the event there is no signed Data Processing Agreement, BMC and Customer agree that the Data Processing Agreement applicable on the date the Technology is made available to Customer, a copy of which may be viewed at <https://www.bmc.com/content/dam/bmc/corporate/bmcdpa.pdf>, applies to Technology under this Agreement.

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

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

- (i) **THE AMERICAS.** If both parties to this Agreement are entities organized under the law of any jurisdiction in the Americas, the Controversy shall be tried in either state or federal court located in Houston, Texas and the laws of the State of Texas shall govern. Both parties hereby submit to the exclusive jurisdiction of the courts in Houston, Texas and waive all defenses based on forum non conveniens.
- (ii) **EMEA.** If both parties to this Agreement are entities incorporated in countries in the Europe, Middle East, or Africa regions, the Controversy shall be tried in the District Court located in Amsterdam, the Netherlands and the substantive laws of the Netherlands shall govern. Both parties hereby submit to the exclusive jurisdiction of the District Court in Amsterdam, the Netherlands and waive all defenses based on forum non conveniens.
- (iii) **ASIA PACIFIC.** If both parties to this Agreement are entities incorporated in countries in the Asia Pacific region, the Controversy shall be tried in the courts located in Singapore and the substantive laws of the Singapore shall govern. Both parties hereby submit to the exclusive jurisdiction of the courts of Singapore and waive all defenses based on forum non conveniens.

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

12. **U.S. GOVERNMENT END USER RIGHTS.** This Section applies only to acquisitions of the commercial Prerelease Code 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, agreement or other activity with the United States Government. When Prerelease Code is delivered or provided to the United States Government, the United States Government agrees that this commercial license Agreement and the Prerelease Code governed by this Agreement are defined in accordance with and qualify as "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" as outlined in FAR 12.211, FAR 12.212 and DFARS 227.202-3, as applicable. The terms and conditions of this Agreement shall pertain to the United States Government's use (including documentation or technical data), duplication, and disclosure of the Prerelease Code, and shall supersede any conflicting contractual terms and conditions.

13. **NO GUARANTEE AS TO NEW VERSIONS.** Customer acknowledges and agrees that BMC is under no obligation to provide any maintenance releases, updates or new versions of the Technology. BMC does not guarantee that the Prerelease Code will become a GA Product. If a GA Product is announced replacing the Prerelease Code, BMC does not guarantee that the GA Product will be similar in functionality to the comparable Prerelease Code. This Agreement creates no obligation on behalf of Customer to purchase a license or access rights to any GA Product, or for BMC to provide any GA Product to Customer.

14. **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. Customer 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. If any part of this Agreement is found to be invalid or unenforceable, that part will be modified to the extent necessary to eliminate its invalidity or unenforceability, and the

remaining terms will be in full force and effect. Customer agrees that BMC and its affiliates may refer to Customer as a customer of BMC, both internally and in externally published media. The Prerelease Code may contain third party software which is delivered to Customer as part of the Prerelease Code and may not be taken out of the Prerelease Code or used separately from the Prerelease Code and for which additional terms may be included in the Documentation. The Prerelease Code 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.