



LICENSE AGREEMENT FOR BMC CONNECTOR

BY OPENING THE PACKAGE, INSTALLING, CLICKING “AGREE” OR “YES”, DOWNLOADING, OR USING THE BMC CONNECTOR AND/OR THE MATERIALS WITHIN THE BMC CONNECTOR, THE ENTITY OR INDIVIDUAL ENTERING INTO THIS AGREEMENT AGREES TO BE BOUND BY THE FOLLOWING TERMS AND THE TERMS OF ANY THIRD-PARTY FILES OR PROGRAMS EMBEDDED IN BMC CONNECTOR (SUCH THIRD-PARTY TERMS ARE FOUND IN THE APPLICABLE INSTALLATION INSTRUCTIONS, RELEASE NOTES, TEXT FILE, OR DISTRIBUTION FILE). IF YOU DO NOT AGREE WITH ANY OF THESE TERMS, DO NOT INSTALL OR USE THE BMC CONNECTOR. IF YOU REJECT THIS AGREEMENT, YOU WILL NOT ACQUIRE ANY LICENSE TO USE THE BMC CONNECTOR.

This License Agreement (“**Agreement**”) is an agreement between the entity or individual entering into this Agreement (“**Licensee**”) and BMC Software, Inc., a Delaware corporation (“**BMC**”), located at 2103 CityWest Blvd., Houston, Texas 77042. In addition to the restrictions imposed under this Agreement, any other usage restrictions contained in the BMC Connector’s installation instructions and release notes shall apply to Licensee’s use of the BMC Connector and all materials contained therein.

1. SCOPE OF AGREEMENT. This Agreement governs Licensee’s use of BMC code that connects certain BMC products to third party products, including but not limited to Microsoft Visual Studio (such BMC code in each instance, a “**BMC Connector**”). Licensee may not access or use the BMC Connector if it is a direct competitor of BMC, unless otherwise authorized by BMC to do so in writing.

2. LICENSE. Subject to this Agreement, BMC grants Licensee a non-exclusive, non-transferable, non-sublicensable, revocable (per Section 3 of this Agreement), and royalty-free right under trade secrets rights and copyrights to install, access and use the BMC Connector (i) for Licensee’s internal business operations and (ii) in accordance with any documentation provided with the BMC Connector (the “**Documentation**”).

3. RESTRICTIONS. Licensee will not: (a) modify, delete or remove any ownership, title, trademark, patent or copyright notices from the BMC Connector, or copy or make a partial copy of the BMC Connector; (b) disassemble, reverse engineer, decompile or otherwise attempt to derive any BMC Connector source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (c) provide a third party with the results of any functional evaluation, or performance tests, without BMC’s prior written approval; or (d) attempt to disable or circumvent any of the licensing mechanisms within the BMC Connector.

4. TERMINATION. This Agreement terminates automatically if Licensee breaches any of its terms. Either party may terminate this Agreement without cause. Upon termination, Licensee must cease use of the BMC Connector and the BMC Connector must be promptly destroyed and removed from any computer system.

5. OWNERSHIP. BMC, or its affiliates or licensors, retains all right, title, and interest in the BMC Connector and copies thereof, and any intellectual property, informational, industrial property, and proprietary rights therein. The BMC Connector is protected by applicable copyright and trade secret rights and may be protected by patent and other intellectual and industrial property laws. BMC neither grants to Licensee any license to any BMC patents nor transfers any rights of ownership in the BMC Connector to Licensee. BMC reserves any rights not expressly granted to Licensee in this Agreement.

6. CONFIDENTIAL AND PROPRIETARY INFORMATION. The BMC Connector contains valuable confidential information and trade secrets of BMC. Licensee agrees to use all reasonable efforts to prevent the unauthorized use, copying, publication, or dissemination of the BMC Connector. Licensee may not disclose the BMC Connector or any part thereof to any third party; provided, however, Licensee may disclose the BMC Connector, or parts thereof, to Licensee’s employees provided that such employee (i) is one that needs to receive the disclosure of the BMC Connector in order to install, use, support or maintain the BMC Connector and (ii) has obligations of confidentiality with regard to the BMC Connector, which are at least as protective of BMC’s confidential information and trade secrets as the provisions of this Agreement.

7. INDEMNIFICATION. If a third party asserts a Claim (as defined herein) against BMC, Licensee will at its own expense defend or settle the Claim and indemnify and hold harmless BMC, its affiliates, and licensors, and each of their respective employees, officers, directors, and representatives from and against any loss, claim, liability, damage, action or cause of action (including reasonable attorneys’ fees) arising out of or relating to any third party claim concerning Licensee’s use of the BMC Connector in violation of this Agreement (a “**Claim**”). Licensee will not bind BMC to a monetary obligation in a settlement or compromise, or make an admission on behalf of BMC, without obtaining BMC’s prior consent.



8. DISCLAIMER OF WARRANTIES. THE BMC CONNECTOR IS PROVIDED “AS IS”, WITH ALL FAULTS. BMC, ITS AFFILIATES, AND LICENSORS SPECIFICALLY DISCLAIM ALL WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND QUIET ENJOYMENT. BMC DOES NOT WARRANT THAT THE OPERATION OF THE BMC CONNECTOR WILL BE UNINTERRUPTED OR VIRUS OR ERROR FREE, THAT THERE ARE NO DEFECTS, OR THAT ANY DEFECT IN SUCH CAN BE CORRECTED.

9. LIMITS ON BMC’S LIABILITY. NEITHER BMC, ITS AFFILIATES OR LICENSORS, WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE USE OF THE BMC CONNECTOR, OR ANY THIRD PARTY CODE OR SOFTWARE PROVIDED WITH THE BMC CONNECTOR (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST COMPUTER USAGE TIME, AND DAMAGE TO, OR LOSS OF USE OF DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF ANY NEGLIGENCE OF BMC OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW. BMC’S LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT, INCLUDING FOR INFRINGEMENT CLAIMS, IS LIMITED TO THE GREATER OF (I) THE AMOUNT PAID BY LICENSEE FOR THE BMC CONNECTOR, IF ANY, AND (II) \$500.

10. VERIFICATION. If requested by BMC, Licensee will deliver to BMC written certification relating to Licensee’s use of the BMC Connector in compliance with the terms of this Agreement. BMC may audit Licensee’s use of the BMC Connector to confirm such compliance.

11. 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>.

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

- (i) **UNITED STATES.** If 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 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 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) **OTHER REGIONS.** 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.

13. U.S. GOVERNMENT END USER RIGHTS. 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, agreement or other activity with the United States Government. When products are delivered or provided to the United States Government, the United States Government agrees that this commercial license Agreement and the products 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 BMC Connector, and shall supersede any conflicting contractual terms and conditions.

14. DATA PROTECTION. (a) Licensee acknowledges that BMC neither requires nor needs Licensee to (i) send BMC any personal data collected by Licensee (“**Licensee Collected Data**”) or (ii) give BMC access to any Licensee Collected Data. Consequently, Licensee remains responsible for either filtering, making anonymous, encrypting such Licensee Collected Data or for having proper procedures in place to prevent Licensee 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 Licensee (mainly contact and related information) in order to perform its obligations under this Agreement, such information being referred to hereinafter as “**Licensee Contact Information**”. Where the Licensee 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. BMC shall in particular: (i) allow Licensee to access, modify, correct or erase Licensee Contact Information when necessary; (ii) take reasonable technical and organizational security measures to maintain the confidentiality and integrity of Licensee Contact Information and to prevent its unauthorized access, use, or disclosure; and (iii) refrain from using Licensee Contact Information for any other purpose than performing its obligations under this Agreement.

15. 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. Licensee 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. The BMC Connector may contain third party software which is delivered to Licensee as part of the BMC Connector and may not be taken out of the BMC Connector or used separately from the BMC Connector and for which additional terms may be included in the Documentation. The BMC Connector 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 Licensee’s use of these websites. During the term of this Agreement and in compliance with all applicable laws and for internal purposes only, BMC may compile and use information related to Licensee’s use of the BMC Connector, for the purposes of: (a) enhancing and improving BMC’s products or technology, developing new products and technology, and for other development, diagnostic, statistical and corrective purposes; and (b) better informing the Licensee of relevant products. Licensee should refer to the policies posted by other websites regarding data privacy and other topics before using them. 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.