

TRIAL AGREEMENT

THIS TRIAL AGREEMENT ("AGREEMENT") WILL BECOME A LEGAL AGREEMENT BETWEEN THE USER OF THE DOWNLOADED PRODUCT NAMED IN THE EXPORT VALIDATION SECTION OF THE BMC SUPPORT WEB SITE (WITHIN WWW.BMC.COM) OR ANY SUCCESSOR SITE) OF WHICH THIS AGREEMENT IS A PART ("USER") AND BMC SOFTWARE DISTRIBUTION, INC. OR ITS LOCAL LICENSING AFFILIATE ("BMC"). BY PRESSING THE "*I AGREE*" BUTTON, YOU REPRESENT AND WARRANT THAT YOU HAVE READ AND UNDERSTOOD THE TERMS OF THIS AGREEMENT, THAT YOU HAVE THE AUTHORITY TO BIND USER TO THIS AGREEMENT, AND THAT USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. BMC AGREES TO PERMIT YOU TO DOWNLOAD PRODUCTS ONLY IF AND AFTER YOU AND USER HAVE ACCEPTED ALL OF THESE TERMS BY PRESSING THE "*I AGREE*" BUTTON.

*PLEASE READ THIS AGREEMENT: IF YOU DO NOT UNDERSTAND OR AGREE WITH ANY OF THE TERMS OF THIS AGREEMENT, DO NOT PRESS THE "*I AGREE*" BUTTON.*

(1) DEFINED TERMS. "Confidential Information" is all information that is proprietary information and/or confidential information of the disclosing party and does not include information that: (a) was rightfully in the receiving party's possession without any obligation of confidentiality before receipt from the disclosing party; (b) is or becomes a matter of public knowledge through no fault of the receiving party; (c) is rightfully received by the receiving party from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for the receiving party. "Products" are software products and their related documentation and other technical information owned or distributed by BMC which may be accessed on the BMC EPD Web site (www.bmc.com/ or any successor web site) and for which User is granted a license under this Agreement. "Trial Period" with respect to a Product, is the time period that begins the date that You download such Product and ends on the sooner of (a) thirty calendar days thereafter, or (b) the number of calendar days thereafter specified in the license key provided with such Product.

(2) TRIAL LICENSE. BMC grants User a non-exclusive, non-transferable, non-assignable temporary license to use each Product on a single computer for the Trial Period only to internally evaluate and determine whether to acquire a license to such Product for a fee and not for development, commercial, production, or database management purposes, or with production data. User must enter into a separate agreement to obtain production rights and technical support for a Product. To the extent a Product includes third party code, if (a) such third party code is provided for use with a Product, it may be used only with that Product; and (b) the documentation contains terms that pertain to such third party code, those terms govern the third party code in place of the terms of the this Agreement.

(3) RESTRICTIONS ON USE. User shall not: (a) remove any Product identifiers, copyright notices, or other notices or proprietary restrictions from the Products, (b) cause or permit the de-compilation, disassembly, reverse engineering or any other attempt to derive a Product's source code from executable code, except to the extent expressly permitted by applicable law or treaty despite this limitation; (c) disclose the results of any benchmark tests of any Product to any third party without BMC's prior written consent, (d) duplicate, install and/or use the Products other than as specified in this Agreement, or (e) sublicense, modify, timeshare, rent, service bureau or otherwise transfer or share the Products to or with, or permit access or use of the Products by, any third party. User may not export or re-export any Products without both the prior written consent of BMC and the appropriate U.S. and/or foreign government licenses or license exceptions.

(4) TERMINATION. Upon termination of this Agreement or expiration of a Trial Period, if User has not obtained a production use license for the Product, User shall (a) cease using the Product, and (b) certify in writing to BMC that User has de-installed and destroyed, or returned to BMC, the Products and all copies of the Products. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory and whether or not merged into other materials. This Agreement creates no obligation on the part of BMC to license any Products to User or on the part of User to purchase any license to the Products

from BMC.

(5) NO WARRANTY AND LIMITATION OF LIABILITY. THE PRODUCTS ARE PROVIDED "AS IS" FOR EVALUATION PURPOSES ONLY AND WITHOUT ANY WARRANTY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, AND NON-INFRINGEMENT, OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED. NONE OF BMC, ITS AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY LOSS OF PROFITS, REVENUE, DATA OR DATA USE FROM ANY CAUSE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE PRODUCT OR THIS AGREEMENT. BMC'S, ITS AFFILIATES', SUPPLIER'S AND LICENSOR'S LIABILITY FOR DAMAGES RESULTING FROM THE USE OF THE PRODUCT OR THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, SHALL BE LIMITED TO THE GREATER OF THE AMOUNT PAID BY USER TO LICENSE THE USE OF THAT PRODUCT OR US\$500.00 . IN THE COUNTRIES LISTED IN SUBSECTION 9(F), BELOW, THE LIMITATION OF LIABILITY IN THIS SECTION WILL NOT APPLY IF AND TO THE EXTENT THAT THE DAMAGE WAS CAUSED BY THE WILLFUL INTENT OR GROSS NEGLIGENCE OF EITHER PARTY.

(6) PROPRIETARY RIGHTS AND CONFIDENTIALITY. BMC, its affiliates and/or licensors, as applicable, retain all right, title and interest to the Products and all related intellectual property and proprietary rights. The Products and any third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC reserves any rights not expressly granted to User. The parties agree that the Products are BMC's confidential information. A receiving party (a) will hold the other party's Confidential Information in confidence for five (5) years from the later of (i) the date of disclosure or (ii) the last use of the Product and (b) will only disclose the other party's Confidential Information to employees or agents of the receiving party who are bound not to disclose such information by legal obligations at least as protective as those in this Agreement and who have to know the information to perform his, hers or its job. Nothing will prevent either party from disclosing the terms or pricing under this Agreement in any legal proceeding arising from or in connection with this Agreement or disclosing information to a federal or state governmental entity as required by law.

(7) EXPORT LAWS. Export laws and regulations of the United States and other relevant local export laws and regulations apply to the Products. User's use of the Products (including technical data) is governed by, and User shall comply with, all such laws, including "deemed export" and "deemed re-export" regulations. User agrees that no Product, data, information, program and/or materials will be exported, directly or indirectly, in violation of these laws or will be used for any purpose prohibited by these laws, including nuclear, chemical or biological weapons proliferation or development of missile technology. Pressing the "I agree" button below is also a confirmation of User's agreement that User complies, now and during the trial term, with each of the following statements:

(a) User is not a citizen, national or resident of, or is under control of, the government of Cuba, Iran, Sudan, Iraq, North Korea, Syria or any country to which the United States has prohibited export; and

(b) User will not download otherwise export or re-export any Product, directly or indirectly, to any of the above-mentioned countries or to citizens, nationals or residents of any of such countries; and

(c) User is not listed on the United States Department of Treasury lists of Specially Designated Nationals, Specially designated terrorists, or Specially Designated Narcotic Traffickers or is listed on the United States Department of Commerce Table of Denial Orders; and

(d) User will not download or otherwise export or re-export any Product, directly or indirectly, to any person on any of the above-mentioned list; and

(e) User will not use any Product for, or will allow any Product to be used for, any purpose prohibited by United States or other applicable law, including, without limitation, the development, design, manufacture or production of nuclear, chemical or biological weapons of mass destruction.

(8) ENTIRE AGREEMENT. This is the entire agreement of the parties, and it supersedes and replaces all prior and

contemporaneous agreements and negotiations with respect to User's use of the Products on a trial basis. This Agreement may only be amended by a signed writing of the parties. 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. In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

(9) CHOICE OF LAW AND JURISDICTION. If User is located and will be using the Product in (a) Argentina, the laws of Argentina, without regard to conflict of laws principles, will apply to this Agreement and jurisdiction will be in the Courts of Buenos Aires, and BMC and User agree to the personal jurisdiction of such Courts for such matters, (b) Brazil, the laws of Brazil, without regard to conflict of laws principles, will apply to this Agreement and jurisdiction will be in the Courts of Sao Paulo, and BMC and User agree to the personal jurisdiction of such Courts for such matters, (c) United Mexican States, the laws of United Mexican States, without regard to conflict of laws principles, will apply to this Agreement and jurisdiction will be in the Courts of Mexico City, and BMC and User agree to the personal jurisdiction of such Courts for such matters, (d) Japan, South Korea, Peoples Republic of China, Special Administrative Regions of Hong Kong or Macau, Taiwan, Philippines, Indonesia, Malaysia, Myanmar, Singapore, Brunei, Vietnam, Cambodia, Laos, Thailand, India, Pakistan, Australia, New Zealand, Papua New Guinea or any of the pacific island states, then the substantive laws of Singapore, without regard to conflict or laws principles, will apply and jurisdiction will be in the Courts of the Singapore, and BMC and User agree to the personal jurisdiction of such Courts for such matters, (e) the United States, Puerto Rico or any other US protectorate, Canada, or any country in Central or South America not specifically covered above, the laws of the State of Texas, without regard o conflict of laws principles, will apply to this Agreement, and jurisdiction will be in the state and federal courts located in Harris County, Texas, and BMC and User hereby consent to the personal jurisdiction of such courts for such matters, and (f) in country not covered by any of the foregoing, the laws of the Netherlands, without regard to conflict of laws principles, will apply to this Agreement, and jurisdiction will be in the Courts of Amsterdam, and BMC and User agree to the personal jurisdiction of such Courts for such matters.

The choice of law rules of any jurisdiction and the United Nations convention on contracts for the international sale of goods do not apply to this Agreement.

(10) MISCELLANEOUS. Upon thirty (30) calendar days written notice, BMC may audit User's use of the Products. User shall cooperate with such audit and provide reasonable assistance and access to information. Within thirty (30) calendar days of receiving notice thereof, User shall pay any underpaid fees disclosed by the audit.

(11) U.S. FEDERAL ACQUISITIONS. This Article applies to all acquisitions of the Product subject to this Agreement by or on behalf of the US federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the US federal government. By accepting delivery of the Product, the government hereby agrees that the Product qualifies as "commercial" within the meaning of the acquisition regulation(s) applicable to this procurement. The terms and conditions of this Agreement shall pertain to the government's use and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions. If the license granted by this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Product, unused, to BMC. 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)."

If you agree, as an authorized representative of User, to accept the license terms above on behalf of yourself and User, and to confirm that you and User are in compliance with and will remain in compliance with all of the terms and conditions set forth above, click on the "I agree" button below.

