

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](http://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" means all proprietary or confidential information that is disclosed to the recipient ("Recipient") by the discloser ("Discloser"), and includes, among other things (i) any and all information relating to Discloser's financial information, customers, employees, 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 software Product and any third party software provided with the Product; and (iii) the terms of this Agreement, including without limitation, Product pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without violation of a duty of confidentiality; or (d) is independently developed by or for the Recipient. "Products" are software or hardware 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/](http://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 and/or license 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.

3. PROPRIETARY RIGHTS AND CONFIDENTIALITY (a) BMC, its affiliates or licensors retain all right, title and interest to the Product, Support 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) Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement. The Recipient (i) will exercise the same degree of care and protection with respect to the Confidential Information of the Discloser 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 Discloser. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to Recipient'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 the Recipient becomes aware of any unauthorized use or disclosure of Discloser's Confidential Information, then Recipient will promptly and fully notify the Discloser of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Recipient 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 Discloser's Confidential Information, the Recipient will not disclose the Discloser's Confidential Information without providing the Discloser with commercially reasonable advance prior written notice to allow Discloser to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, the Recipient will exercise its commercially

reasonable efforts to preserve the confidentiality of the Discloser's Confidential Information, including, without limitation, cooperating with Discloser to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

4. RESTRICTIONS ON USE User will not: (a) modify, delete or remove any ownership, title, trademark, patent or copyright notices ("Identification") from any Product; (b) copy any Product or any portion of any Product without reproducing all Identification on each copy or partial copy; (c) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (d) distribute, rent, lease, sublicense or provide the Product to any third party; (e) provide a third party with the results of any functional evaluation, or performance tests, without BMC's prior written approval; (f) attempt to disable or circumvent any of the licensing mechanisms within the Product; or (g) violate any other usage restrictions contained in the Documentation.

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, it's 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 \$500. 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. TERMINATION. Either party may terminate this Agreement at any time upon two weeks prior notice. 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 hardware or license any software Products from BMC. Notwithstanding anything to the contrary in this Section 6, if hardware is included with the Product, upon conclusion of the Trial Period User will either purchase the hardware or return it to BMC within five days in its original packing material.

7. 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 Product is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Product under such regulations; d) will not acquire the Product for a person who is restricted under such regulations; e) will not use the Product in contradiction to such regulations; and f) will not use the Product for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Product exported from Ireland, EC No. 428/2009 sets up a Community regime for control of exports of dual-use item and technology, and it is declared that this Product 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 Product.

8. GOVERNING LAW AND DISPUTE RESOLUTION A party will provide written notice to the other party 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 engage in good faith negotiations to resolve the Controversy. Only if the Controversy is not resolved through good faith negotiations within 15 days of the sending of the 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 (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.

9. 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)."

10. MISCELLANEOUS TERMS. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Should any term of this Agreement be invalid or unenforceable, the remaining terms will remain in effect. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement and supersedes any prior or contemporaneous negotiations or agreements, between the parties relating to the subject matter of this Agreement. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. The prevailing party in any litigation is entitled to recover its attorney's fees and costs from the other party. User may not assign or transfer this Agreement without BMC's prior written consent. 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. Any additional documents presented to a BMC representative by User for signature as a condition for going on a User'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. 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.