



CONNECTOR SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT

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This Agreement is between the entity or individual entering into this Agreement ("**Licensee**" or "**You**" or "**Your**") and BMC Software, Inc. ("**BMC**"), a Delaware corporation, located at 2103 CityWest Blvd., Houston, Texas 77042. A copy of this Agreement is posted at http://media.cms.bmc.com/documents/Connector_SDK_License_Agreement.pdf, where it can be saved and/or printed. The Agreement is effective between Licensee and BMC as of the date of Your acceptance of this Agreement (the "**Effective Date**"). This Agreement was last updated on January 28, 2016.

1. **SCOPE.** This Agreement governs Licensee's use of BMC'S software development kit for Connectors that are made available to Licensee, which may include certain code, modules, libraries, scripts, application specific interfaces ("**APIs**"), documentation and other intellectual property made available by BMC under this Agreement (collectively, the "**Connector SDK**"). You may not access the Connector SDK if you are BMC's direct competitor, except with BMC's prior written consent.

2. **DEFINITIONS.**

"**Connector**" means software code that integrates Licensee's product with a BMC product for the purpose of centrally managing and fulfilling services from the Licensee's product to the BMC product.

3. **DEVELOPMENT LICENSE GRANT.** Subject to the terms and conditions of this Agreement, BMC grants to Licensee a non-exclusive, non-transferable, non-sublicensable, term, and revocable (as set forth in the Term and Termination Section) license under copyrights and trade secret rights to (a) use the Connector SDK solely for the purpose of Licensee developing, supporting, and testing Licensee's Connector; and (b) make a reasonable number of copies of the Connector SDK necessary to exercise the license grant described in Section 3(a) above.

4. **NO SUPPORT.** BMC, its affiliates, or licensors do not provide any technical support, maintenance services, or any other type of services for the items in the Connector SDK.

5. **LICENSE RESTRICTIONS.** Licensee expressly agrees (a) not to disassemble, reverse engineer, decompile, or otherwise attempt to derive any source code from the executable code of any item in the Connector SDK, except to the extent expressly permitted by applicable law; (b) not to use any item in the Connector SDK for Licensee's production purposes; (c) not to distribute, resell, sublicense, rent, lease or otherwise transfer any item in the Connector SDK, except as part of a Connector; (d) not to disclose to any third party any item of the Connector SDK; (e) not to modify or create derivative works of any item of the Connector SDK, and (f) not to remove, alter, or omit any copyright notices or other proprietary rights notices in or on any item of the Connector SDK. The licenses granted under this Agreement (y) do not extend to any use of any item in the Connector SDK in combination with any product, service, or software other than a Connector, and (z) do not extend to any rights under any patents or patent applications under which BMC has any rights. **No patent license is granted, and BMC expressly reserves all rights not granted herein.**

6. **OWNERSHIP.** BMC, or its Affiliates or licensors, retains all right, title, and interest in and to any item in the Connector SDK and copies thereof and intellectual property, informational, industrial property and proprietary rights therein. Items in the Connector SDK are protected by applicable copyright, trade secret, patent, and intellectual property laws.

7. **WARRANTY DISCLAIMER.** The items in the Connector SDK are provided "**AS IS**", with all faults, and Licensee assumes the risk of using such. BMC, its Affiliates, and licensors specifically disclaim all warranties, including without limitation, the implied warranties of merchantability, fitness for a particular purpose, title, non-infringement and quiet enjoyment. BMC does not warrant that the operation of the items in the Connector SDK will be uninterrupted, virus or error free, or that there are no defects.

8. **VERIFICATION.** BMC may audit Licensee's use of the Connector SDK to confirm such compliance.

9. **TERM AND TERMINATION.** The term of this Agreement commences on the Effective Date for a one (1) year period. BMC may, at any time and in its sole discretion, terminate this Agreement upon thirty (30) days prior written notice to Licensee. Either party may terminate this Agreement immediately upon any violation by the breaching party of the other party's intellectual property rights or of a party's confidentiality obligations to the other party. Upon termination of this Agreement, Licensee must immediately cease using the Connector SDK, must uninstall any item of the Connector SDK that Licensee installed on Licensee's systems, and either certify their destruction or return of all items of the Connector SDK to BMC.

10. **CONFIDENTIALITY.** For purposes of this Agreement, "**Confidential Information**" means for BMC all of the items in the Connector SDK. Confidential Information does not include information that: (i) was already rightfully in Licensee's possession, (ii) becomes a matter of public knowledge through no fault of the Licensee, (iii) is rightfully received by Licensee from a third party without violation of any duty of confidentiality, or (iv) is or was independently developed by or for Licensee without use of any of BMC's Confidential Information. For the Confidentiality Period (as hereinafter defined), the Licensee will hold the Confidential Information confidential, using efforts at least as protective as it uses to protect its own information of a similar nature, and in no event less than reasonable efforts, and will not use the disclosing party's Confidential Information for any purpose other than the one for which it was disclosed.



If the Confidential Information consists of computer software disclosed in object code form, Licensee will not, and will not permit any other party, to reverse engineer, reverse compile, disassemble such object code, or take any other steps to derive a source code equivalent thereof. The "**Confidentiality Period**" is perpetual. Licensee is liable for all acts and omissions of its employees and contractors related to the Confidential Information. In the event that Licensee becomes legally compelled to disclose the Confidential Information, Licensee shall provide BMC with prior written notice of such requirement as soon as Licensee becomes aware of such requirement, such that BMC may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if BMC waives in writing compliance with the terms of this Section of this Agreement, Licensee agrees to: (i) furnish only that portion of the Confidential Information that Licensee is advised by written opinion of counsel is legally required to be furnished, and (ii) exercise reasonable efforts to obtain confidential treatment of such portion.

11. LIMITS ON LIABILITY. Except for damages arising out of a breach of an obligation of confidentiality, Licensee's violation of intellectual property rights, or a claim of gross negligence, in no event will (a) either party, its Affiliates or licensors, be liable for any special, indirect, incidental, punitive, or consequential damages relating to or arising out of this Agreement, even if advised of the possibility of such damages, and irrespective of any negligence of either party or whether such damages result from a claim arising under tort or contract law, and (b) either party's liability for direct damages exceed one thousand dollars (\$1000.00).

12. GOVERNING LAW. 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 fifteen (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:

- (a) 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.
- (b) 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. EXPORT CONTROLS. Licensee 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 Licensed Products, BMC IP, or Confidential Information is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Licensed Products, IP, or Confidential Information under such regulations; d) will not acquire the Licensed Products, IP, or Confidential Information for a person who is restricted under such regulations; e) will not use the Licensed Products, IP, or Confidential Information in contradiction to such regulations; and f) will not use the Licensed Products, IP, or Confidential Information for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Licensed Product 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 Licensed Product, BMC IP, and Confidential Information is intended for civil purposes only. Therefore, Licensee 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 Licensee forfeiting all rights to the Licensed Products, BMC IP, and Confidential Information.

14. MISCELLANEOUS TERMS. This Agreement constitutes the entire agreement between Licensee and BMC relating to the matters covered hereby, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning such matters. BMC may modify this Agreement from time to time by posting a revised version at http://media.cms.bmc.com/documents/Connector_SDK_License_Agreement.pdf. The modified terms will become effective upon posting. By Licensee accepting the revised Agreement, Licensee agrees to be bound by the current terms then in effect. It is Customer's responsibility to check the URL stated above regularly for modifications to this Agreement. Licensee may not assign or otherwise transfer this Agreement or any rights granted hereby, even in the context of merger, consolidation, or sale of all or substantially all of Licensee's assets. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions shall remain in effect.