PRERELEASE WORLDWIDE SOFTWARE LICENSE AGREEMENT

The Prerelease Software is still under development and testing. BMC has NOT made any Prerelease Software generally available as a formal BMC software product available for licensing by its customers (“GA Product”). You should not place any Prerelease Software 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 LICENSE TO USE THE PRERELEASE SOFTWARE.

This Prerelease Worldwide Software License Agreement ("Agreement") is between the entity or individual entering into this Agreement ("Licensee") and BMC Software, Inc. and its affiliates (together, "BMC"). BMC and/or its affiliates and licensors owns the beta, alpha or other preliminary version of all BMC software products, related object code, documentation, and any pre-generally available updates, new versions and upgrades, if any (collectively, the "Prerelease Software"), or has the rights to license use of the Prerelease Software, and is willing to grant to Licensee a limited license to use such Prerelease Software, on the following terms. You may not access the Prerelease Software if you are BMC's direct competitor, except with BMC's prior written consent.

The Agreement is effective between Licensee and BMC as of the date of your acceptance. This Agreement was last updated on July 3, 2018.

1. PRERELEASE LICENSE. Subject to the terms of this Agreement and the Restrictions on Use set forth below, BMC grants to Licensee, from time to time and effective upon each delivery of Prerelease Software, a worldwide, non-exclusive, non-sub-licensable, and non-transferable license to use any copies of the Prerelease Software delivered to Licensee by BMC, on computers owned or leased by Licensee and located at its premises, solely for the purpose of performing internal testing of the Prerelease Software.

2. RESTRICTIONS ON USE. Licensee agrees NOT to:
   a. use the Prerelease Software to process production data, or where it may be used as would the GA Product;
   b. use the Prerelease Software with data or information that has not been backed up;
   c. decompile, disassemble, reverse engineer or otherwise attempt to derive the Prerelease Software’s source code from object code, except to the extent expressly permitted by applicable law or treaty despite this limitation;
   d. modify, delete or remove any ownership, title, trademark, patent or copyright notices ("Identification") from any Prerelease Software;
   e. copy any Prerelease Software or any portion of any Prerelease Software without reproducing all Identification on each copy or partial copy;
   f. sell, rent, lease, license, sublicense, display, modify, time share, outsource or otherwise transfer the Prerelease Software to any third party;
   g. release any results of performance tests related to Prerelease Software to any third party without BMC’s prior written consent; and
   h. use the Prerelease Software for any purpose other than as specifically provided in this Agreement.

3. FEEDBACK. Licensee shall promptly provide to BMC any relevant feedback on the functionality and performance of the Prerelease Software and any test results (together, the "Feedback"). Licensee agrees to provide the Feedback in writing if requested by BMC. BMC or its affiliates owns all Feedback relating to the Prerelease Software. Licensee hereby assigns to BMC all rights, title and interest in the Feedback and all intellectual property therein. If requested by BMC, Licensee agrees to execute such further instruments as BMC may reasonably request confirming BMCCs ownership interest in such Feedback.

4. PROPRIETARY RIGHTS AND CONFIDENTIALITY. (a) BMC and/or its affiliates and licensors retain all rights, title and interest to the Prerelease Software and all related intellectual property and proprietary rights. The Prerelease Software and all third party software provided with the Prerelease Software is protected by applicable copyright, trade secret, industrial and other intellectual property laws. BMC reserves any rights not expressly granted to Licensee in this Agreement. (b) “Confidential Information” means all proprietary or confidential information that is disclosed by BMC to Licensee, and includes, among other things (i) any and all information relating to the Prerelease Software or services provided by BMC, its financial information, software code, flow charts,
techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) the terms of this Agreement; and (iii) Feedback. Confidential Information does not include information that Licensee can show: (A) was rightfully in Licensee’s possession without any obligation of confidentiality before receipt from BMC; (B) is or becomes a matter of public knowledge through no fault of Licensee; (C) is rightfully received by Licensee from a third party without violation of a duty of confidentiality; (D) is independently developed by or for Licensee; or (E) is required to be disclosed by applicable law or court order. Licensee may not disclose Confidential Information of BMC to any third party or use the Confidential Information in violation of this Agreement. In the event Licensee becomes legally compelled to disclose any Confidential Information, Licensee shall provide BMC with prompt prior written notice of such requirement so 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 Agreement, Licensee agrees to furnish only that portion of the information which Licensee is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information. Licensee (i) will exercise the same degree of care and protection with respect to the Confidential 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. Notwithstanding the foregoing, Licensee may disclose Confidential Information to Licensee’s employees and agents who have 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 Licensee becomes aware of any unauthorized use or disclosure of Confidential Information, then Licensee will promptly and fully notify BMC of all facts known to it concerning such unauthorized use or disclosure. In addition, if Licensee 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 the Confidential Information, Licensee will not disclose the Confidential Information without providing the 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, Licensee will exercise its commercially reasonable efforts to preserve the confidentiality of the the 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.

5. TERMINATION. The license of Section 1 granted under this Agreement terminates on the earlier of:
   a. Ninety (90) days after Licensee’s receipt of a Prerelease Software; or
   b. immediately upon BMC’s notice of termination for convenience.

   Upon termination of any license or this Agreement, Licensee shall cease using the Prerelease Software and shall uninstall the Prerelease Software from its computers. Licensee agrees to destroy and certify the destruction of the Prerelease Software and delete all copies or, upon request, return the Prerelease Software to BMC. Sections 3, 4, 5, 6, and 7 survive the termination of any Prerelease Software license or this Agreement.

   If a generally available (“GA”) product is announced that replaces a Prerelease Software and Licensee desires to acquire a license to use that GA Product, then Licensee must license that GA Product under the then-current license terms with BMC or its appropriate subsidiary or affiliate.

6. DISCLAIMER OF WARRANTY, LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY.
   a. THE PRERELEASE SOFTWARE IS PROVIDED “AS IS” WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. BMC AND/OR ITS AFFILIATES AND LICENSORS DO NOT WARRANT THAT ANY PRERELEASE SOFTWARE WILL SATISFY LICENSEE’S REQUIREMENTS, THAT ANY PRERELEASE SOFTWARE IS WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY PRERELEASE SOFTWARE WILL BE UNINTERRUPTED. BMC DISCLAIMS AND REJECTS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, MADE WITH RESPECT TO THE PRERELEASE SOFTWARE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND
   b. BMC DISCLAIMS AND REJECTS ANY LIABILITY TO LICENSEE, OR ANY OTHER INDIVIDUAL OR ENTITY, FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRERELEASE SOFTWARE, EVEN IF BMC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BMC’S ENTIRE LIABILITY AND LICENSEE’S EXCLUSIVE REMEDY FOR DIRECT DAMAGES UNDER THIS AGREEMENT IS LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY LICENSEE TO LICENSE THE APPLICABLE PRERELEASE SOFTWARE OR $100.

7. MISCELLANEOUS.
   a. No-Guarantee as to New Versions. Licensee acknowledges and agrees that BMC is under no obligation to provide any maintenance releases, updates or new versions of the Prerelease Software. BMC does not guarantee that any Prerelease Software will become a GA Product. If a GA Product is announced replacing a Prerelease Software, BMC does not guarantee
that the GA Product will be similar in functionality to the comparable Prerelease Software version licensed under this Agreement. This Agreement creates no obligation on behalf of Licensee to license any GA Product, or for BMC to provide any GA Product to Licensee.

b. **Entire Agreement and Modifications.** This Agreement is the entire understanding between Licensee and BMC and replaces any prior or contemporaneous communication, agreement or understanding of any kind, oral or written, concerning this subject matter. This Agreement may only be changed if mutually agreed to in writing by the parties.

c. **Enforceability, Non-Waiver and Non-Assignment.** 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. 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. Licensee may not assign or otherwise transfer this Agreement or any of its rights or obligations without the prior written consent of BMC.

d. **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.

e. **Independent Contractor.** Nothing in this Agreement will be construed as creating a joint venture, partnership or principal/agent relationship between the parties.

f. **U.S. Federal Acquisitions.** This Section applies only to acquisitions of the commercial Prerelease Software 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 Prerelease Softwares are delivered to the United States Government, the United States Government hereby agrees that the Prerelease Softwares 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 Prerelease Software, 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).”
g. **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 Prerelease Software is a citizen of or from an embargoed country (currently Iran, Syria, Sudan, Cuba and North Korea); c) is not prohibited from receiving the Prerelease Software under such regulations; d) will not acquire the Prerelease Software for a person who is restricted under such regulations; e) will not use the Prerelease Software in contradiction to such regulations; and f) will not use the Prerelease Software for prohibited uses, including but not limited to nuclear, chemical, missile or biological weapons related end uses. For Prerelease Software 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 Prerelease Software 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 Prerelease Software.

h. **Third Party Code.** The Prerelease Software may contain third party software which is delivered to Licensee as part of the Prerelease Software and may not be taken out of the Prerelease Software or used separately from the Prerelease Software and for which additional terms may be included in the Documentation.

i. **Data Protection.** BMC and Customer agree that the Data Processing Agreement, a copy of which may be viewed at https://www.bmc.com/content/dam/bmc/corporate/bmcdpa.pdf, applies to the Prerelease Software downloaded unless BMC already has a signed a Data Processing Agreement with Customer for such Prerelease Software; in which case, the signed version applies.

j. **Links to Third Party Websites.** The Prerelease Software 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.