BMC SOFTWARE TECHNOLOGY ALLIANCE PROGRAM AGREEMENT

BY ACCEPTING THIS SOFTWARE TECHNOLOGY ALLIANCE PROGRAM AGREEMENT ("**AGREEMENT**") BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. 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 DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT PARTICIPATE IN THE BMC SOFTWARE TECHNOLOGY ALLIANCE PROGRAM ("**TAP**"), AND YOU WILL NOT ACQUIRE ANY LICENSE TO UTILIZE BMC'S LICENSED PRODUCTS OR BMC IP.

This Agreement is between the entity or individual entering into this Agreement ("**Program Member**" 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/TAP_Agreement.pdf, where it can be saved and/or printed. It is effective between Program Member and BMC as of the date of Your acceptance of this Agreement ("**Effective Date**"). This Agreement was last updated on August 1, 2016.

1.   SCOPE. Acceptance of the terms of this Agreement allows for Program Member to participate in BMC's TAP. TAP is a program under which: (i) Program Member receives a license to Licensed Product in order to develop Program Member's products that integrate with or are dependent on a Licensed Product, (ii) Program Member can develop and distribute Integrated Products and Connectors, and (iii) BMC can distribute Connectors.

2.   DEFINITIONS.

(a) "**BMC IP**" means modules, libraries, scripts, APIs, connectors, documentation (including supplementary terms) and other intellectual property made available to Program Member under this Agreement.

(b) "**Connector**" means software code that integrates a Program Member's product with a Licensed Product, but is neither a Program Member product nor an Integrated Product and is developed by Program Member using a BMC SDK.

(c) "**Connector SDK**" means a BMC SDK licensed to Program Member as described under this Agreement.

(d) "**Integrated Products**" means Program Member's product that integrates with a Licensed Product.

(e) "**Licensed Products**" means the BMC products and associated documentation (including supplementary terms) that are listed at http://developer.bmc.com/legal/tapprods/, which list may be updated by BMC from time-to-time to add or delete products.

3.   LICENSES.

3.1   Development License Grant. Subject to the terms and conditions of this Agreement, BMC grants to Program Member 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 delivered Licensed Products, BMC IP, and Connector SDK solely for the purpose of Program Member developing, supporting, testing, and demonstrating to customers and potential customers the following: (i) software products that integrate with a Licensed Product and/or are otherwise dependent for execution upon a Licensed Product; and (ii) Connectors; (b) make a reasonable number of copies of the BMC IP and Connector SDKs necessary to exercise the license grant described in Section 3.1 (a) above; and (c) perform (a) and (b) at any site owned or operated by Program Member.

3.2   Integrated Product License Grant. Subject to the terms and conditions of this Agreement, BMC grants to Program Member a non-exclusive, non-transferable, non-sublicensable, term, and revocable (as set forth in the Term and Termination Section) license under copyrights, trademark rights, and trade secret rights to:

(a) embed the BMC IP into an Integrated Product, solely for the purpose of Program Member developing a product that will integrate optimally with a Licensed Product;

(b) make a reasonable number of copies of the BMC IP necessary to exercise the license grant described in Section 3.2 (a) above;

(c) perform (a) and (b) at the installation site set forth in the MOF;

(d) distribute to customers worldwide the BMC IP solely as an embedded component of the Integrated Product and solely in object code format; and

(e) under Program Member's standard end user license agreement, to license customers worldwide to use the embedded BMC IP, solely for the customers' internal use in a production environment and solely as an embedded component of the Integrated Product.

3.3   Distribution License Grant to BMC. Subject to the terms of this Agreement, Program Member grants BMC a non-exclusive, worldwide right and license under intellectual property rights to use, copy, make, have made, import, test, display, demonstrate to customers and potential customers, perform, and distribute copies of licenses to (subject to the terms of the Free BSD License) the Connectors. BMC will determine how or whether the Connectors will be represented in BMC's ongoing marketing and sales efforts and what channels to use in these efforts.

3.4   No Support. Unless expressly agreed to, BMC, its affiliates, or licensors do not provide any technical support, maintenance services, or any other type of services for the BMC IP, the Integrated Product or the Connectors. BMC shall provide Program Member standard support for the Licensed Products as provided to any other customer of Licensed Products. BMC shall provide Program Member one-on-one integration development support as purchased by Program Member on the TAP Website, available at https://communities.bmc.com/community/tap/member_portal.

3.5   Connector Support. You agree to support a customer's use of Your Connector in accordance with your standard software product support offering.

4.   LICENSE RESTRICTIONS. Program Member expressly agrees:

(a) not to disassemble, reverse engineer, decompile, or otherwise attempt to derive any source code from executable code of Licensed Products, BMC IP, or Connector SDKs except to the extent expressly permitted by applicable law;

(b) not to use any Licensed Products, BMC IP, or Connector SDKs for Program Member's production purposes;

(c) not to distribute, resell, sublicense, rent, lease or otherwise transfer any Licensed Products or BMC IP or any product into which the BMC IP is embedded unless it is an Integrated Product;

(d) not to distribute, resell, sublicense, rent, lease or otherwise transfer any Connector SDK, except as part of a Connector;

(e) that the distribution of the embedded BMC IP shall be done solely by incorporation of such BMC IP into the Integrated Product;

(f) that each such distribution of Integrated Product shall be subject to an end user agreement that includes provisions providing protections for BMC's intellectual property rights in and to the embedded BMC IP that are at least as protective of BMC and its interest in such BMC IP as those included in this Agreement (including disclaiming on behalf of BMC, and its Affiliates and licensors all representations, warranties and liability for the embedded BMC IP and imposing appropriate obligations of confidentiality);

(g) not to disclose to any third party any Licensed Product, BMC IP or Connector SDK, or the functionality or performance of any Licensed Product, BMC IP or Connector SDK;

(h) not to modify or create derivative works of any Licensed Product, BMC IP, or Connector SDK;

(i) not to participate in the TAP for purposes of monitoring any Licensed Products' availability, performance or functionality, or for any other benchmarking or competitive purposes; and

(j) (j) not to remove, alter, or omit any copyright notices or other proprietary rights notices in or on the Licensed Product, BMC IP or Connector SDK.

The licenses granted under this Agreement (x) do not extend to any use of the Licensed Product or BMC IP in combination with any product, service or software other than the Integrated Product, (y) do not extend to any use of 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.*

5.   TRADEMARK LICENSE TO PROGRAM MEMBER. Subject to the terms of this Agreement, BMC grants to Program Member a non-exclusive, non-transferable, non-sublicensable, and revocable license under trademark rights to use (a) the TAP logos found at http://developer.bmc.com/legal/tapmarks/ ("**Program Logos**") as necessary for Program Member to market the fact that it is a member of TAP and use the Program Logos in Program Member's marketing materials, including, but not limited to marketing collateral, websites, and business cards; and (b) a BMC Mark within a Licensed Product name or within the name of an Integrated Product and in connection with marketing such Licensed Product or Integrated Product, underlined provided that such use is in accordance with the product naming guidelines provided by BMC at http://developer.bmc.com/legal/tapmarks/ and with Section 5.1 of this Agreement.

5.1   Trademark and Program Logo Requirements. Program Member shall comply with: (1) applicable trademark laws; and (2) BMC's policies regarding advertising and trademark usage as established and amended from time to time in the content found in the links: http://developer.bmc.com/legal/tapmarks/ ("**BMC TAP Marks Link**"). By its use of any BMC Mark and/or Program Logo under this Agreement, Program Member shall not derive any ownership of such BMC Mark or Program Logo. All goodwill and reputation that accrues to any BMC Marks or Program Logos shall automatically vest in BMC or its Affiliates, without any separate or additional consideration of any kind to Program Member, and Program Member agrees to take all such reasonable actions necessary to affect such vesting. Program Member acknowledges that BMC has the absolute right to assert any and all rights to the BMC Marks and Program Logos at its sole discretion. In connection with this Agreement, Program Member shall be provided access to https://communities.bmc.com/community/tap (the "**TAP Portal**"). Program Member's use of the TAP Portal and the content and material provided therein is subject to the terms of this Agreement, the BMC Web Site Terms of Use located at http://www.bmc.com/legal/terms-of-use.html, as such may be updated from time to time. Program Member shall also:

(a) at BMC's expense, take such actions as BMC, in its sole discretion, shall deem necessary or appropriate to protect the BMC Marks and/or Program Logos against infringement or dilution;

(b) take no action that diminishes the goodwill in any BMC Marks and/or the Program Logos, or BMC's reputation for quality;

(c) take no action that tarnishes or disparages the BMC Marks and/or the Program Logos, the BMC IP, or in connection with unlawful activities;

(d) advise BMC promptly of any challenge to, potential violation of, or suspected or actual infringement of the BMC Marks and/or the Program Logos of which Program Member becomes aware, and cooperate, at BMC's expense, with BMC in any such action;

(e) if Program Member acquires any rights in the BMC Marks and/or the Program Logos, by operation of law or otherwise, assign immediately to BMC and at no expense to BMC all such rights, registrations, or applications, along with associated goodwill;

(f) provide any non-financial assistance requested by BMC in connection with the protection, enforcement, and potential violation of or suspected or actual infringement of the BMC Marks and/or the Program Logos; and

(g) indemnify and hold harmless BMC from all third-party claims and damages that arise from Program Member's misrepresentation of a Program Member product or of the Integrated Product, or in the event that Program Member's use of the BMC Marks and/or the Program Logos is in breach of this Agreement.

5.2   **TRADEMARK LICENSE TO BMC.** Subject to the terms of this Agreement, You hereby grant BMC a non-exclusive, non-transferable, non-sublicensable, worldwide and revocable (for breach of this Agreement) license under trademark rights to use and display in any marketing media and to grant BMC's channel the right to use and display marketing materials, including, but not limited to marketing collateral, websites, and business cards Program Member's trademarks, logos and trade name ("**Marks**") in connection with Program Member's participation in TAP and in accordance with the following: (a) BMC's and BMC's channel's usage of Marks will inure to Program Member's benefit; and (b) BMC agrees not to, (i) contest Marks or make application for registration of any of Marks without Program Member's consent, (ii) alter Marks or use them other than as agreed to by Program Member, and (iii) use, employ or attempt to register any trademarks or trade names for software that would be likely to result in confusion among relevant customers.

6.   **OWNERSHIP.** It is expressly understood and agreed that, as between You and BMC, (a) all right, title and interest in and to (i) the Connector (excluding the Connector SDK), (ii) the Integrated Product (excluding the BMC IP), (iii) Your Marks, and (iii) Your copyrights, patent rights, trade secret rights and other proprietary rights in the Connector and Integrated Products vest solely and exclusively in You, and BMC shall neither derive nor assert any title or interest in or to such items except for the rights and licensed granted under this Agreement; and (b) all right, title and interest in and to (i) the Licensed Software, (ii) the BMC IP, (iii) the Connector SDK, (iv) BMC Marks and Program Logos, and (v) BMC's copyrights, patent rights, trade secret rights and other proprietary rights in the Licensed Software, BMC IP, and Connector SDK vest solely and exclusively in BMC, and You shall neither derive nor assert any title or interest in or to such items.

7.   **WARRANTY DISCLAIMER. The Licensed Products, BMC IP, Connector SDK, BMC Marks, Marks, and Program Logos are provided "AS IS", with all faults, and Program Member 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. All information on the TAP Portal is provided "AS IS", and is subject to change at any time at BMC's sole discretion. BMC does not warrant that the operation of the Licensed Products, BMC IP, the TAP Portal, Integrated Products, or Integrated Products will be uninterrupted, virus or error free, or that there are no defects.**

8.   **VERIFICATION.** BMC may audit Program Member's use of the Licensed Products, BMC IP, Connector SDK, the BMC Marks, and the Program Logos to confirm such compliance.

9.   **FEES.** Program Member shall pay to BMC the annual fee, or the prorated annual fee for the Initial Term if applicable, as specified in the MOF. All fees paid for Program Member's membership in TAP are non-refundable.

10.   **TERM AND TERMINATION.** The term of this Agreement commences on the Effective Date, and is effective until May 31 of the following year ("**Initial Term**"). The Initial Term will automatically renew for additional one year terms upon Program Member's payment of the annual Fee, unless terminated by either party upon written notice provided thirty (30) days prior to the expiration of the Initial Term or any renewal term. BMC may, at any time and in its sole discretion, terminate this Agreement and Program Member's participation in the TAP, upon thirty (30) days prior written notice to Program Member.   Either party may termination 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.

10.1   **EFFECTS OF TERMINATION**.

(a) Program Member Requirements. Upon termination of this Agreement, Program Member agrees to the following: (i) immediately cease using the Licensed Products, BMC IP, and Connector SDK, (ii) immediately uninstall the Licensed Products and/or BMC IP and remove them from the Integrated Products, (iii) immediately cease distribution of the Licensed Products and/or BMC IP, and (iv) either certify their destruction or return the Licensed Products and BMC IP to BMC. Program Member agrees to continue to support the Connectors for at least six (6) months following termination, and will uninstall and return the Connector SDK upon termination of such post-termination support period.

(b) BMC Requirements. Six (6) months following termination of this Agreement, BMC agrees to no longer distribute the Connector.

Termination of this Agreement will not affect any of the license agreements made by BMC or its subcontractors, resellers, distributors, partners or other channels (collectively, "**Channels**") respecting the Connectors, which for all purposes remain independent and separate from this Agreement and any of its provisions. In no event will You have any rights or claims with respect to any license agreement made by BMC or its Channels.

11.   CONFIDENTIALITY. For purposes of this Agreement, "**Confidential Information**" means for BMC, all information on the TAP Portal, the BMC IP, the Licensed Products, and the Connector SDK. Confidential Information does not include information that: (i) was already rightfully in Program Member's possession; (ii) becomes a matter of public knowledge through no fault of the Program Member; (iii) is rightfully received by Program Member from a third party without violation of any duty of confidentiality; or (iv) is or was independently developed by or for Program Member. For the Confidentiality Period (as hereinafter defined), the Program Member 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, Program Member 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. Program Member is liable for all acts and omissions of its employees and contractors related to the Confidential Information. In the event that Program Member becomes legally compelled to disclose the Confidential Information, Program Member shall provide BMC with prior written notice of such requirement as soon as Program Member 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, Program Member agrees to: (i) furnish only that portion of the Confidential Information that Program Member 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.

12.   INDEMNIFICATION. If a third party asserts a claim against Program Member asserting that the Licensed Products or the embedded BMC IP in Program Member's Integrated Product, or the Connector SDK embedded in a Connector, violates such third-party's patent, trade secret, or copyright rights ("**Infringement Claim**"), then BMC shall, at its own expense: (a) defend or settle the Infringement Claim on behalf of Program Member; and (b) indemnify Program Member for any damages finally awarded against Program Member, but only if Program Member promptly notifies BMC of such Infringement Claim, BMC retains sole control of the defense of such Infringement Claim and all negotiations for its settlement or compromise, and Program Member provides all reasonable assistance requested by BMC. BMC's obligations shall not apply if the Infringement Claim is based on Program Member's (i) use of BMC IP in combination with products not found in the user manuals related to the Licensed Products, or (ii) use of any BMC IP, Licensed Product or Connector SDK other than in strict accord with the terms of this Agreement. This Section contains Program Member's exclusive remedy and BMC's sole liability for Infringement Claims.

13.   LIMITS ON LIABILITY. Except for damages arising out of a breach of an obligation of confidentiality, a 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 the amount paid or payable by Program Member under all MOFs under this Agreement.

14.   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 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.

15.   EXPORT CONTROLS. Program Member 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, Connector SDK, 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, BMC IP, Connector SDK, or Confidential Information under such regulations; d) will not acquire the Licensed Products, BMC IP, Connector SDK, or Confidential Information for a person who is restricted under such regulations; e) will not use the Licensed Products, BMC IP, Connector SDK, or Confidential Information in contradiction to such regulations; and f) will not use the Licensed Products, BMC IP, Connector SDK, 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, Connector SDK and Confidential Information is intended for civil purposes only. Therefore, Program Member 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 Program Member forfeiting all rights to the Licensed Products, BMC IP, Connector SDK and Confidential Information.

16.   MISCELLANEOUS TERMS. This Agreement constitutes the entire agreement between Program Member 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/TAP_Agreement.pdf. The modified terms will become effective upon posting. By Program Member accepting the revised Agreement, Program Member 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. Program Member 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 Program Member's assets. The Licensed Products may contain third party software which is delivered to Program Member as part of the Licensed Product and may not be taken out of the Licensed Product or used separately from the Licensed Product and for which additional terms may be included in the Licensed Product's documentation. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions shall remain in effect. Sections 3.3, 3.5, 5.2, 6, 7, 10, 11, 12, 13, 14, 15, and 16 survive termination or expiration of this agreement.