



MUTUAL CONFIDENTIALITY AGREEMENT

BY ACCEPTING THIS MUTUAL CONFIDENTIALITY AGREEMENT ("**AGREEMENT**"), EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A FORM THAT REFERENCES THIS AGREEMENT, 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.

This Agreement was last updated on June 1, 2016. This Agreement is between the entity or individual entering into this Agreement ("**You**" or "**Your**") and BMC Software, Inc., a Delaware corporation ("**BMC**"), located at 2103 CityWest Blvd., Houston, Texas 77042. A copy of this Agreement is posted at <http://www.bmc.com/legal/agreements.html>, where it can be saved and/or printed. It is effective between You and BMC as of the date of your acceptance of this Agreement.

- 1. Scope.** BMC and You (the "**Parties**") desire to disclose certain confidential information in connection with (a) an existing business relationship, (b) the discussion or validation of business proposals or design concepts, or (c) a future business relationship (the "**Purpose**").
- 2. Discloser and Recipient.** As to any particular Proprietary Information (defined below), the "**Discloser**" is the Party disclosing the Proprietary Information and the "**Recipient**" is the Party receiving the Proprietary Information.
- 3. Proprietary Information.** "**Proprietary Information**" means any confidential, proprietary, or trade secret information concerning Discloser's (a) customers' identity, finances, and data, and (b) personnel, business practices, business policies, the terms of any agreements between the Parties, pricing information, information relating to research and development, know-how, methodologies, inventions, specifications, software, market analyses, research strategies, projections, forecasts, proposal related documents and responses, data center and/or facility procedures and operations, data center and/or facility audit results, and compilations, summaries, analyses, copies, or other reproductions, in whole or in part, of the foregoing, except to the extent to which Recipient can establish by legally sufficient evidence that such information: (i) was rightfully in Recipient's possession without obligation of confidentiality before receipt from Discloser; (ii) is or has become a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without violation of any duty of confidentiality; (iv) is or was independently developed by or for Recipient without use or reference to the Proprietary Information or (v) was disclosed by Discloser to a third party without an obligation of confidentiality. Subject to the foregoing exceptions, "**Proprietary Information**" also includes, without limitation, third-party information that Discloser has the right to disclose to Recipient. Nothing disclosed under this Agreement is considered Proprietary Information unless (a) it is received in a tangible form and is marked "confidential" or "proprietary", (b) is received in intangible form and is followed up within a reasonable period of time with a writing describing it and designating it as "confidential" or "proprietary", or (c) it is something by either the substance of which or the circumstances surrounding its disclosure would lead a reasonable person to believe it is confidential or proprietary.
- 4. Restrictions on Use and Non-Disclosure of Proprietary Information.** Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient may not:
 - (a) use the Proprietary Information for any purpose other than to further the business relationship of the Parties and for the sole benefit of Discloser; or
 - (b) directly or indirectly disclose Proprietary Information to any person or entity other than Recipient's employees and consultants who (i) have a need to know in order to fulfill the Purpose, (ii) have been advised of the Proprietary Information's confidential status, and (iii) are subject to legally binding obligations of confidentiality as to such Proprietary Information, which are no less restrictive than those contained in this Agreement, provided, that Recipient is at all times fully responsible to Discloser for compliance with this Agreement by such employees and consultants.
- 5. Standard of Care.** Recipient shall use at least the same degree (but no less than a reasonable degree) of care and protection to prevent the unauthorized use or disclosure of any Proprietary Information as Recipient uses to protect its own confidential, proprietary, or trade secret information.
- 6. Ownership; Suggestions.** Recipient may not assert any claim of title or ownership to the Proprietary Information or any portion thereof. In the course of the discussions facilitated in the Customer Program, You may be providing to BMC feedback and suggestions relevant to the functionality, performance, features, and operation of BMC's products and services ("**Suggestions**") the purpose of their disclosure being to assist BMC and its affiliates to deliver BMC products that include the functionality, performance, features, and operation in BMC products that You need and desire to have. In order for BMC to be able to act on such Suggestions, BMC needs to have Your permission to do something with Your Suggestions, therefore, notwithstanding anything to the contrary herein, You hereby assign to BMC all rights, title and interest in the Suggestions and in all intellectual property therein. Although not usually necessary, if requested by BMC, You agree to execute such further instruments as BMC may reasonably request confirming BMC's ownership in Your Suggestions.



7. **Disclosures Required by Law.** In the event Recipient becomes legally compelled to disclose any Proprietary Information, Recipient shall provide Discloser with prior written notice of such requirement as soon as Recipient becomes aware of such requirement, such that Discloser may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms of this Agreement, Recipient agrees to (a) furnish only that portion of the Proprietary Information which Recipient is advised by written opinion of counsel is legally required to be furnished and (b) exercise reasonable efforts to obtain confidential treatment of the portion of Proprietary Information that is furnished.
8. **Confidentiality Period.** Recipient's obligations under paragraphs 3 through 5 expire on the earlier of (a) notification from the Discloser that the Proprietary Information is no longer confidential, or (b) the Parties' entry into a separate, subsequent agreement that contains confidentiality and non-disclosure provisions that supersede this Agreement as to that Proprietary Information.
9. **No Liability.** Discloser makes no representations or warranties, express or implied, as to the quality, accuracy, and completeness of the Proprietary Information, and neither Discloser nor its representatives have any liability whatsoever with respect to Recipient's use of or reliance upon the Proprietary Information.
10. **Disposal of Proprietary Information.** Recipient agrees to destroy or return to Discloser all copies of Proprietary Information promptly upon the earlier of (a) Discloser's request at any time, or (b) the duration of the confidentiality period established in Section 8(a) of this Agreement.
11. **Non-Public Individually Identifiable Information.** To the extent that Discloser shares its customers' non-public individually identifiable information with Recipient, Recipient will: (a) implement appropriate and otherwise required safeguards to maintain the confidentiality and integrity of non-public individually identifiable information; (b) use non-public individually identifiable information only for the purposes for which it was disclosed; (c) refrain from disclosing non-public individually identifiable information to any employee or other person or entity except as permitted by applicable law, only on a need to know basis, and only to the extent that such entity or individual agrees to implement appropriate safeguards no less restrictive than those set forth in this section 11..
12. **Remedies.** The Parties acknowledge and agree that a breach of this Agreement by either Party may cause irreparable injury to the other's business as a result of any such violation, for which the remedies at law may be inadequate, and that Discloser is therefore entitled to seek, in addition to any other remedies available to Discloser, a temporary restraining order and injunctive relief against Recipient, provided the Discloser can meet the legal requirements therefor.
13. **Miscellaneous.** No failure, delay, or single or partial exercise of any right under this Agreement by either Party is a waiver of such right. This Agreement may be modified or waived only by a separate writing by the Parties expressly modifying or waiving any provision of this Agreement. Neither the provision of Proprietary Information under this Agreement nor the execution of this Agreement binds or obligates either Party to any business relationship, and neither Party is bound or obligated to any such relationship with the other Party until the Parties execute a binding written agreement specifically describing such relationship. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the remaining provisions will be unaffected and remain in effect. Any additional documents presented to a BMC representative by Customer for signature as a condition for going on a Customer'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.
14. **Compliance with Law.** The Parties agree to comply with all applicable international and national laws that apply to (i) Proprietary Information, or (ii) any product (or part thereof), process, or service that is the direct result of the Proprietary Information, including without limitation, the U.S. Export Administration Regulations, as well as end-user and destination restrictions issued by U.S. and other governments.
15. **Attorney's Fees.** If either Party engages legal counsel to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs.
16. **Governing Law.** This Agreement is governed by the laws of the State of Texas without regard to conflict of law principles.