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**Instructions for Executing**
**BMC Data Processing Addendum**

**PURPOSE OF THIS ADDENDUM**

In the course of providing (i) support for its on-premise software products, (ii) access to BMC Subscription Services and (iii) professional services (collectively, the "**BMC Services**") to Customers, BMC may process Personal Data, as may be submitted to BMC by Customer.

As a data processor, acting on behalf and under the instructions of its Customers, BMC is already strongly committed to its Controller and Processor Data Protection Binding Corporate Rules, approved by European Data Protection Authorities with respect to compliance with European Data Protection Laws.

As of 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data (General Data Protection Regulation or "**GDPR**") will become applicable.

The purpose of the attached Data Processing Agreement Addendum ("**Addendum**") is to incorporate relevant provisions of the GDPR into current agreement(s).

**HOW TO EXECUTE THIS ADDENDUM**

This Addendum has been pre-signed on behalf of BMC. To complete it, Customer must:
1. Complete the information in the signature box and sign on Page 4 of the Addendum. The Addendum must be signed by the same entity that executed prior Agreement(s) for the subscription of BMC Services;
2. Send the completed and signed Addendum to BMC by email to GDPRAddendum@bmc.com, indicating Customer Legal Name. Please indicate former Legal Name if prior Agreement(s) was(were) executed under a different Legal Name than current.

Upon receipt of a validly completed Addendum by BMC, this Addendum will become legally binding.

**HOW THIS ADDENDUM APPLIES**

This Addendum is an add-on to prior Agreement(s) between BMC and Customer in relation to the subscription of BMC Services. The BMC entity to this DPA Addendum is the BMC party to the Agreement(s) previously executed by Customer. Once signed by Customer, this Addendum shall only apply as of 25 May 2018.

**HOW TO GET ADDITIONAL INFORMATION ON THIS ADDENDUM**

Any question related to this Addendum should be directed to your BMC Sales Contact.

# DATA PROCESSING ADDENDUM

**PREAMBLE**

This Addendum ("**DPA Addendum**") is an add-on to the prior Agreement(s) executed by the entity set forth in the signature block below ("**Customer**") for the license of BMC software products, associated support, access to the BMC Subscription Services and/or provision of professional services (collectively, the "**BMC Services**"), as such BMC Services are described in the corresponding Order(s) and/or Statements of Work attached to such Agreement(s) (collectively, "**Agreements**"). The BMC entity ("**BMC**") to this DPA Addendum is the party to the Agreement(s) executed by Customer. Notwithstanding the signature below of any other BMC entity, such other BMC entities are not party to this DPA Addendum. Customer and BMC may be referred individually as to a "**Party**" or collectively as to the "**Parties**".

In the course of providing the BMC Services to Customer pursuant to the Agreement(s), BMC may have access to Customer Personal Data as may be submitted to BMC by Customer.

Customer acknowledges that BMC adheres to its Controller and Processor Binding Corporate Rules Policy (the "**BCR**") approved by European data protection authorities with respect to compliance with European data protection laws. A copy of the BCR can be found at: http://www.bmc.com/legal/data-privacy-binding-corporate-rules.html.

BMC is committed to complying with applicable European data protection regulations ("**European Data Protection Laws**"), including Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data ("**GDPR**").

The purpose of this DPA Addendum is to incorporate to the Agreement(s) the relevant provisions of the GDPR.

1. **Definitions.** For the purposes of this DPA Addendum, "**Personal Data**", "**Processing**", "**Controller**", "**Processor**", "**Personal Data Breach**", "**Data Protection Impact Assessment**", "**Prior Consultation**", "**Data Subject**" and "**Supervisory Authority**" have the meaning specified for each term respectively in the GDPR.

2. **Scope.** This DPA Addendum applies to the Processing of Personal Data set out in prior Agreement(s) executed by Customer and BMC, insofar as the Processing is in scope of the GDPR. The duration of the Processing shall be the duration of the Agreement(s), unless otherwise agreed upon in writing. Subject-matter, nature and purpose of Processing, type of Personal Data and categories of Personal Data in scope of this DPA Addendum are those set out in prior Agreement(s) executed by Customer and BMC.

3. **Roles of the Parties.** The Parties acknowledge and agree that with regard to the Processing of Customer Personal Data, Customer determines the purposes and means of Processing, and shall be considered the data Controller under this DPA Addendum. BMC processes Customer Personal Data on behalf of the Customer, and shall be considered the data Processor under this DPA Addendum.

4. **Instructions.** BMC shall only process Personal Data on behalf of and in accordance with Customer's documented instructions. BMC shall not process Customer Personal Data except on instructions from the Customer, unless required to do so by local law. BMC shall immediately inform Customer if, in BMC's opinion, an instruction from the Customer may infringe European Data Protection Laws.

5. **Confidentiality.** BMC shall ensure that all personnel of BMC granted access to Personal Data have committed themselves to confidentiality by executing written confidentiality obligations. The obligation to treat Personal Data pursuant to such confidentiality obligations shall survive the termination of the

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employment. Personal Data may be made available only to personnel that require access to such Personal Data for the performance of BMC Services.

6. **Security of Processing.** BMC shall maintain appropriate organizational and technical protection measures, as set out in prior Data Processing Agreement(s) agreed between Customer and BMC. BMC regularly monitors compliance with these measures.

7. **Sub-Processing.** Customer and BMC agree that "**Sub-Processor**" means any Personal Data Processor engaged by BMC that processes Personal Data on behalf of Customer that may be an affiliate of BMC or a third party engaged by BMC or a BMC affiliate. Customer generally acknowledges and agrees that BMC may engage its affiliates or third parties as Sub-Processors in connection with the BMC Services, including access to Personal Data. Sub-Processors shall be obliged under a written contract (i) to comply with European Data Protection Laws and (ii) to provide at least the same level of data protection as is required by this DPA Addendum, including the implementation of appropriate technical and organizational measures. Any additions or replacements of Sub-Processors will be notified to the Customer via email. Customer may oppose to BMC use of a new Sub-Processor by notifying BMC in writing of its objective reasons to oppose within ten (10) business days after receipt of BMC's notice. In the event Customer objects to a new Sub-Processor, BMC will use reasonable efforts to make available to Customer a change in the BMC Services or recommend a commercially reasonable change to Customer's configuration or use of the BMC Services to avoid Processing of Personal Data by the objected-to new Sub-Processor without unreasonably burdening the Customer. If BMC is unable to make available such change within a reasonable period of time, Customer may terminate the applicable Agreement(s) with respect only to those BMC Services which cannot be provided by BMC without the use of the objected-to new Sub-Processor by providing written notice to BMC. BMC will refund Customer any prepaid fees covering the remainder of the term of such Agreement(s) following the effective date of termination with respect to such terminated BMC Services, without imposing a penalty for such termination on Customer. BMC shall be liable for the performance of its Sub-Processors to the same extent BMC would be liable if performing the BMC Services of each Sub-Processor directly under the terms of this DPA Addendum.

8. **Assistance to Customer**

   **8.1 Data Subjects' Requests.** BMC shall, to the extent legally permitted, promptly notify Customer if BMC receives a request from a data subject to exercise the data subject's right of access, right to rectification, restriction of Processing, erasure ("right to be forgotten"), data portability, object to the Processing, or its right not to be subject to an automated individual decision making ("data subject request"). In addition, to the extent Customer, in its use of the Services, does not have the ability to address a data subject request, BMC shall upon Customer's request provide commercially reasonable assistance to Customer in responding to such data subject request, to the extent BMC is legally permitted to do so and the response to such data subject request is required under European Data Protection Laws. Customer shall be responsible for any costs arising from BMC's provision of such assistance. Notwithstanding the aforementioned, any claim received by BMC directly from the Data Subject will be addressed as set forth in the Agreement.

   **8.2 Security of Processing.** Upon Customer's request, BMC shall provide Customer with reasonable cooperation and assistance to fulfil Customer's obligation under the GDPR to implement and maintain appropriate organizational and technical protection measures, insofar as this obligation relates to the BMC Services in scope of this DPA Addendum. Customer shall be responsible for any cost arising from BMC's provision of such cooperation and assistance.

   **8.3 Notification of a Personal Data Breach to the Supervisory Authority and communication of a Personal Data Breach to the Data Subject.** Upon Customer's request, BMC shall provide Customer with reasonable cooperation and assistance to fulfil Customer's obligation under the GDPR to notify a Personal Data Breach to the Supervisory

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Authority and to communicate on a Personal Data Breach to the Data Subject, insofar as this obligation relates to the BMC Services in scope of this DPA Addendum. Provided the Personal Data Breach is not due to BMC's breach of its obligations under this DPA Addendum, Customer shall be responsible for any cost arising from BMC's provision of such assistance.

**8.4 Data Protection Impact Assessment and Prior Consultation.** Upon Customer's request, BMC shall provide Customer with reasonable cooperation and assistance to fulfil Customer's obligation under the GDPR to carry out a Data Protection Impact Assessment related to Customer's use of the Services, to the extent Customer does not otherwise have access to the relevant information, and to the extent such information is available to BMC. BMC shall provide reasonable assistance to Customer in the cooperation or Prior Consultation with the Supervisory Authority in the performance of its tasks. Customer shall be responsible for any cost arising from BMC's provision of such assistance.

9. **Deletion and Return.** If BMC has any Customer Data in its possession, then upon request by Customer made within thirty (30) days after the effective date of termination of the Agreement(s), BMC will make available to Customer for download a file of Customer Data in comma separated value (.csv) format or database backup format. After such 30-day period, BMC shall have no obligation to maintain or provide any Customer Data and will thereafter delete Customer Data from the BMC Services, including copies, unless legally prohibited.

10. **Compliance Documentation and Audit Rights.** Upon request by Customer, BMC shall make available to Customer all relevant information necessary to demonstrate compliance with this DPA Addendum, and shall allow for and contribute to audits, including inspections, by Customer or an auditor mandated by Customer in relation to the Processing of the Customer Personal Data by BMC and its sub-Processors. Customer shall give notice of any audit or inspection to be conducted and shall make reasonable endeavours to avoid causing any damage or disruption to BMC premises, equipment and business while its personnel are on those premises in the course of such an audit or inspection. Any audit shall be carried out on reasonable prior written notice of no less than 30 days, and shall not be carried out more than once a year. Access to BMC premises for the purposes of such an audit or inspection is subject to: (a) the production of reasonable evidence of identity and authority by the auditors; (b) normal business hours; (c) audit personnel have committed themselves to confidentiality by executing written confidentiality obligations; and (d) access only to information that is strictly relevant to the BMC Services provided to Customer, which excludes any information relating to the provision of BMC Services to other customers.

11. **Personal Data Breach Notification to Customer.** BMC shall notify Customer without undue delay after becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Customer Personal Data processed by BMC and its Sub-Processors. BMC shall make reasonable efforts to identify the cause of such breach and take those steps as BMC deems necessary and reasonable in order to remediate the cause of such a breach to the extent the remediation is within BMC's reasonable control.

12. **Transfer of Personal Data to Third Countries.** BMC adheres to its Controller and Processor Binding Corporate Rules Policy (the "BCR") approved by European data protection authorities with respect to compliance with European Data Protection Laws. The BCR policy is incorporated into a BMC corporate wide policy, requiring all BMC affiliates and their employees to comply with and respect the BCR policy which is governing the collection, use, access, storage and transfer of Personal Data among BMC entities and their sub-Processors. Customer agrees to rely upon the BCR as providing adequate safeguards in regard to European Data Protection Laws and provisions contained in the Introduction, Part III and IV of the BCR are incorporated by reference and are an integral part of this DPA Addendum. A copy of the BCR can be found at: http://www.bmc.com/legal/data-privacy-binding-corporate-rules.html. Customer agrees that Personal Data may be processed by BMC affiliates provided that BMC and its sub-Processors are and remain contractually bound by the BCR. BMC represents that its

affiliates and their sub-Processors are and shall for the duration of this DPA Addendum remain contractually bound by and comply with the requirements of the BCR.

13. **Records of Processing Activities.** Customer and BMC shall maintain records of Processing activities, in their respective roles of data Controller and data Processor. Parties shall cooperate to fulfil obligation to maintain such records. Any material change made by a Party, requiring an update of the records of Processing activities maintained by the other Party, shall be notified to the other Party within a reasonable time. Each Party shall bear its own costs for its own records of Processing Activities.

14. **Cooperation with Supervisory Authorities.** Customer and BMC shall cooperate with competent Supervisory Authorities as required by the GDPR. If a Party is subject to investigative or corrective powers of a Supervisory Authority, this Party shall inform the other Party without undue delay, insofar as it relates to the data Processing covered by this DPA Addendum. Parties shall provide reasonable assistance to each other to fulfil obligation to cooperate with Supervisory Authorities. Each Party is responsible for its own costs arising from the provision of such assistance.

15. **Entry into force.** This DPA Addendum shall apply as of 25 May 2018 ("**Effective Date**"), according to article 99 of the GDPR. It shall be in force once executed by the Customer and shall remain into effect until the Agreement(s) has(ve) been terminated or expire(s).

16. **Precedence.** In the event of any conflict or inconsistency between the provisions of this DPA Addendum and any other prior agreements between the Parties, including prior DPA(s), the provisions of this DPA Addendum shall prevail.

**CUSTOMER**

Signature:
Customer Legal Name
Name:
Title:
Date:

**BMC SOFTWARE, Inc.**

Signature: *Judy Schafer*
Name: Judy Schafer
Title: Senior Manager, Order Services
Date: O8-Dec-2017

**BMC SOFTWARE CANADA Inc.**

Signature: *Judy Schafer*
Name: Judy Schafer
Title: Senior Manager, Order Services
Date: O8-Dec-2017

**BMC SOFTWARE DISTRIBUTION B.V.**

Signature:
Name: Arno Jan ter Avest
Title: Regional Financial Controller, EMEA
Date: O8-12-2017

**BMC SOFTWARE ASIA PACIFIC Pte. Ltd**

Signature:
Name: Michael Lee
Title: Senior Manager, Order Services
Date: O8-12-2017

**BMC SOFTWARE (New Zealand) LIMITED**

Signature:
Name: Michael Lee
Title: Regional Financial Controller, APAC
Date: O8-12-2017

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**BMC SOFTWARE K.K.**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE (China) Limited Company**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE KOREA LIMITED**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE (Hong Kong) Ltd**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE ASIA Sdn Bhd**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE ASIA PACIFIC Pte Ltd**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date  09.12.2017

**BMC SOFTWARE (Australia) Pty Ltd**

Signature

Name  Michael Lee

Title  Regional Financial Controller  APAC

Date.  09.12.2017

**BMC SOFTWARE FEDERAL, LLC**

Signature

Name  Judy Schaler

Title  Senior Manager  Order Services

Date  09 - Dec - 2017

**BMC SOFTWARE DO BRASIL Ltda**

Signature

Name  Marcia Nakahara

Title  Country Director

Date  13.12.2017

**BMC SOFTWARE DISTRIBUTION DE MEXICO S.A. de C.V.**

Signature

Name  Ricardo Wolff

Title  Country Director

Date  14/12/17

**BMC SOFTWARE DE ARGENTINA S.A.**

Signature

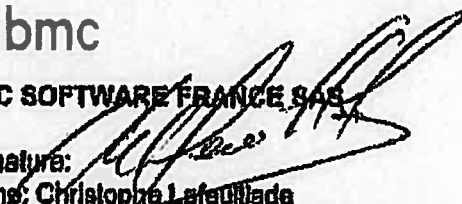Name  Sergio Vekselman

Title  Country Director

Date  11/12/17

**BMC SOFTWARE S r l**

Signature

Name  Arno Janter Avesi

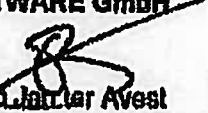Title  Regional Financial Controller  EMEA

Date  09.12.2017

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**BMC SOFTWARE FRANCE SAS**

Signature:
Name: Christophe Lafeuillade
Title: Président du Conseil d'Administration
Date: 15.12.2017

**BMC SOFTWARE Ltd**

Signature:
Name: Arno Jarrier Avest
Title: Regional Financial Controller, EMEA
Date: 08 12.2017

**BMC SOFTWARE GmbH**

Signature:
Name: Arno Jarrier Avest
Title: Regional Financial Controller, EMEA
Date: 08-12.2017

**BMC SOFTWARE S.A.**

Signature:
Name: Francisco Trillo
Title: Area Director
Date: 15-12-2017