bmc helix

ONLINE TRIAL AGREEMENT

If BMC Helix accepts this agreement ("**Agreement**"), it is an Agreement between the entity or individual entering into this agreement ("**User**") and BMC Helix, Inc., a Delaware corporation located at 2103 CityWest Blvd., Houston, Texas 77042, USA, or its local licensing affiliate ("**BMC Helix**"). If BMC Helix accepts this Agreement, then this Agreement is effective on the date it is communicated to User. This Agreement applies to User's trial of the Product, regardless of whether such trial occurs as part of a "proof of concept" or "proof of value" process in which BMC Helix participates or otherwise.

Product: The BMC Helix software product and/or subscription service for which a temporary license and/or access right is being granted in accordance with terms of this Agreement.

Technology: The Product, solution, and/or demonstration environment being installed, accessed and/or used by User pursuant to the terms of this Agreement, and all related software, systems, platforms or networks.

Documentation: The technical publications relating to the Product, such as release notes, reference, user, installation, systems administrator and technical guidelines included with the Product.

1. **TRIAL LICENSE.** BMC Helix grants User a worldwide, non-exclusive, non-transferable, temporary right to access and use the Technology up to the installed capacity as determined by BMC Helix, for a 30 day time period, unless otherwise provided by BMC Helix ("**Trial Period**"), only (a) to internally evaluate and determine whether to acquire a license to the Products for a fee, or (b) if User is an authorized BMC Helix Partner or a Service Provider, to demonstrate to the prospective customer for the prospective customer's internal evaluation purposes. User may not access or use the Technology if it is a direct competitor of BMC Helix, unless otherwise authorized by BMC Helix to do so in writing.

2. **RESTRICTIONS ON USE**. User will not: (a) operate or use any Technology in any manner other than as set forth in the trial license above; (b) use the Technology to process production data, or for development, commercial, production, or database management purposes; (c) use the Technology with data or information that has not been backed up; (d) modify, copy or create derivative works based on the Product; (e) create Internet "links" to or reproduce any content forming part of the Product, other than for its own internal non-production business purposes; (f) use any components provided with the Technology separately from the Product; (g) attempt to gain unauthorized access to the Product or its related software, systems, platforms or networks; (h) modify, delete or remove any ownership, title, trademark, patent or copyright notices from any Product; (i) copy the Technology for any purposes, except to the extent expressly permitted by applicable law or treaty notwithstanding this limitation. User agrees not to claim or assert title to or ownership of the Technology, or modifications thereto; (j) disassemble, reverse engineer, decompile or otherwise attempt to derive any Product source code from object code or access it in order to copy any ideas, features, content, functions or graphics of the Product, except to the extent expressly permitted by applicable law despite this limitation without possibility of contractual waiver; (k) sell, distribute, rent, lease, sublicense, display, modify, time share, outsource or otherwise provide the Product to any third party or use it in a service bureau, outsourcing environment, or for the processing of third party data; (l) access the Product for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; (m) release any results of performance tests related to Product to any third party without BMC Helix's prior written consent; (n) attempt to disable or circumvent any of the licensing mechanisms within the Product or Technology; (o) interfere with or disrupt the integrity or performance of the Product; (p) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material via the Product; (q) send or store viruses or malicious code via the Product; (r) violate any other usage restrictions contained in the Documentation; or (s) make any representations to prospective customers which are not made by BMC Helix in this Agreement. User is responsible for maintaining the confidentiality of any passwords assigned to User. User will immediately notify BMC Helix if it becomes aware that a password is lost, stolen, disclosed to an unauthorized third party, or otherwise compromised. User will be responsible for any and all activities under User's account and/or using User passwords. User will (i) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Product, and notify BMC Helix promptly of any such unauthorized access or use, and (ii) comply with all applicable laws in using the Product.

3. **OWNERSHIP.** All title and copyrights in and to the Technology are owned by BMC Helix and/or its affiliates and licensors, and are protected by both United States copyright law and applicable international copyright treaties. User acknowledges that the Technology contain valuable trade secrets of BMC Helix and/or its affiliates and licensors.

4. **NO WARRANTY AND LIMITATION OF LIABILITY. THE TECHNOLOGY IS PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT ANY WARRANTY, INCLUDING WITHOUT LIMITATION NO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT. NEITHER BMC HELIX, NOR ITS AFFILIATES, SUPPLIERS OR LICENSORS ARE LIABLE FOR**

INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES FROM ANY CAUSE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE TECHNOLOGY OR THIS AGREEMENT. BMC HELIX'S, ITS AFFILIATES', SUPPLIERS' AND LICENSORS' LIABILITY FOR DIRECT DAMAGES RESULTING FROM THE USE OF THE TECHNOLOGY OR THIS AGREEMENT IS LIMITED TO US $500.

5. **ACTIONS UPON EXPIRATION OF TRIAL PERIOD**. Upon termination of this Agreement or expiration of a Trial Period: (a) User will immediately cease using the Technology; (b) if User has installed the Product on its system, then User will delete it immediately; (c) if User is accessing the Product via an Internet-based demonstration site, BMC Helix may disable User's access; (d) If User desires to acquire a paid-for license to access and use the Product, then User must acquire a license to use and access the Product under the then-current subscription service or software license terms, as applicable, with BMC Helix or its appropriate subsidiary or affiliate; and (e) BMC Helix may permanently delete all data input or imported into the Product during the trial period. At BMC Helix's sole discretion, a new Trial Period may be activated upon request and approval by BMC Helix. This agreement creates no obligation on the part of User to purchase a license to any Products or for BMC Helix to provide such license to User. Further, this Agreement creates no obligation on the part of BMC Helix to make any Internet-based demonstration site available to User.

6. **PROPRIETARY RIGHTS AND CONFIDENTIALITY**. (a) BMC Helix, its Affiliates or licensors retain all right, title and interest to the Technology and all related intellectual property and proprietary rights. The Product and all third party software provided with the Product are protected by applicable copyright, trade secret, industrial and other intellectual property laws. User may not remove any product identification, copyright, trademark or other notice from the Product. BMC Helix reserves any rights not expressly granted to User in this Agreement. (b) "**Confidential Information**" means all proprietary or confidential information that is disclosed to User by BMC Helix, and includes, among other things (i) any and all information relating to products or services, including, without limitation, software code, BMC Helix product vulnerabilities, flow charts, techniques, specifications, development and marketing plans, strategies, forecasts, and proposal related documents and responses; (ii) as to BMC Helix, and its licensors, the Product (excluding portions of the Documentation that BMC Helix makes publicly available) and any third party software provided with the Product; and (iii) the terms of this Agreement. Confidential Information does not include information that User can show: (iv) was rightfully in User's possession without any obligation of confidentiality before receipt from BMC Helix; (v) is or becomes a matter of public knowledge through no fault of User; (vi) is rightfully received by User from a third party without violation of a duty of confidentiality; or (vii) is independently developed by or for User. User may not disclose Confidential Information of BMC Helix to any third party or use the Confidential Information in violation of this Agreement. User (xiii) will exercise the same degree of care and protection with respect to the Confidential Information of BMC Helix that it exercises with respect to its own Confidential Information and (ix) will not, either directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of BMC Helix. Notwithstanding the foregoing, User may disclose BMC Helix's Confidential Information to User's employees and agents who have the 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 User becomes aware of any unauthorized use or disclosure of BMC Helix's Confidential Information, then User will promptly and fully notify BMC Helix of all facts known to it concerning such unauthorized use or disclosure. In addition, if User 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 BMC Helix's Confidential Information, User will not disclose BMC Helix's Confidential Information without providing BMC Helix with commercially reasonable advance prior written notice to allow BMC Helix to seek a protective order or other appropriate remedy or to waive compliance with this provision. In any event, User will exercise its commercially reasonable efforts to preserve the confidentiality of BMC Helix's Confidential Information, including, without limitation, cooperating with BMC Helix to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information. User agrees to destroy or return to BMC Helix all copies of Confidential Information promptly upon the expiration or termination of this Agreement.

7. **DATA PROTECTION.** The processing of personal data under this Agreement is governed by the Data Processing Agreement referenced below, unless BMC Helix already has a signed Data Processing Agreement with User for such BMC Helix offerings; in which case, the signed version governs the processing of personal data. In the event there is no signed Data Processing Agreement, BMC Helix and User agree that the Data Processing Agreement applicable on the date the Technology is made available to User, a copy of which may be viewed at https://www.helixops.ai/content/dam/bmc/corporate/bmcdpa.pdf, applies to Technology under this Agreement.

8. **EXPORT CONTROLS**. Both parties agree to comply with applicable export regulations, including but not limited to U.S. Export Administration Regulations and the OFAC embargoes and sanctions lists. More information on BMC Helix's export compliance program may be found here: https://www.bmc.com/legal/export-compliance.html.

9. **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 Customer is 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. Notwithstanding the foregoing, if Customer is a state or local governmental entity or higher education institution and legally required to apply state law, then Customer's state law will apply to the Controversy, without reference to conflict of law principles.

(ii) **CANADA.** If Customer is incorporated in Canada (outside Quebec), then the law of the Province of Ontario applies, without reference to conflict of law principles. If Customer is incorporated in Quebec, then the laws of the Province of Quebec will apply, without reference to conflict of law principles.

(iii) **EMEA AND ASIA-PACIFIC**. If Customer is incorporated in countries in Europe, Middle East, Africa or Asia Pacific 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.

(iv) **OTHER REGIONS**. In all other instances, the Controversy shall be tried in state court located in Houston, Texas and the laws of the State of Texas shall govern.

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.

10. **U.S. GOVERNMENT END USER RIGHTS**. This Section applies only to acquisitions of the commercial Product 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, agreement or other activity with the United States Government. When Products are delivered or provided to the United States Government, the United States Government agrees that this commercial license Agreement and the Products governed by this Agreement are defined in accordance with and qualify as "commercial items" consisting of "commercial computer software" and "commercial computer software documentation" as outlined in FAR 12.211, FAR 12.212 and DFARS 227.202-3, as applicable. The terms and conditions of this Agreement shall pertain to the United States Government's use (including documentation or technical data), duplication, and disclosure of the Product, and shall supersede any conflicting contractual terms and conditions.

12. MISCELLANEOUS TERMS. This is the entire agreement of the parties, and it supersedes and replaces all prior and contemporaneous agreements and negotiations with respect to this subject matter. There are no representations, promises, warranties, covenants, or undertakings between the parties other than those expressly set forth in this Agreement. This Agreement may only be amended by a signed writing of the parties. Either party may terminate this Agreement at any time upon two weeks prior notice. User may not assign or transfer this Agreement without BMC Helix's prior written consent. No failure or delay by either party in exercising any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise thereof preclude any other or further exercise, or the exercise of any right, power or privilege under this Agreement. 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. The Products may contain third party software which is delivered to User as part of the Product and may not be taken out of the Product or used separately from the Product and for which additional terms may be included in the Documentation. The Product may contain hyperlinks to websites controlled by parties other than BMC Helix. BMC Helix is not responsible for and does not endorse the content or accept any responsibility for User's use of these websites. During the Trial Period and in compliance with all applicable laws and for internal purposes only, BMC Helix may compile and use information related to User's use of BMC Helix's Products or Technology, for the purposes of: (a) enhancing and improving BMC Helix's Products or Technology, developing new Products and Technology, and for other development, diagnostic, statistical and corrective purposes; and (b) better informing the User of relevant Products. User should refer to the policies posted by other websites regarding data privacy and other topics before using them. Any additional documents presented to a BMC Helix representative by User for signature as a condition for going on a User'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. The parties have agreed that this Agreement and the documents related thereto be drawn up in the English language. Les parties exigent que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.