



## Corporate Governance Guidelines

(Amended Effective November 10, 2010)

The Board of Directors of BMC Software, Inc. ("BMC" or the "Company") has adopted the following Corporate Governance Guidelines to assist in the exercise of its responsibilities. These Guidelines reflect the Board's commitment to the highest standards of corporate governance and may be modified from time to time. These Guidelines, as amended, are adopted and effective as of November 10, 2010 and, as a result, are applicable to and for acts, events, regulatory filings or other matters that occur or fail to occur after such date.

### Board of Director Functions

BMC's business is conducted by its officers and employees under the oversight of the Board to enhance long-term stockholder value. The Board, which is elected annually by BMC stockholders, is the ultimate decision-making body of the Company, except for matters specifically reserved to the stockholders. The Board's principal responsibility is to promote the best interests of BMC's stockholders by providing guidance and oversight for the management of the Company's business and affairs.

#### 1. Selection of Chairman of the Board and Chief Executive Officer

While the Board recognizes the potential value of splitting the roles of Chairman of the Board and CEO, the Board currently has no policy mandating this and believes that this is a matter that should be discussed and determined by the Board from time to time. When the Chairman is not independent, then the Board will appoint an independent director as Lead Director. The roles and duties of the Chairman and the Lead Director are set forth below in Sections 2 and 3.

The Board selects, evaluates and compensates the CEO. The Board delegates to the CEO, and through him or her to other senior managers, the authority and responsibility for managing the day-to-day affairs of BMC. In addition, the CEO is responsible for recommending policy and strategic direction of BMC, for ultimate approval by the Board, and for acting as the chief spokesperson of the Company.

#### 2. Role of Chairman of the Board

The Chairman of the Board is elected by the full Board. The Chairman is reviewed annually as part of the Board's evaluation process and is subject to removal or rotation at the discretion of the Board. The Chairman is responsible for coordinating the activities of the Board. In addition to the duties of a regular Board member, the Chairman has the following specific responsibilities:

- Conduct meetings of the Board and stockholders;
- Schedule Board meetings with a frequency and duration that enables the Board and its committees to perform their duties responsibly while not interfering with the flow of BMC's operations;
- Prepare, in consultation with the Lead Director and CEO (as applicable), committee chairs and other directors, the agendas for the Board meetings;
- Monitor the quality, quantity and timeliness of the flow of information between BMC management and the Board; although management is responsible for the preparation of most materials for the Board, the Chairman or the Lead Director may request specific or additional material;
- Interview, along with members of the Corporate Governance & Nominating Committee (and other independent directors to the extent practical), all Board candidate finalists; and
- Consult with the Corporate Governance & Nominating Committee with respect to the membership of the various Board committees and the selection of the committee chairs.

If the Chairman is not independent, then the Chairman will share responsibility with the Lead Director with respect to the following responsibilities:

- Monitor the quality, quantity and timeliness of the flow of information between BMC management and the Board; although management is responsible for the preparation of most materials for the Board, the Chairman or the Lead Director may request specific or additional material;
- Interview, along with members of the Corporate Governance & Nominating Committee (and other independent directors to the extent practical), all Board candidate finalists; and
- Consult with the Corporate Governance & Nominating Committee with respect to the membership of the various Board committees and the selection of the committee chairs.

If the Chairman is an independent director, then the Chairman has the following additional responsibilities:

- Develop the agenda for, and moderate executive sessions of, the Board's independent directors; act as principal

liaison between the independent directors and the CEO on matters discussed in executive sessions;

- Approve, in consultation with other independent directors, the retention and compensation of consultants who report directly to the Board;
- In conjunction with one of the Board committee chairs, review with the CEO, the CEO's performance evaluation conducted by the independent directors; and
- With the assistance of the Corporate Governance & Nominating Committee, review each individual director's performance annually and discuss the details of each director's review with him or her.

### **3. Role of Lead Director**

If the Chairman is not independent, then the Board will appoint an independent director as Lead Director. The Corporate Governance & Nominating Committee shall be responsible for recommending a candidate for the position of Lead Director from among the independent members of the Board. The Lead Director is elected by the full Board. The Lead Director shall serve in that position until a successor shall be appointed by the Board and is subject to removal or rotation at the discretion of the Board. The Lead Director is reviewed annually as part of the Board evaluation process with a view towards periodically rotating the position among independent directors. When the Board appoints a Lead Director, in addition to those responsibilities listed above which the Lead Director shares with the Chairman, the following responsibilities will be the sole responsibility of the Lead Director:

- Develop the agenda for, and moderate executive sessions of, the Board's independent directors; act as principal liaison between the independent directors and the Chairman and/or CEO on matters discussed in executive sessions; the Lead Director may call meetings of the full Board or just the independent directors of the Board, in addition to the executive sessions held during regularly scheduled Board meetings; and the Lead Director shall preside at any meeting of the Board or stockholders at which the Chairman is not present;
- Advise and consult with the Chairman and the chair of each Board committee as to the appropriate information, agendas and schedules of Board and Board committee meetings; the Lead Director is encouraged to attend those Board committee meetings at which critical issues are to be decided;
- Approve, in consultation with other independent directors, the retention and compensation of consultants who report directly to the Board;
- In conjunction with one of the Board committee chairs, review with the CEO the CEO's performance evaluation, including a review of the CEO's performance as Chair, conducted by the independent directors; and
- With the assistance of the Corporate Governance & Nominating Committee, review each individual director's performance annually and discuss the details of each director's review with him or her.

### **4. Board of Directors Meetings**

To effectively oversee the management of BMC, all directors are expected to attend and actively contribute to meetings of the Board and meetings of the committees on which they serve. The full Board meets on a regularly scheduled basis, at least quarterly and more frequently as necessary, to discharge fully its duties. At least annually, the full Board meets for an extended session focused on BMC's long-term strategy. In addition, the full Board meets periodically upon the call of the Chairman, the Lead Director or as otherwise provided by the Company's Bylaws between scheduled meetings, either face-to-face or by teleconference if necessary, to discharge effectively its oversight duties. It is the Board's general preference to hold at least one Board meeting per year at a Company location other than corporate headquarters so directors may gain additional insight into BMC's operations through exposure to local management, employees and/or customers. In addition, the Board discharges certain of its duties through its committees which meet, in some cases, more frequently than regularly scheduled Board meetings. Directors who attend less than seventy-five percent (75%) of meetings of the Board and/or meetings of committees of which they are members for two (2) consecutive years will not be eligible for re-nomination to the Board. All directors have the right, exercised reasonably, to place items on the Board agenda and to expect that adequate time is allotted for discussion of those items.

It is the duty of the Board to serve as a prudent fiduciary for stockholders and to oversee the management of BMC. In discharging their duties, directors are expected to:

- Contribute ideas, insight, critical thoughts and perspective;
- Exercise objectivity and autonomy in decision-making;
- Develop the knowledge and expertise to provide effective oversight;
- Exercise business judgment to act in what they reasonably believe to be the best interests of BMC's stockholders;
- Display the character, integrity, and will to assert their points of view;
- Demonstrate loyalty to BMC;
- Keep confidential all matters involving BMC that have not been disclosed to the general public; and
- Devote the time necessary to fulfill the legal, regulatory and stock exchange requirements imposed upon them.

Information and data that are important to an understanding of the business to be conducted at a Board meeting will generally be distributed in advance of the meeting. Directors may request additional information from management or consultants as they believe necessary to make sound, informed business decisions on a timely basis. Members of senior management of BMC are generally invited to attend quarterly scheduled Board meetings to discuss significant business issues with the Board and to enable the Board to contribute to their evaluation and development for succession purposes. The Board encourages senior management, from time to time, to bring additional managers into Board meetings who: (a) can provide additional insight concerning items being discussed and/or (b) demonstrate high potential and whom the senior management believe should be given exposure to the Board. At each regularly scheduled Board meeting, the independent directors will hold an executive session with the CEO and an executive session without

management and the CEO. The Chairman or the Lead Director, as applicable, will preside at the executive sessions of the Board.

## **5. Professional Conduct and Ethics**

The Board expects BMC's directors, officers and employees to act ethically at all times and to acknowledge their adherence to the BMC Professional Conduct Policy and Code of Ethics. The Board expects BMC directors and officers to exhibit the highest standards of ethical behavior and to set an ethical tone for BMC. Each director should be alert and sensitive to any interest he or she may have that might be considered to conflict with the best interests of BMC. If a director, directly or indirectly, has a financial or personal interest in a contract or transaction to which BMC is to be a party, the director is considered to be "interested" in the matter. If this situation arises, the interested director must disclose the interest and describe all material facts concerning the matter to the full Board and then leave the meeting while the disinterested directors complete their discussion and vote on whether or not to approve the transaction.

## **6. Other Board Functions**

To discharge effectively their oversight duties, the Board has direct access to management. Board members will apply sound business judgment to ensure that such contact is not distracting. If such contact is initiated in writing, the other directors who have responsibilities in the area in question and the CEO should receive a copy.

The Board believes that in most matters the CEO or his or her designees should speak for the Company. Unless the Board has asked an independent director to represent its views on a particular topic, it is suggested that directors refer inquiries from institutional investors, the press or customers to the CEO.

## **Board Committee Functions**

### **7. Standing Committees of the BMC Board**

The Board has established the following four standing committees: Audit, Compensation, Corporate Governance & Nominating, and Mergers & Acquisitions. Committee members must be independent directors. The current membership of each committee is available on BMC's website. Each committee has a charter setting forth the duties of the committee, and a copy of each charter is filed with the SEC and NASDAQ as required and available on BMC's website. The Corporate Governance & Nominating Committee is responsible for making recommendations to the full Board with respect to the assignment of Board members and chairs to committees. After reviewing the Corporate Governance & Nominating Committee's recommendations, the Board appoints the chairs and members to the committees. The Corporate Governance & Nominating Committee periodically reviews the committee assignments and considers the rotation of chairs and members approximately every three to five years with a view toward balancing the benefits derived from continuity against the benefits derived from the diversity of experience and viewpoints of the various directors.

### **8. Committee Operations**

Each of the Audit, Compensation and Corporate Governance & Nominating Committees meets on a regularly scheduled basis, at least quarterly and more frequently as necessary, to discharge the duties of its charter. The Mergers & Acquisitions Committee meets periodically as necessary to discharge the duties specified in its charter. The chair of each committee, after consultation with the Board, management and outside advisors as necessary, sets the agenda for the committee meetings. Through this consultative process, each committee prepares an annual calendar of meetings and agenda items to ensure that all the responsibilities of its charter and the strategic mission of the committee are fulfilled. This annual calendar is then provided to the full Board. Directors are expected to be prepared for meetings of committees on which they serve, to be able to devote the time required and to contribute judgment, ideas, insight, critical thoughts and perspective to the meetings. The following are guidelines for the conduct of committee meetings:

- Information and data that are important to an understanding of the business to be conducted at a committee meeting will generally be distributed in advance of the meeting.
- Each committee has the authority to hire and compensate independent advisors and counsel.
- Each committee has direct access to members of management.
- Independent directors may attend committee meetings on which they do not serve.
- Each committee will conduct an annual evaluation and discuss the results and its improvement plans with the full Board.

## **Board Composition**

### **9. Director Independence**

It is the strong sense of the Board that its membership be predominantly non-employee directors who, at a minimum, meet the criteria for independence required by the NASDAQ. In addition, the Board feels strongly that even the

perception of a conflict of interest hinders independence. Therefore, an independent director should be free of any relationship with BMC or its management that may impair, or appear to impair, the director's ability to make independent judgments. Specifically, no officer or employee of BMC or its subsidiaries nor any immediate family member of any officer or employee of BMC or its subsidiaries will qualify as an independent director. A director who is an executive officer of another corporation on whose board any of BMC's executives serves will not qualify as an independent director. A director will not be independent if he or she is affiliated with (i) a service provider to BMC such as a law firm, accounting firm or consulting firm providing a significant amount of service to BMC or (ii) a recipient of a significant charitable donation from BMC. Further, an individual may not serve as an independent member of the Board for a period of five years following the termination of any of the relationships delineated above, unless the Board expressly determines otherwise. The Board, working through its Corporate Governance & Nominating Committee, monitors director independence and conducts an annual review of director independence to ensure compliance with this Guideline.

#### **10. Size of Board**

The Board believes that it should generally have between nine and twelve directors. This range permits diversity of experience without hindering effective discussion or diminishing individual accountability.

#### **11. Selection of New Directors**

The entire Board is responsible for nominating members for election to the Board and for filling vacancies on the Board that may occur between annual meetings of stockholders. The Corporate Governance & Nominating Committee is responsible for identifying, screening and recommending candidates to the entire Board for Board membership. When formulating its Board membership recommendations, the Corporate Governance & Nominating Committee may engage outside advisors and will also consider any advice and recommendations offered by other Board members or BMC's stockholders.

#### **12. Board Membership Criteria**

Nominees for director will be selected on the basis of broad experience; wisdom; integrity; ability to make independent analytical inquiries; understanding of BMC's business environment; and willingness to devote adequate time to Board duties. The Corporate Governance & Nominating Committee is responsible for assessing the appropriate balance of skills, characteristics and perspectives required of an effective Board. The Board is committed to a diversified membership.

The following criteria are used as guidelines for selecting director nominees:

- Experience as a chief executive officer, member of senior management or director of a technology company or other nationally recognized or significant business.
- Ability to dedicate sufficient time to his or her duties as a director of BMC.
- Particular skills or expertise that enhance the overall composition of the Board.

Members of BMC's Board are elected annually by the Company's stockholders. Consequently, there is no specified limit on the number of years that a director may serve on the BMC Board. Generally, a director will not be nominated to a new term if he or she would be age 70 or older at the time of the election; provided, that such director has had the opportunity to serve at least 5 years as a director. There is no specific limitation on the number of other company boards on which a BMC director may serve. However, directors must be mindful of the time commitment that such service requires and of their commitment to BMC. To preserve independence and to avoid conflicts of interest or competitive issues, each director must notify the Corporate Governance & Nominating Committee in writing in advance of accepting an invitation to serve on another board of directors or comparable governing body of a private or public entity (including not-for-profit entities) or another company audit committee. The Corporate Governance & Nominating Committee will review and evaluate the proposed appointment and if it determines that the director's continued service on the Board would not be appropriate under the circumstances, it will notify such director of its decision and, if necessary, make a recommendation to the Board. If the Board determines that the director's continued service on the Board would not be appropriate under the circumstances, the director shall offer his or her resignation before accepting the other appointment.

While serving as a director of BMC and for at least two years afterwards, a BMC director may not engage in competitive activities with BMC whether as an employee, officer, director or advisor of a BMC competitor. A director is required to submit a letter of resignation to the Corporate Governance & Nominating Committee in the event of a change in circumstances involving a director's employment status, position and/or principal business or professional association. The Corporate Governance & Nominating Committee will review the continued appropriateness of Board membership under any such circumstances and will recommend to the Board whether to accept the resignation or permit the director to continue to serve on the Board.

#### **13. Majority Voting Director Resignation Policy**

BMC's Bylaws provide that, in the case of uncontested elections, a director is elected if more shares vote in favor of the

director nominee than against the director nominee. A director who fails to receive the required number of votes for election where the election is uncontested must, promptly following the certification of the stockholder vote, tender his or her written resignation to the Chairman of the Corporate Governance & Nominating Committee for consideration by the Board.

The Corporate Governance & Nominating Committee (excluding, if applicable, the director who tendered the resignation) will consider the tendered resignation and make a recommendation to the Board. The Board (excluding the director who tendered the resignation) will evaluate whether to accept or reject the resignation or take any other action in light of the best interests of BMC and its stockholders. In making this determination, the Board (and, in making its recommendation to the Board, the Corporate Governance & Nominating Committee) may consider any factors it deems relevant, including the director's qualifications, the director's past and expected future contributions to BMC, the overall composition of the Board and whether accepting the resignation would cause BMC to fail to meet any applicable rule or regulation.

The Board will accept or reject the resignation no later than 90 days following the date of the stockholders' meeting at which the election occurred. The Company will promptly and publicly disclose the Board's decision and, if applicable, the Board's reason or reasons for rejecting the tendered resignation.

The foregoing policy will be summarized in the proxy statement for each meeting of stockholders (annual or special) at which directors are to be elected.

#### **14. Director Orientation and Continuing Education**

All new directors must participate in a comprehensive orientation designed by the Corporate Governance & Nominating Committee to acquaint them with BMC's strategy, long-range plans, financial statements, significant accounting policies, products and operations, corporate governance guidelines, policies and code of ethics. The orientation program will introduce new directors to BMC's senior management and its independent auditors.

From time to time, the Board devotes extended time, particularly during the Board's annual multi-day meeting, to pursue a deeper understanding of particular industry, governance or managerial trends and other important topics raised by the Board's Committees. BMC's Board is also committed to continuing director education and periodically allocates Board meeting time to receive information and updates on corporate governance issues, director best practices and legal and regulatory changes. As part of the annual review process, the Corporate Governance & Nominating Committee may suggest director education and training for the full Board, committees and/or individual directors.

### **Compensation and Evaluation**

#### **15. Board Evaluation, Compensation and Stock Ownership**

The Board conducts an annual evaluation of itself, its committees and each independent director to determine whether they are functioning effectively. The Corporate Governance & Nominating Committee surveys and receives comments from each director and reports annually to the Board with an assessment of the Board's and each committee's performance. Where useful, the Board and its committees may solicit input from outside advisors as part of its annual evaluation. The Corporate Governance & Nominating Committee assists the Chairman or the Lead Director, as applicable, in reviewing each individual director's performance annually. This review assesses the independence, conformance with the Board Membership Criteria listed above, attendance, and overall contribution. In the latter regard, this review also encompasses the director's duties discussed above. Upon completion of the review, the Chairman or the Lead Director, as applicable, discusses the details of each director's review with him or her and reports to the full Board as necessary so that the full Board may consider the performance evaluation in determining whether to re-nominate such director for an additional term.

Under the oversight of the Corporate Governance & Nominating Committee, the full Board periodically reviews the form and amount of director compensation. No BMC employee serving on the Board will receive additional compensation for his or her service as a director. The Board believes that compensation for non-employee directors should be competitive and should fairly compensate directors for the time and skills devoted to serving BMC but should not be so great as to compromise independence. A portion of director compensation should be in BMC stock, stock equivalents or options to purchase BMC stock to align director interests with those of other BMC stockholders. Each non-employee director shall own 7,500 shares of BMC common stock. Directors serving on the Board as of April 27, 2009 shall have until April 27, 2014 to acquire the 7,500 shares, and directors who join the Board after April 27, 2009 shall have until the fifth anniversary of the date they join the Board to acquire the 7,500 shares.

#### **16. CEO and Executive Management Evaluation and Compensation**

Under the oversight of the Compensation Committee, the independent directors of the Board annually review the performance of the CEO and participate with the CEO in the evaluation of senior management. These evaluations are based on performance against previously established performance criteria (including both long-term and short-term

goals). The results of the CEO's review and evaluation are promptly communicated to the CEO by the Chairman or the Lead Director, as applicable, in conjunction with one of the committee chairs.

The Compensation Committee makes recommendations to the full Board on compensation of the CEO and senior management.

#### 17. **Succession Planning**

The Board, with the assistance of its Compensation Committee, identifies and periodically updates the qualities and characteristics necessary for an effective CEO and other members of the senior executive team. With these principles in mind, the Compensation Committee periodically monitors and reviews the development and progression of potential internal candidates against these standards. The Board recognizes that advance planning for contingencies such as the departure, death, or disability of the CEO or other top executives is also critical so that, in the event of an untimely vacancy, BMC has in place an emergency succession plan to facilitate the transition to both interim and longer-term leadership. In addition, the CEO and senior management of BMC periodically review with the full Board high potential employees and personnel development and succession plans for such individuals.