AI Terms of Use

These AI Terms of Use (the "**AI Attachment**") apply to Customer's use of Products or Subscription Services (together, "**BMC Offerings**") purchased by Customer under the Order or Agreement that refers to this AI Attachment. All capitalized terms used herein and not defined have the meaning given in the applicable Order or Agreement.

Introduction. Some BMC Offerings include or may include in the future artificial intelligence and machine learning functionality ("**AI Offerings**"), as described in the AI Offering's Documentation or User Guide. AI Offerings use models to generate predictions, recommendations and other content from data patterns, and may also set goals and autonomously plan and execute such goals.

Input and Output; Ownership and Confidentiality. As between Customer and BMC and to the extent permitted by applicable law, the party that owns the inputted data (referred to as "**Input**") that generates an AI Offering's output ("**Output**") also owns that Output. If an Input is a party's Confidential Information, the corresponding Output is also considered Confidential Information. For Subscription Services, if an Input is Customer Content, the corresponding Output is also considered Customer Content. Notwithstanding the foregoing, Customer's ownership of Output is subject to BMC's and/or its licensor's ownership rights in (a) the BMC Offerings, (b) the data used to train the AI Offerings, and (c) all software, programming, documentation, templates, questionnaires, methodologies, models, charts, reports, ideas, features, content, functions, graphics and any other items provided as part of the AI Offerings (together, the "**Pre-Existing Materials**"). Customer does not have, and BMC does not grant to Customer, any ownership right in the BMC Offerings or the Pre-Existing Materials, including to the extent they are incorporated into any Input or Output. BMC grants Customer the right to use, and Customer may only use, Pre-Existing Materials in Output to the same extent that Customer is permitted to use the BMC Offerings. Customer acknowledges and agrees that (i) Output may not be eligible for intellectual property protection; (ii) similar or identical Output may be generated by AI Offerings in response to similar requests from different customers, and (iii) the same or similar Input may generate different Output.

Acceptable Use. Customer acknowledges that AI Offerings are emerging technologies and that all AI tools may produce incorrect, biased, unfair, or inaccurate Output relative to certain data, queries, or contexts. Customer is solely responsible for (a) its Input, including providing Input that does not violate the rights of any third party, (b) deciding whether to rely on Output, regardless of any recommendations provided therein, (c) any evaluation of Output (including through activities such as human review, human oversight and correction, code scanning, or security scanning, as appropriate) before using or relying on Output for any purpose, (d) ensuring that its use of Outputs avoids engaging in any activities that are unlawful, unethical or otherwise harmful (including any applicable responsibility to avoid improper discrimination) and (e) ensuring that its use of Outputs complies with all applicable laws, regulations, and standards. If a BMC Offering provides Customer the ability to connect such BMC Offering to a Customer-provided large language model ("**LLM**"), including via Customer-provided keys to such LLM, then as between BMC and Customer, Customer is solely responsible for its use of such LLM in connection with the BMC Offering.

Infringement Indemnity. Provided Customer complies with this AI Attachment, BMC's intellectual property infringement indemnification obligations set forth in the Agreement will apply to the AI Offerings. In no event will such indemnification obligations apply to any Output or any Input not owned by BMC.

AI Models. BMC does not commit to the use of specific AI models in an AI Offering, even if Customer may be able to choose between different AI models when using the AI Offering. BMC reserves the right to add, remove or exchange AI models at any time, in its sole discretion.

Updates to Terms. BMC may update this AI Attachment in connection with the evolving landscape of AI technology by publishing the updated AI Attachment on the BMC Agreements website located at https://www.bmc.com/legal/agreements.html. Customer may subscribe to receive automated notification of any updates via the link below (or other link provided by BMC). The updated AI Attachment will apply to AI Offerings effective one month after BMC's publication, to the extent permitted under applicable law. If Customer continues using the AI Offerings after the effective date of the update, Customer will be bound by such updated AI Attachment thereafter. If a change significantly diminishes Customer's rights or significantly increases Customer's obligations under this AI Attachment, but is not required by applicable law, Customer may terminate its subscription to the impacted AI Offering by providing written notice of termination to BMC within one month of BMC's publication of the update.

Additional EU AI Terms. If and to the extent the EU Artificial Intelligence Act (Regulation (EU) 2024/1684) applies to the Order, the parties further agree to comply with the additional EU AI terms as follows:

EU Artificial Intelligence Act Compliance. In accordance with Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (the "**EU AI Act**"), the parties acknowledge and agree that BMC acts as the "provider" of the AI Offerings, and Customer acts as the "deployer" of those AI Offerings.

The AI Offerings are supplied solely for the Customer's internal business purposes, (unless expressly agreed otherwise in writing), in accordance with its applicable Documentation or User Guide and expressly exclude any use that (i) is prohibited under Article 5 of the EU AI Act, or (ii) falls within Section 21 (High-Risk Activities) of the Agreement (the "**Intended Purpose**").

BMC represents that, as of the Effective Date of the applicable Order or Agreement, the AI Offerings, when used for their Intended Purpose, do not, nor are intended to, qualify as high-risk AI systems under the EU AI Act. Customer will not use the AI Offerings outside of their Intended Purpose nor will it modify or integrate the AI Offerings in a manner that would or could cause them to be classified as high-risk AI systems.

BMC will comply with its obligations under the EU AI Act applicable to a provider of non-high-risk AI system, including by maintaining technical documentation and records proportionate to the nature, scale and complexity of the AI Offerings. Upon reasonable written request, and subject to its obligations of confidentiality under the Agreement, BMC will provide such additional information or assistance as is reasonably necessary for Customer to meet its obligations under the EU AI Act. Customer is solely responsible for performing any deployer obligations, risk assessments, or post-market monitoring required under the EU AI Act.

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