Data Processing Addendum to Snap Schedule 365 Subscription Agreement

This Data Processing Addendum ("DPA") addresses the processing, security, and data protection of Customer Personal Data in connection with the Snap Schedule 365 software-as-a-service and its technical support ("Services"). It forms part of the Snap Schedule 365 Subscription Agreement and other written or electronic agreements ("Contract") between you, or, if you designate an entity in connection with a Snap Schedule 365 subscription purchase or renewal (Subscription), the entity you designated ("you" or "your") and Business Management Systems, Inc. ("BMS", "we", "us", or "our"). By accepting this DPA, either by clicking a box indicating your acceptance or incorporating the DPA by reference into the Contract, you agree to the terms of this DPA.

The terms in this DPA shall be effective, and replace any previously applicable terms relating to their subject matter, from the effective date.

1 Definitions

For the purposes of this DPA, the following definitions shall apply:

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity.

"Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Customer Data" is defined as all data, in any form, format or media (including paper, electronic and other records), submitted, stored, sent or received via the Services by you which BMS has access to, obtains, uses, maintains or otherwise handles in connection with the performance of the Services, including partial copies thereof.

"Customer Personal Data" means any Customer Data that is Personal Data.

"Controller" means the natural or legal person, public authority, agency or any other body which alone or jointly with others, determine the purposes and means of the processing of the Personal Data, or as otherwise specified in applicable Privacy/Data Protection Laws. In the context of this DPA, you are the Controller.

"Data Subject" means the identified or identifiable person to whom Customer Personal Data relates.

"EU Personal Data" means Personal Data the sharing of which pursuant to this DPA is regulated by the Directive, the General Data Protection Regulation and Local Data Protection Laws.

"GDPR" means the General Data Protection Regulation (Regulation (EU) 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).

"Personal Data" means any information that identifies, or can be used to identify an individual that is stored, processed, or transmitted in connection with, or as a result of, providing the Services or as otherwise meeting the definition of "personal data" as defined in Article 4 of the GDPR or specified in applicable Privacy/Data Protection Laws.

"Personal Data Breach" means any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Personal Data.

 "Privacy/Data Protection Laws" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement.

"Process" means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

"Processor" means a natural or legal person, public authority or other body which processes Personal Data on behalf of the Controller, or as otherwise specified in applicable Privacy/Data Protection Laws. In the context of this DPA, BMS is the Processor.

 "Subprocessors" means third parties authorized under this DPA to have access to and process Customer Personal Data in order to provide parts of the Services and related technical support.

"Supervisory Authority" means an independent public authority which is established by a European Union member state pursuant to Article 51 of the General Data Protection Regulation.

Terms used but not defined in this DPA (e.g., "processing", "data subject") shall have the same meaning as in Article 4 of the GDPR.

2   Data Processing

2.1   Roles and Scope
a.   This DPA applies to the security and processing of Customer Personal Data, within the scope of the GDPR or Privacy/Data Protection Laws, by the Processor on behalf of the Controller.
b.   For purposes of this DPA, you agree that you are the Controller of the Customer Personal Data and BMS is the Processor of such data. In the case where you act as a Processor of Customer Personal Data on behalf of a third party, BMS shall be deemed to be a Subprocessor. These Terms do not apply where BMS is a Controller of Personal Data.

2.2 Controller Responsibilities

a. You agree that (i) you shall comply with your obligations as a Controller under GDPR or Privacy/Data Protection Laws in respect of your processing of Customer Personal Data and any processing instructions you issue to BMS and (ii) you have provided notice and obtained (or shall obtain) all consents and rights necessary for BMS to process Personal Data and provide the Services pursuant to the Agreement and this DPA.

b. As the Controller, you agree to implement appropriate technical and organizational measures for ensuring that, by default, only Personal Data which are necessary for each specific purpose of the Processing are processed. That obligation applies to the amount of Personal Data collected, the extent of their Processing, the period of their storage and their accessibility.

c. You agree to provide to BMS and also promptly update, when necessary, the information indicated below:
   - identity and contact information of your Data Protection Officer, if applicable;
   - identity and contact information of your EU representative, if applicable;

b. Unless otherwise directed by written instructions from you, the subject matter, nature and purpose of the Processing, and the types of Personal Data and categories of Data Subjects are as defined in Schedule 1.

2.3 Processor Responsibilities

BMS agrees to:

a. Process Customer Personal Data only for the purposes described in this DPA and only in accordance with your documented instructions to provide the Services, and not use such Customer Personal Data for any other reason except as necessary to provide the Services.

b. Take reasonable steps to ensure that any employee, agent, consultant, or contractor of any Subprocessor who may have access to the Customer Personal Data is subject to formal confidentiality undertakings or professional or statutory obligations of confidentiality;

c. Implement and maintain appropriate technical and organizational security measures to ensure a level of security appropriate to the risk, of varying likelihood and severity, to the rights and freedoms of natural persons, including, as appropriate, the measures required pursuant to Article 32 of the GDPR ;

d. Assist you in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR, relating to security of Processing, Personal Data Breaches and data protection impact assessments;

e. Make available to you all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to audits conducted by you or another auditor on your behalf. You are responsible for all costs and fees related to such audits, including all reasonable costs and fees for any and all time BMS expends for any such audit, in addition to the rates for services performed by BMS .

2.4 Subprocessors

a. You consent and authorize BMS to continue to use the Subprocessors already engaged by BMS as of the date of this DPA. Those Subprocessors are listed in Schedule 2 of this DPA.

b. BMS agree to respect the conditions referred to in paragraphs 2 and 4 of Article 28 of the GDPR for engaging another Processor, namely that BMS may not engage another Subprocessor to process Customer Personal Data without your prior authorization. BMS agrees to send via e-mails prior written notice of its intent to appoint any new Subprocessor with full details of the Processing to be undertaken by the Subprocessor. If within 10 days of receipt of each such notice, you do not explicitly notify BMS in writing of any objections (on reasonable grounds) to the proposed appointment, it shall be deemed that you have consented to the proposed appointment. If you object to the use of a Subprocessor, BMS shall have the right, at its discretion, to cure the objection through one of the following options: (i) BMS will cease to use the Subprocessor with regard to Personal Data, (ii) BMS will take the corrective steps requested by you in your objection and proceed to use the Subprocessor to process Personal Data; or (iii) BMS may cease to provide or you may agree not to use (temporarily or permanently) the Services that would involve use of the Subprocessor to process Personal Data.

c. Before a Subprocessor can processes Customer Personal Data, BMS will carry out adequate due diligence to ensure that the Subprocessor is capable of providing the level of protection for Customer Personal Data required by this DPA and applicable Data Protection Laws; and ensure that the arrangement is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in this DPA, and that such terms meet the requirements of Article 28(3) of the GDPR.

2.5 Third Party Access Requests

a. BMS agrees to provide appropriate technical and organizational measures, insofar as this is reasonably possible, to assist you in fulfilling your obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR;

b. BMS will inform you if BMS becomes aware of:

- Any legally binding request for disclosure of Customer Personal Data by a law enforcement authority, unless BMS is otherwise forbidden by law to inform you;
- Any notice, inquiry or investigation by a Supervisory Authority with respect to Customer Personal Data; or
- Any complaint or request received directly from Data Subjects of Customer Personal Data. BMS will not respond to any such request until it has consulted with you and the parties have agreed upon an appropriate response.

2.6 Data Return and Deletion

a. Upon termination or expiration of the Services or at your request, BMS shall, to the extent allowed by applicable law, delete any or all Customer Data in BMS' possession, power or control. BMS will comply with this instruction as soon as reasonably practicable and within a maximum period of 180 days.

b. If BMS disposes of any paper or electronic record containing Customer Personal Data, BMS shall do so by taking all reasonable steps to destroy the information by: (i) shredding; (ii) permanently erasing and deleting; or (iii) otherwise modifying the Customer Personal Data in such records to pseudonymize a data set or mask the information to make the information difficult to reconstruct or decipher.

2.7 Personal Data Breach

a. BMS shall notify you without undue delay after becoming aware of a Personal Data Breach. Such notification will include the information a Processor must provide to a Controller under GDPR Article 33(3) to the extent such information is reasonably available to BMS. Notification of or response to a Personal Data Breach will not be construed as an acknowledgement by BMS of any fault or liability with respect to the Personal Data Breach.

b. BMS shall co-operate and take all reasonable commercial steps to assist you in the investigation, mitigation, and remediation of each such Personal Data Breach.

2.8 International Data Transfers

a. You instruct and authorize BMS to instruct each Subprocessor to process Customer Personal Data, and to transfer Customer Personal Data to those countries or territories where those Subprocessors identified in Schedule 2 are located.

b. BMS shall ensure that EU Personal Data will be stored and processed exclusively within the territory of a member state of the European Union and any transfer of EU Personal Data to a non-EU approved country requires your prior written consent.

3 Liability

Each party's and all of its Affiliates' liability, taken together in the aggregate, arising out of or related to this DPA, and all DPAs, whether in contract, tort or under any other theory of liability, is subject to the 'Limitation of Liability' section of the Snap Schedule 365 Subscription Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its Affiliates.

4 General

a. Should any provision of this DPA be found invalid or unenforceable pursuant to any applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the DPA will continue in effect.

b. Except as specifically amended in this DPA, the Snap Schedule 365 Subscription Agreement and applicable ordering document remain unchanged and in full force and effect.

c. If BMS determine that it can no longer meet its obligations in accordance with this DPA, it shall promptly notify you of that determination, and cease the Processing or take other reasonable and appropriate steps to remedy.

Schedule 1: Subject Matter and Details of the Data Processing

- Subject matter: The subject matter of the data processing under this DPA is the Customer Data.

- Duration: The duration of the data processing under this DPA is until the termination of the Agreement in accordance with its terms.

- Purpose: The purpose of the data processing under this DPA is the provision of the Services to you and the performance of BMS' obligations under the Snap Schedule 365 Subscription Agreement (including this DPA) or as otherwise agreed by the parties.

- Categories of Data Subjects: Any individual in your organization accessing and/or using the Services through your Snap Schedule 365 account to schedule your employees ("Users", "Schedulers"); and any employee: (i) whose information is stored on or submitted via the Services, or (ii) to whom schedulers schedule, engage, or communicate with via the Services (collectively, "Employees").

- Types of Personal Data: You determine, at your sole discretion, the type of Personal Data to which you want to store and process in the Services. Accordingly, the collection, processing and/or use of Personal Data may relate to identification and contact data of your employees, when and where they are scheduled to work and their IT information including location data.

- Nature of the processing: BMS provides a scheduling application for you to schedule and manage your employees as described in the Snap Schedule 365 Subscription Agreement.

Schedule 2: List of Subprocessors

Below is a list of BMS' current Subprocessors as of the Effective date:

Entity Name	Location	Description of Processing
Microsoft Corporation	Microsoft Azure EU data centers for EEA customers Microsoft Azure USA data centers or a data center requested by customers	Azure cloud computing platform, hosting, and storage services
The Rocket Science Group LLC d/b/a MailChimp	USA	Transactional emailing services for communication between your schedulers/users and your employees
Twilio, Inc.	USA	Provision for voice and short text service communication between your schedulers/users and your employees when you have enabled the call or SMS text features
Snap Engage	USA	Live chat software for use by BMS sales and support teams
Google LLC	USA	Google Analytics for improving user's experience

Effective Date: 05/25/2018