

Snap Schedule 365 Subscription Agreement

This Subscription Agreement (“Agreement”) is between you, or, if you designate an entity in connection with a Subscription purchase or renewal, the entity you designated (“you” or “your”) and Business Management Systems, Inc. (“BMS”, “we”, “us”, or “our”). By accepting this Agreement, either by clicking a box indicating your acceptance or by executing an order form for the Subscription, you agree to the terms of this Agreement. You represent that if you are entering into this Agreement on behalf of an entity, you have the authority to bind such entity to these terms and conditions, in which case the terms “you” or “your” shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Services.

You may not access the Snap Schedule 365 Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed as applicable.

1. Definitions

“Customer Data” is defined as all data, including text, sound, video, or image files that are entered or collected and processed by you, or on your behalf, for the use of the Services, including any Personal Data (as defined in the UK Data Protection Act 1998).

“Documentation” means our online user guides, documentation, and help and training materials, as updated from time to time, accessible via our Portal or login to the applicable Services.

“Intellectual Property” means any patents and applications therefore, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property rights.

“Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

“Offer Details” means the pricing and related terms applicable to a Subscription offer, as published in the Portal.

“Order Form” means an ordering document entered into between you and us. It includes documents for specifying the items, quantities and Services to be purchased, including purchase orders, order notifications and order confirmation documents and addenda thereto, that are agreed to by us. Order Forms are deemed incorporated herein by reference.

“Portal” means the Services’ respective web site that can be found at <http://www.snapschedule365.com> or at an alternate website we identify.

"Purchased Services" means Services that you purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

“Services” means the products and services that are provided under a free trial or ordered by you under an Order Form and made available online by us, including associated offline components and Software, as described in the Documentation.

“Software” means the apps and/or software we provide for installation on your device as part of your Subscription or to use with the Services to enable certain functionality.

“Subscription” means enrollment for the Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately.

“Subscription User” means an individual who is authorized by you to use the Services, for whom you have ordered the Services, and to whom you (or we at your request) have supplied a user identification and password. Users may include, for example, your employees, your managers, consultants, contractors and agents.

"Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including VAT (subject to reverse charge), GST (subject to reverse charge), excise, sales, use or withholding taxes.

“Term” means the duration of a Subscription specified in the Offer Details (one month for month-to-month or one year for annual subscription).

“Terms of Use” means the rules that you must agree to abide by in order to use our Portal. These rules can be found on our Portal under Terms of Use.

"Third-Party Software" means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Services, and are identified as third-party software.

2. Use of Services

- a. **Right to use.** We grant you the right to access and use the Snap Schedule 365 Services and to install and use the apps included with your Subscription, as further described in this Agreement. We reserve all other rights.
- b. **Acceptable use.** You may use the Services only in accordance with this Agreement, the Documentation, and applicable laws and government regulations. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Services, except to the extent applicable law permits it. You may not copy a Service or any part, feature, function or user interface thereof. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Services. You may not rent,

lease, lend, resell, transfer, or host the Services, or any portion thereof, to or for third parties except as expressly permitted in this Agreement. You may not install or add Malicious Code to the Software.

- c. **Usage Limits.** The Services are subject to usage limits, including, for example, the quantities of Subscription Users specified in Order Forms. If you exceed a contractual usage limit, we will work with you to seek to reduce your usage so that it conforms to that limit. If, notwithstanding our efforts, you are unable or unwilling to abide by a contractual usage limit, you will execute an Order Form for additional quantities of the Services promptly upon our request, and/or pay any invoice for excess usage. If you fail to execute an Order Form for additional quantities of the Services promptly upon our request, or fail to pay any invoice for excess usage, then we may terminate your Subscription.
- d. **Subscription Users.** You control access by Subscription Users and you are responsible for their use of the Services in accordance with this Agreement. You will use reasonable efforts to prevent unauthorized access to or use of the Services and notify us promptly of any such unauthorized access or use.
- e. **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Services to you without violating the rights of any third party or otherwise obligating us to you or to any third party. We do not and will not assume any obligations with respect to Customer Data or to your use of the Services other than as expressly set forth in this Agreement or as required by applicable law.
- f. **Free Trial.** If you register on our website for a free trial, we will make the Services available to you on a trial basis free of charge until the earlier of (a) the end of the free trial period or (b) the start date of any Purchased Service subscriptions you ordered. Any Customer Data you enter into the Services, and any settings made to the Services by or for you during your free trial will be permanently lost unless you purchase a subscription to the same services as those covered by the trial within 30 days from the trial expiration date. Notwithstanding Section 5 (representations, warranties, exclusive remedies and disclaimers), during the free trial, the services are provided “as-is” without any warranty.

3. Purchasing Services

- a. **Month-to-month.** With a month-to-month subscription, you will be charged the monthly price stated in the Order Form plus applicable Taxes, every month, until you cancel. The Services begin as soon as your initial payment is processed. Because there is no annual contract, your price is subject to change, but we’ll always notify you beforehand. You can cancel the Subscription at any time. However, your payment is non-refundable and your service will continue until the end of that month’s billing period. You may increase the quantity of the Services ordered during the Term of a Subscription. Additional quantities of Services added to a Subscription are priced at the rates available at the time of purchase and prorated based on the days remaining in the month’s billing period. We encourage you not to decrease the

quantity of Services until your subscription renewal date, as we will be unable to credit you for any quantity of Services you remove mid-cycle.

- b. **Annual subscription.** With an annual subscription, you will be charged the annual price stated in the Order Form as one lump sum, plus applicable Taxes. Your Subscription will renew automatically, on your annual renewal date, unless you notify us in writing at least 30 days before the annual renewal date that you wish to cancel the Subscription.. Thereafter, you can cancel the Subscription at any time. However, any prepaid payment is non-refundable and your service will continue until the end of your annual subscription. You may increase the quantity of the Services ordered during the Term of a Subscription. Additional quantities of Services added to a Subscription are priced at the rates available at the time of purchase and prorated based on the days remaining in your annual subscription. We encourage you not to decrease the quantity of Services until your subscription renewal date, as we will be unable to credit you for any quantity of Services you remove mid-cycle.
- c. **Pricing.** Except otherwise provided in the Agreement or the Order Forms : (a) during the Term of your Subscription, prices will not be increased from those set forth in each Order Form; (b) prices are based upon the Services and Subscription Users purchased and not actual usage; and (c) payment obligations are non-cancelable and prices paid are non-refundable. All prices are subject to change at the beginning of any Subscription renewal and we agree to confirm to you in writing the price for any renewal Subscription at least 60 days before expiry of the then current Term.
- d. **Payment.** You agree to pay all prices specified in Order Forms. Payments are due and must be made according to the Offer Details for your Subscription.
- e. **Taxes.** Our prices do not include Taxes. You are responsible for paying all Taxes associated with any order you placed under this Agreement. If we have the legal obligation to pay or collect Taxes for which you are responsible, we will invoice you and you will pay that amount unless you provide a valid tax exemption certificate authorized by the appropriate taxing authority.

4. Subscription Term, Termination, and Suspension

- a. **Agreement term and termination.** This Agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.
- b. **Subscription termination.** You may terminate a Subscription at any time during its Term; however, you must pay all amounts due and owing for the Term before the termination is effective.
- c. **Suspension.** We may suspend your use of the Services or terminate your Subscription if: (a) it is reasonably needed to prevent unauthorized access; (b) you fail to respond to a claim of alleged infringement within a reasonable time; (c) you do not pay amounts due under this agreement; or (d) you do not abide by the terms of this Agreement. We will give at least 10 days prior notice before we suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within 15 days after we

suspend, we may terminate your Subscription and delete your Customer Data without any retention period.

5. Representations, Warranties, Exclusive Remedies and Disclaimers

- a. **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- b. **Our warranties.** We warrant that (a) the Services will perform materially in accordance with the applicable Documentation, and (b) we will not materially decrease the overall security and features of the Services during a subscription term. Our warranty does not cover problems caused by accident, abuse or use of the Services in a manner inconsistent with this Agreement or our published Documentation or guidance, or resulting from events beyond our reasonable control. If the Services do not conform to the warranty specified above, you must notify us within thirty (30) days of the breach of warranty, and we agree to use commercially reasonable efforts to cure the non-conforming portions of the Services. Your sole and exclusive remedy for a breach of any of the above warranties shall be to terminate the Agreement and have us refund to you the pro rata unused portion of any pre-paid Subscription fees.
- c. **Disclaimer.** Except as expressly stated and as permitted by applicable law, the Services are provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law. The services may be subject to limitations or issues inherent in the use of the internet and we are not responsible for any problems or other damage resulting from such limitations or issues.

6. Defense of Third Party Claims

- a. **Mutual Defense.** We will defend you against any claims made by an unaffiliated third party alleging that the use of the Services infringes a third party's patent, copyright or trademark or makes unlawful use of its trade secret. You will defend us against any claims made by an unaffiliated third party alleging that any Customer Data or services you provide, directly or indirectly, in using our Services infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret.
- b. **Limitations.** Our defense obligations won't apply to a claim or award based on (a) any modifications you make to the Services or Customer Data you provide or make available as part of using the Services; (b) your combination of the Services with, or damages based upon the value of, Customer Data, or a Non-BMS data or business process; (c) your use of a BMS trademark without our express written consent, or your use of the Services after we notify you to stop due to a third-party claim; or (d) the Services provided free of charge.
- c. **Remedies.** If we reasonably believe that a claim under this Section may bar your use of the Services, we will seek to: (a) obtain the right for you to keep using it; or (b) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Services. If

these options are not commercially reasonable, we may terminate your rights to use the Services and then refund any advance payments for unused Subscription rights.

- d. **Obligations.** Each party must notify the other promptly of a claim under this Section. The party seeking protection must (a) give the other sole control over the defense and settlement of the claim; and (b) give reasonable help in defending the claim. The party providing the protection will (a) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help, and (b) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

7. Limitation of liability

- a. **Limitation of all damages.** The aggregate liability arising out of or related to this Agreement whether in contract, tort or under any other theory of liability of each party for all claims under this Agreement is limited to direct damages up to the amount paid under this Agreement for the Service during the 12 months preceding the cause of action arose; provided, that in no event will a party's aggregate liability exceed the amount paid for the Services during the Subscription. For Services provided free of charge, our liability is limited to direct damages up to \$1,000.00 USD.
- b. **Disclaimer of consequential damages.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues or business interruption, or loss of business information, even if the party has been advised of the possibility of such damages.
- c. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (a) the parties' obligations under Section 6; or (b) violation of the other's intellectual property rights.

8. Additional Software for use with the Services

- a. **Licensing.** To enable optimal access and use of the Services, you may install and use certain Software in connection with your use of the Services. We license Software to you, we do not sell it. Proof of your Software license includes this Agreement, any order confirmation, and proof of payment. You must uninstall the Software when your right to use it ends. We may also disable it at that time. We may check the version of the Software you are using and recommend or download updates, with or without notice, to your devices. Failure to install updates may affect your ability to use certain functions of the Services.
- b. **Transferring and assigning Software licenses.** License transfers are not permitted.

9. Miscellaneous

- a. **Publicity.** We may include you or your company name on a customer list unless you notify us in writing upon purchase of the Services that you would like you or your company name withheld from the customer list.
- b. **Commercial Computer Software.** The Services and related modifications were fully developed at private expense and are commercial computer software as defined in the United States Federal Acquisition Regulation (FAR) Section 2.101. Any related documentation, technical data, or services are also commercial. In accordance with FAR 12.212 and Defense Federal Acquisition Regulation Supplement (DFARS) Section 227.7202, all rights conferred in the Services, related documentation, technical data, services, or any deliverable to the United States Government are specified in this Agreement. All other uses are prohibited and no ownership rights are conferred.
- c. **Assignment.** You may not assign this Agreement either in whole or in part.
- d. **Severability.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.
- e. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- f. **No agency.** This Agreement does not create an agency, partnership, or joint venture.
- g. **No third-party beneficiaries.** There are no third-party beneficiaries to this Agreement.
- h. **Choice of Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its conflicts of law provisions. Any action to enforce this agreement must be brought in the State of California. The parties also agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- i. **Entire agreement.** The Agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. This Agreement may be modified only by a written addendum agreed to by both parties or by us accepting the terms listed by you in the Order Forms. In the case of a conflict between any documents in the Agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (a) written addendums agreed to by both parties (b) Order Forms (c) this Agreement, (d) the Documentation, (e) the Terms of Use.
- j. **U.S. export jurisdiction.** The Services are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments.
- k. **Force majeure.** Neither party shall be liable to the other for any delay or failure in performance (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, acts of civil or military authority, war, terrorism (including cyber terrorism), flood, fire, earthquakes, civil unrest, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, acts or omissions of Internet traffic carriers, and denial of service attacks.
- l. **Notices.** You may send notices by either mail, return receipt requested, or by fax, as set out below:

Business Management Systems, Inc.
PO Box 17188
Anaheim, CA 92807, USA

Via Facsimile: (714) 661-5954

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

10. Data Protection for Customers in European Economic Area

10.1 Where we process, or anyone on our behalf processes, any Customer Data including Personal Data (as defined in the UK Data Protection Act 1998 (“DPA”)), we shall use commercially reasonable endeavors to ensure that:

- 10.1.1 such Customer Data is processed solely in accordance with your instructions from time to time and as required in order to comply with our obligations under this Agreement;
- 10.1.2 appropriate technical, organizational and contractual measures are in place to ensure the security of your Customer Data and guard against unauthorized or unlawful processing of, and accidental loss or destruction of, or damage to, your Customer Data;
- 10.1.3 your Customer Data (including but not limited to the database and its backups) is not transferred outside the European Economic Area;
- 10.1.4 we provide you with such information as you may reasonably require to satisfy you that we are complying with this Section 10;
- 10.1.5 we promptly notify you of any breach of the security measures required to be put in place pursuant to Section 10; and
- 10.1.6 we do not knowingly or negligently do or omit to do anything which places you in breach of your obligations under the DPA.

10.2 We shall use commercially reasonable endeavors to ensure that all Customer Data will be handled by us (and anyone processing this data on our behalf) in accordance with this Section 10.

Last updated 09/29/2016