



# BOSSDesk SOFTWARE SUBSCRIPTION SERVICE AGREEMENT

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This Software Subscription Service (SaaS) Agreement (the “Agreement”) sets forth the obligations and conditions between you (“Client”) and Business Oriented Software Solutions, Inc (BOSS), a Georgia Corporation (“Provider”), relating to your use of the Services defined herein. Please read this Agreement carefully. Your use of the Services is expressly conditioned on your acceptance of this Agreement.

Recitals A. Provider is the owner of certain proprietary computer software known as BOSSDesk that is used to handle asset management and incident management (the “Software”).

B. Provider provides and sells subscriptions for subscribers to access and use the Software via bossdesk.io or any website notified to the subscribers from time to time (the “Services”).

C. Provider is willing to provide access to the Services for Client’s internal business use pursuant to the terms and conditions set forth herein.

D. Provider and Client acknowledge and agree that this Agreement shall be effective and in force immediately upon the date that Client clicks the “I Agree” icon below (the “Effective Date”) NOW THEREFORE, in consideration for the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

## 1. Software Subscription.

a. Provider grants to Client and Client accepts from Provider, a limited, nonexclusive, nontransferable right to access and use and permit Authorized Users to access and use the Services solely for Client’s internal business use. The Services shall not be used by Client or by Authorized Users for, or on behalf of, third parties that are not authorized under this Agreement. Client shall use its best efforts to ensure that the Authorized Users use the Services in accordance with the terms and conditions of this Agreement. Client acknowledges that its right to use the Services will be web based only pursuant to the terms of this Agreement and the Software will not be installed on any servers or other computer equipment owned or controlled by Client or otherwise provided to Client.

## 2. Intellectual Property Rights.

a. Client acknowledges that all right, title, and interest in and to the Services and the Software, together with its codes, sequences, derivative works, organization, structure, interfaces, any documentation, data, trade names, trademarks, or other related materials (collectively, the “Provider IP”), is, and at all times shall remain, the sole and exclusive property of Provider. The Provider IP contains trade secrets and proprietary information owned by Provider and is protected by United States copyright laws (and other laws relating to intellectual property). Except the right to use the Services, as expressly provided herein, this Agreement does not grant to Client any rights to, or



in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Services or the Software.

b. Client shall not attempt, or directly or indirectly allow any Authorized User or other third party to attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Services and/or Software in any form or media or by any means.

c. The provisions of this paragraph 2 shall survive termination of this Agreement.

### 3. Subscription Fee.

a. Client shall pay to Provider the subscription fee (the "Subscription Fee") in the amount and for the duration that Client has entered and agreed to pursuant to the sign up page for this Agreement.

b. The Subscription Fee for the first Subscription Period (either month or year, as applicable) of the term of this Agreement shall be paid on the Effective Date. The Subscription Fee for all subsequent Subscription Periods of the term of this Agreement shall be paid to Provider on the first day of each subsequent Subscription Period, pursuant to subsection d, below.

c. The amount of the Subscription Fee does not include any applicable taxes. Client is responsible for any and all applicable taxes.

d. Client shall provide a valid credit card, ACH payment system information, bank account information authorized for automatic bill paying, or other acceptable method of payment to Provider and shall take all necessary steps to authorize automatic payment of the Subscription Fee. By agreeing to this Agreement, Client hereby authorizes Provider to automatically charge said method of payment for all Subscription Periods during the term of this Agreement. If, for any reason, automatic payment shall be denied, then Client shall pay the applicable Subscription Fee, to the Provider within five (5) days. If the payment is delayed beyond that there will be a late fee of \$50 that will be added to the subscription fee.

e. Any additional payment terms between Provider and Client shall be agreed to in writing and set forth in an invoice, billing agreement, or other written document.

F Late Payments/Non-payment of Subscription Charges: We will notify You if We do not receive payment towards the Subscription Charges within the due date for Your Account. For payments made through credit cards, We must receive payments due within a maximum of five (5) days from the date of Our notice and for payments through other accepted methods, We must receive payments within a maximum of fifteen (15) days from the date of Our notice. If We do not receive payment within the foregoing time period, in addition to Our right to other remedies available under law, We may (i) charge an interest for late payment @ 1.5% per month and/or; (ii) suspend Your access to and use of the Service(s) until We receive Your payment towards the Subscription Charges as specified herein and/or; (iii) terminate Your Account in accordance with Section 7.

### 4. Accessibility/Performance

Provider shall use commercially reasonable efforts to make the Services available on a 24x7 basis (twenty four hours per day, seven days per week) during the Term, except for: (i) scheduled system backup or other ongoing maintenance as required and scheduled in advance by Provider, or (ii) for any unforeseen cause beyond Provider's



reasonable control, including but not limited to internet service provider or communications network failures, denial of service attacks or similar attacks, or any force majeure events set forth in this Agreement. Provider will monitor performance indicators on the systems and network infrastructure (its own and that of third party suppliers) in order to gauge the overall performance of its hosting services, and will take reasonable steps to address systems and network infrastructure as required to maintain satisfactory performance of the Software. Provider further reserves the right to monitor and reasonably restrict Client's ability to use the Services if Client is using excessive computing resources which are impacting the performance of the Services for other subscribers. Provider agrees to notify Client in cases where it restricts such use and use good faith efforts to determine an appropriate alternative or workaround solution.

## 5. Maintenance and Support

Provider shall maintain the Software and/or Services and provide all patches and fixes to the Software and/or Services at no additional cost. Provided, however, said maintenance shall not include any major releases of new versions of the Software, additional functionality, or custom programming, which Provider, at its discretion, may provide at an additional cost as otherwise agreed between the parties.

## 6. Term

The Term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided herein. Client shall elect whether the term will consist of annual or monthly periods (each a "Subscription Period"). The Agreement shall automatically renew for subsequent Subscription Periods unless either party provides written notice of its election not to renew this Agreement at least fifteen (15) days prior to end of the then current Subscription Period or otherwise terminates this Agreement pursuant to the terms of this Agreement. Upon termination of this Agreement for any reason, all rights and subscriptions granted to Client shall immediately terminate, and the Client shall cease using the Services and shall prohibit Authorized Users from using the Services.

## 7. Default

Client shall be in default of this Agreement if Client fails to make any payment when due and fails to cure said default within five (5) days after receipt of written notice thereof from Provider. In addition to the monetary breach described in the previous sentence, either party will be in default of this Agreement if the party is in material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice thereof from the nonbreaching party. If a party is in default, the nonbreaching party may terminate this Agreement or seek any other remedies available at law or in equity, except as otherwise provided in this Agreement. In the event Client breaches or attempts to breach any of the provisions of this Agreement, Provider shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempt to breach, Client hereby acknowledging the inadequacy of any remedy at law.

## 8. Confidentiality

a. In addition to, and in no way limiting the requirements relating to the Provider IP as set forth in Section 2 of this Agreement, Client shall use its reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) to protect all proprietary, confidential, and/or nonpublic information pertaining to or in any way connected to the Software, the Services, the Provider's financial, professional and/or other business affairs, and this Agreement (the "Confidential Information").

b. Client shall not disclose or publicize the Confidential Information without the Provider's prior written consent.



c. Client shall use their reasonable efforts (but in no case less than the efforts used to protect its own proprietary information of a similar nature) not to disclose and not to use the Confidential Information for their own benefit or for the benefit of any other person, third party, firm or corporation in a manner inconsistent with the purpose of this Agreement.

d. The terms of confidentiality and nondisclosure contained herein shall expire five (5) years from the date of the termination of this Agreement.

e. The restrictions on disclosure shall not apply to information which was: (i) generally available to the public at the time of disclosure, or later available to the public other than through fault of the Client; (ii) already known to the Client prior to disclosure pursuant to this Agreement; (iii) obtained at any time lawfully from a third party under circumstances permitting its use or disclosure to others; or (iv) required by law or court order to be disclosed.

#### 9. Limited Warranty

Provider warrants that it has the power and authority to grant the subscription for the Services granted to Client hereunder. EXCEPT FOR THE WARRANTY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND PROVIDER DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### Limitation of Remedy and Liability

Client represents that it accepts sole and complete responsibility for: (a) the selection of the Services to achieve Client's intended results; (b) use of the Services; (c) the results obtained from Services; and (d) the terms of any contracts between Client and Authorized Users. Provider does not warrant that the Client's use of the Services will be uninterrupted or errorfree. Client shall not assert any claims against Provider based upon theories of negligence, gross negligence, strict liability, fraud, or misrepresentation, and Client shall defend Provider from any demand or claim, and indemnify and hold Provider harmless from any and all losses, costs, expenses, or damages, including reasonable attorneys' fees, directly or indirectly resulting from Client's use of the Services, an Authorized User's use of the Services, and/or any agreement between the Client and an Authorized User based on or in any way related to the Services. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In any event, under no circumstances shall Provider be liable for any loss, costs, expenses, or damages to Client in an amount exceeding the Subscription Fee actually paid to Provider by Client for the previous twelve (12) months.

#### 10. Miscellaneous

a. Notice and Demands. Notice, demand, or other communication mandated to be given by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested or delivered personally. Unless Provider is otherwise notified in writing, the Client's address for notice purposes shall be Client's address provided as part of Client's billing information.

b. Governing Law; Forum Selection. This Agreement shall be governed exclusively by the laws of the State of Georgia, without regard to its conflicts of laws principles. The parties irrevocably agree and consent that said forum is convenient and has jurisdiction to hear and decide any such action.



c. Compliance with Laws. Client shall use the Services in accordance with any and all applicable local, state, and federal laws.

d. Headings. The paragraph headings in this Agreement are for convenience only and they form no part of the Agreement and shall not affect the interpretation thereof.

e. Severability. If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions shall remain in full force and effect.

f. No Waiver. The delay or failure of either party to exercise any right under this Agreement or to take action against the other party in the event of any breach of this Agreement shall not constitute a waiver of such right, or any other right, or of such breach, or any future breaches, under this Agreement.

g. Assignment. Client shall not assign or transfer this Agreement.

h. No Partnership or Agency. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either party to act as an agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise bind the other in any way.

i. Force Majeure. Provider will not be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the Provider's reasonable control, including but not limited to fire, flood, storm, act of God, war, malicious damage, failure of a utility service or transport or telecommunications network.

j. Complete Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Services, and supersedes any and all prior or contemporaneous understandings or agreements whether written or oral. No amendment or modification of this Agreement will be binding unless reduced to a writing signed by duly authorized representatives of the parties and such writing makes specific reference to this Agreement and its intention as an amendment hereto.

## **11 DATA PRIVACY AND SECURITY; CONFIDENTIALITY**

11.1. If You choose, or You are provided with, a user identification code, password or any other piece of information as part of Our security procedures, You must treat such information as confidential. You must not disclose it to any third party. We have the right to disable any user identification code or password, whether chosen by You or allocated by Us, at any time, if in Our reasonable opinion, You have failed to comply with any of the provisions of these Terms.

11.2. Confidentiality obligations: Each of us will protect the other's Confidential Information from unauthorized use, access or disclosure in the same manner as each of us protects our own Confidential Information, and in any event, no less than reasonable care. Except as otherwise expressly permitted pursuant to these Terms, each of us may use the other's Confidential Information solely to exercise our respective rights and perform our respective obligations under these Terms and shall disclose such Confidential Information solely to those of our respective employees, representatives and agents who have a need to know such Confidential Information for such purposes and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information. The provisions of this sub-section shall supersede any non-disclosure agreement by and between You and Us entered prior to these Terms that would purport to address the confidentiality of Your Data and such agreement shall have no further force or effect with respect to Your Data.

11.3. Security of Your Data: We will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Data. These safeguards may include



encryption of Your Data in transmission (using SSL or similar technologies) as described further in the Security Policy on Our Websites.

12. SERVICE LEVEL AGREEMENT. This clause is not applicable to customers using BOSSDesk Onprem and applicable only to those customers utilizing the cloud version of BOSSDesk.

When we use the term “Service Level Agreement” or “SLA” anywhere in this agreement, we are referring to the service level agreement set forth in this Section

We will use commercially reasonable efforts to make the Cloud Services available 99.95% of the Service Year.

“Service Year” means the three hundred sixty five-day period immediately preceding a claim for a service credit.

a. SERVICE CREDIT. Uptime for each Service Year will be calculated by subtracting from 100% the percentage of time during which our Infrastructure was unavailable to all of our Cloud Service clients (the “Uptime Percentage”).

If the Uptime Percentage for the Service Year is less than 99.95%, you will be eligible for a service credit equal to 10% of your Cloud Services bill for the calendar month in which the Uptime Percentage dropped below 99.95%.

The Uptime Percentage will be calculated using five-minute increments.

b. DOWNTIME EXCLUSIONS. Downtime does not include unavailability caused by one or more of the following: (i) maintenance, a suspension, or a termination of the Cloud Services; (ii) the failure of servers or services outside of a datacenter on which the Cloud Services are dependent, including, but not limited to, inaccessibility on the Internet that is not caused by our Infrastructure or network providers; (iii) a force majeure event such as an act of God, act of war, act of terrorism, fire, governmental action, labor dispute, and any other circumstances or events not in our direct control; (iv) an attack on our Infrastructure, including a denial of service attack or unauthorized access (i.e., hacking); (v) unavailability not reported by you in accordance with the reporting provisions in Section 12(c) within five (5) of the days of the date on which the Uptime Percentage dropped below 99.95%; (vi) unavailability that results from the failure of individual Cloud Servers and that is not attributable to an event causing unavailability to all clients using the Cloud Services; or (vii) unavailability that is caused by your breach of this Agreement.

c. SERVICE CREDIT PROCEDURES. We will determine, in our reasonable discretion, your eligibility for service credits and the amount of service credits awarded pursuant to this SLA. To be eligible for service credits, you must send us a reasonably detailed, written request for service credits no later than five (5) Business Days after the day on which your Uptime Percentage first drops below 99.95%. To be deemed valid, your request must include (i) the dates and times of each period of Cloud Service unavailability upon which your request is based; (ii) the instance names of the affected Cloud Servers; and (iii) a description of any events from the Cloud Services portal that may have indicated a system-wide unavailability during the stated dates and times. If your Uptime Percentage is confirmed by us to be less than 99.95% for the Service Year, we will issue a service credit during the billing cycle following the month in which we determine that you are eligible for one. All service credits will be applied to fees due from you to us for Cloud Services; we will not pay any service credit to you as a refund. If you fail to provide us



with a valid request, you will not be eligible for a service credit. Our calculation of your Uptime Percentage and all service credits will be based on our records and data. Any dates and times that you previously reported that led to a successful service credit claim cannot be used for future claims.

d. LIMITATION. THE SERVICE CREDITS DESCRIBED IN THIS SLA ARE YOUR SOLE AND EXCLUSIVE REMEDY FOR THE UNAVAILABILITY OF A CLOUD SERVER.

13. SECURITY. Except as expressly provided in this Agreement, you acknowledge that you bear the sole responsibility for the security of the Cloud Services. You agree to implement security measures that are commercially reasonable for your use of the Cloud Services, including encryption technologies, password and user ID requirements, and procedures regarding the application of security patches and updates. NEITHER WE NOR ANY OF OUR EMPLOYEES, AGENTS, REPRESENTATIVES, SERVICE SUPPLIERS OR LICENSORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS (I.E., HACKING) INTO THE CLOUD SERVERS OR YOUR TRANSMISSION FACILITIES, PREMISES OR EQUIPMENT, OR FOR UNAUTHORIZED ACCESS TO DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THEREON, UNLESS AND ONLY TO THE EXTENT THAT THIS DISCLAIMER IS PROHIBITED BY APPLICABLE LAW. FEES FOR UNAUTHORIZED USE. You are required to pay all fees for Cloud Services accessed through your account, including all fees resulting from unauthorized use.

## 14 INDEMNIFICATION

14.1. If use of the Service(s) by You has become, or in Our opinion is likely to become, the subject of any IP Claim (defined below), We may at Our own option and expense (a) procure for You the right to continue using the Service(s) as set forth hereunder; (b) replace or modify the Service(s) to make it non-infringing; or (c) if options (a) or (b) are not commercially and reasonably practicable as determined by Us, terminate Your subscription to the Service(s) and repay You, on a pro-rated basis, any Subscription Charges You have previously paid Us for the corresponding unused portion.

14.2. Indemnification by Us: Subject to Your compliance with these Terms, We will indemnify and hold You harmless, from and against any claim brought against You by a third party alleging that the Service(s) You subscribed to infringes or misappropriates such third party's valid patent, copyright, or trademark (an "IP Claim"). We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of the attorneys, provided that (a) You promptly notify Us of the threat or notice of such IP Claim; (b) We have or will have the sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim; and (c) You fully cooperate with Us in connection therewith. We will have no liability or obligation with respect to any IP Claim if such claim is caused in whole or in part by (i) compliance with designs, data, instructions or specifications provided by You; (ii) modification of the Service(s) by anyone other than Us; or (iii) the combination, operation or use of the Service(s) with other hardware or software where the Service(s) would not by themselves be infringing.

14.3. Sections 14.1 and 14.2 state Our sole, exclusive and entire liability to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of the Service(s) by You.

14.4. Indemnification by You: You will indemnify and hold Group Companies harmless against any claim brought by a third party against the Us, and their respective employees, officers, directors and agents arising from or related



to use of the Service(s) by You in breach of these Terms or matters which You have expressly agreed to be responsible pursuant to these Terms; provided that We promptly notify You of the threat or notice of such a claim.