

BOSS811 SOFTWARE SUBSCRIPTION SERVICE AGREEMENT

This Software Subscription Service (SaaS) Agreement (the “Agreement”) sets forth the obligations and conditions between the City of Fort Collins CO (“Client”) and Business Oriented Software Solutions, Inc. (BOSS), a Georgia Corporation (“Provider”), relating to use of the Services defined herein.

Recitals

A. Provider is the owner of certain proprietary computer software known as BOSS811 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 BOSS811.com or any website notified to the subscribers from time to time (the “Services” or “Cloud 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.

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, non-transferable 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 rights, 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 a subscription fee (the "Subscription Fee") in the amount set forth on the price sheet attached hereto as Exhibit A.

b. The Subscription Fee for the initial term shall be paid on Net 30 terms after receipt of invoice for the first six (6) month period. The Subscription Fee for all renewal terms of this Agreement shall be paid to Provider on Net 30 terms after receipt of invoice for each six (6) month period.

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

d. 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.

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.

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 releases of new versions of the Software. New versions of the Software shall mean for this purpose, a major update or upgrade of the Software that adds functionality not previously included in the Software and is announced and made available to all of Providers customers as a new or updated version. Custom programming that Provider, at its discretion, provides at an additional cost as otherwise agreed between the parties are not included in new versions of the Software.

6. Term

a. This Agreement shall commence January 10, 2020 and shall continue in full force and effect until January 9, 2021, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed four (4) additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. 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.

b. Upon termination of this Agreement, whether by expiration, non-renewal, convenience or for cause, Provider shall promptly return any data stored by Client on any cloud server or elsewhere in Provider's system. Provider and Client shall arrange for a convenient and reasonable method of returning the data (e.g., FTP, email, physical drive) based on the volume of data at issue.

Appropriation. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

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 thirty (30) 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, subject to Section 13 (l) below. 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, but only to the extent allowed by law, to injunctive relief enjoining such breach or attempt to breach, Client hereby acknowledging the inadequacy of any remedy at law.

8. Confidentiality – see Exhibit B

9. Limited Warranty

Provider warrants: (1) that it has the power and authority to grant the subscription for the Services granted to Client hereunder, (2) that the Service will be free from viruses or other forms of malicious or harmful code, and (3) that the Service will work substantially as stated in any user documentation, functional specifications, or advertising materials published by Provider, provided that Client's sole remedy for failure to work substantially as represented will be prompt repair or replacement of the nonconforming Service by Provider. 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.

10. Service Level Agreement (SLA)

Provider 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 Cloud Services infrastructure was unavailable to Client (the "Uptime Percentage"). If the Uptime Percentage for the Service Year is less than 99.95%, Client will be eligible for a service credit equal to 10% of Client's 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) 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; (ii) 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; (iii) an attack on our infrastructure, including a denial of service attack or unauthorized access (i.e., hacking); (iv) unavailability not reported by Client in accordance with the reporting provisions in Section 10(c) within five (5) days of the date on which the Uptime Percentage dropped below 99.95%; (v) unavailability that is caused by Client's breach of this Agreement with Provider.

c. **SERVICE CREDIT PROCEDURES.** Provider will determine, in our reasonable discretion, Client's eligibility for service credits and the amount of service credits awarded pursuant to this SLA. To be eligible for service credits, Client must send us a reasonably detailed, written request for service credits no later than five (5) business days after the day on which Client's Uptime Percentage first drops below 99.95%. To be deemed valid, Client's request must include (i) the dates and times of each period of Cloud Service unavailability upon which Client's 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 Client's Uptime Percentage is confirmed by us to be less than 99.95% for the Service Year, Provider will issue a service credit during the billing cycle following the month in which Provider determine that Client are eligible for one. All service credits will be applied to fees due from Client to us for Cloud Services; Provider will not pay any service credit to Client as a refund. If Client fails to provide us with a valid request, Client will not be eligible for a service credit. Our calculation of Client's Uptime Percentage and all service credits will be based on our records and data. Any dates and times that Client 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 CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR THE UNAVAILABILITY OF A CLOUD SERVER.**

11. Data Privacy and Security

a. If Client is provided with a user identification code, password or any other piece of information as part of our security procedures, Client shall treat such information as Confidential Information. Provider has the right to disable any user identification code or password, whether chosen by Client or allocated by Provider, at any time, if in Provider's reasonable opinion, Client has failed to comply with any of the provisions of these terms.

b. Provider will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Client data. These safeguards may include encryption of Client data in transmission (using SSL or similar technologies) as described further in the Security Policy on Provider Websites.

12. Indemnification & Insurance



a. If use of the Service(s) by Client has become, or in Provider's opinion is likely to become, the subject of any IP Claim (defined below), Provider may at its own option and expense (a) procure for Client 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 Provider, terminate Client's subscription to the Service(s) and repay Client, on a pro-rated basis, any Subscription charges Client has previously paid Provider.

b. Subject to Client compliance with these terms, Provider will indemnify and hold Client harmless from and against any claim brought against Client by a third party alleging that the Service(s) Client subscribed to infringes or misappropriates such third party's valid patent, copyright, or trademark (an "IP Claim"). Provider shall, at its expense, defend such IP Claim and pay damages finally awarded against Client in connection therewith, including the reasonable fees and expenses of the attorneys, provided that (a) Client promptly notifies Provider of the threat or notice of such IP Claim; (b) Provider has or will have the sole and exclusive control and authority to select defense attorneys, defend and/or settle any such IP Claim (provided that Provider may not settle without Client's consent, which consent shall not be unreasonably withheld); and (c) Client fully cooperates with Provider in connection therewith. Provider will have no liability or obligation with respect to any IP Claim to the extent such claim is caused by (i) compliance with designs, data, instructions or specifications provided by Client; (ii) modification of the Service(s) by anyone other than Provider; or (iii) the combination, operation or use of the Service(s) with other hardware or software (other than standard hardware or software that would reasonably be expected to be used to access the Services) where the Service(s) would not by themselves be infringing.

c. Sections 12a & 12b state Provider's sole, exclusive and entire liability to Client and constitute Client's sole remedy with respect to an IP Claim brought by reason of access to or use of the Service(s) by Client.

d. Provider shall maintain commercially reasonable insurance during the Term of this Agreement, including at least \$2 million in commercial general liability coverage. Upon Client's request, Provider shall promptly supply evidence of all of its insurance coverages, including policy provisions.

13. 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. Unless Client is otherwise notified in writing, Provider's address for notice purposes shall be 350 Research Court, Suite 110, City of Peachtree Corners, GA, 30092.

b. Governing Law. This Agreement shall be governed exclusively by the laws of the State of Colorado, without regard to its conflicts of laws principles.

c. Compliance with Laws. Client shall use the Services, and Provider shall provide 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. Neither party may 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. Neither Provider nor Client may 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, government action, 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.

k. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Provider agrees that, during performance of this Agreement, Provider, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Provider agrees to comply with all applicable implementing regulations and shall include the provisions of this section in every subcontract for services contemplated under this Agreement.

l. Authority to Contract. The individual executing this Agreement on behalf of each party covenants and declares that he/she has obtained all necessary approvals of the necessary boards, stockholders, executive officers or similar authorities to simultaneously execute and bind the party to the terms of this Agreement.

[SIGNATURES PROVIDED ON FOLLOWING PAGE]

Business Oriented Software Solutions, Inc.

DocuSigned by:
Maha Mahadevan
8FCC4F03D7FD44D...
Signature

Maha Mahadevan

1/15/2020

Date

President

City of Fort Collins

DocuSigned by:
Gerry Paul
A8DDA054C8CB45D...
Signature

Gerry Paul

1/15/2020

Date

Purchasing Director

Attest:

Signature

Print Name

Title ((Assistant) Corporate Secretary)

Attest:

DocuSigned by:
Delynn Coldiron
DA94896740DA48A...
Signature

Delynn Coldiron

Print Name



Estimate

EST-19520

BOSS Solutions

350
 Research Court
 Norcross Georgia 30092
 U.S.A

Bill To

Chuck Griffin
 City of Fort Collins Utilities
 222 Laporte Ave
 Fort Collins
 80521 CO

Estimate Date : 03 Dec 2019

Sales person : Maha Mahadevan

#	Item & Description	Qty	Rate	Amount
1	BOSS811 Enterprise Subscription Enterprise ticket management, GIS maps, mobile apps for estimated 30,000 tickets. Includes annual support & Data storage of 50 GB. Additional storage in buckets of 50GB can be procured for \$500. Subscription fee is to be paid in two payments. Payment one is to be paid at the beginning of the year and payment two is to be paid six months later.	30,000.00 Tickets	0.30	9,000.00
2	Implementation & Training Configuration & training - remote services. Additional services @\$150/hr	1.00 per day	1,500.00	1,500.00
3	Renewal annual subscription \$9000 for estimated 30,000 tickets. If the actual number of tickets vary by 5% or more either way from the estimate for the prior year year, the customer will given a credit (applied to the renewal) if the volume reduced or the customer will be billed for increased volume if the volume went up. The renewal amount for the following year will be priced based on the actual volume of the prior year.	1.00	0.00	0.00
			Sub Total	10,500.00
			Total	\$10,500.00

Notes

Payment terms are net 30. No charge for ACH payments or checks. If paying via Credit Card a 3% fee applies. All estimates good for 30 days. No data migration is included in this estimate.

Terms & Conditions

Covered by the BOSS811 SOFTWARE SUBSCRIPTION SERVICE AGREEMENT signed by both the parties.

EXHIBIT B CONFIDENTIALITY

IN CONNECTION WITH THE SERVICES to be provided by Professional under this Agreement, the parties agree to comply with reasonable policies and procedures with regard to the exchange and handling of confidential information and other sensitive materials between the parties, as set forth below.

1. Definitions.

For purposes of this Agreement, the party who owns the confidential information and is disclosing same shall be referenced as the "Disclosing Party." The party receiving the Disclosing Party's confidential information shall be referenced as the "Receiving Party."

2. Confidential Information.

Confidential Information controlled by this Agreement refers to information which is not public and/or is proprietary and includes by way of example, but without limitation, City customer information, utility data, service billing records, customer equipment information, location information, network security system, business plans, formulae, processes, intellectual property, trade secrets, designs, photographs, plans, drawings, schematics, methods, specifications, samples, reports, mechanical and electronic design drawings, customer lists, financial information, studies, findings, inventions, and ideas.

To the extent practical, Confidential Information shall be marked "Confidential" or "Proprietary." Nevertheless, Professional shall treat as Confidential Information all customer identifiable information in any form, whether or not bearing a mark of confidentiality or otherwise requested by the City, including but not limited to account, address, billing, consumption, contact and other customer data. In the case of disclosure in non-documentary form of non-customer identifiable information, made orally or by visual inspection, the Disclosing Party shall have the right, or, if requested by the Receiving Party, the obligation to confirm in writing the fact and general nature of each disclosure within a reasonable time after it is made in order that it is treated as Confidential Information. Any information disclosed to the other party prior to the execution of this Agreement and related to the services for which Professional has been engaged shall be considered in the same manner and be subject to the same treatment as the information disclosed after the execution of this Agreement with regard to protecting it as Confidential Information.

3. Use of Confidential Information.

Receiving Party hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement and not in any way detrimental to Disclosing Party. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. The City and Professional shall cause each of their directors, officers, employees, agents, representatives, and subcontractors to become familiar with, and abide by, the terms of this section, which shall survive this Agreement as an on-going obligation of the Parties.

Professional shall not use such information to obtain any economic or other benefit for itself, or any third party, other than in the performance of obligations under this Agreement.

4. Exclusions from Definition.

The term "Confidential Information" as used herein does not include any data or information which is already known to the Receiving Party or which before being divulged by the Disclosing Party (1) was generally known to the public through no wrongful act of the Receiving Party; (2) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without, to the knowledge of the Receiving Party, a breach of an obligation of confidentiality; (3) has been approved for release by a written authorization by the other party hereto; or (4) has been disclosed pursuant to a requirement of a governmental agency or by operation of law.

5. Required Disclosure.

If the Receiving Party is required (by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or by federal, state, or local law, including without limitation, the Colorado Open Records Act) to disclose any Confidential Information, the Parties agree the Receiving Party will provide the Disclosing Party with prompt notice of such request, so the Disclosing Party may seek an appropriate protective order or waive the Receiving Party's compliance with this Agreement.

The Receiving Party shall furnish a copy of this Agreement with any disclosure.

6. Notwithstanding paragraph 5, Professional shall not disclose Confidential Information to any person, directly or indirectly, nor use it in any way, except as required or authorized in writing by the City.

7. Red Flags Rules.

Professional must implement reasonable policies and procedures to detect, prevent and mitigate the risk of identity theft in compliance with the Identity Theft Red Flags Rules found at 16 Code of Federal Regulations part 681. Further, Professional must take appropriate steps to mitigate identity theft if it occurs with one or more of the City's covered accounts and must as expeditiously as possible notify the City in writing of significant breaches of security or Red Flags to the City.

8. Data Protection and Data Security.

In addition to the requirements of paragraph 7, Professional shall have in place information security safeguards designed to conform to or exceed industry best practices regarding the protection of the confidentiality, integrity and availability of utility and customer information and shall have written agreements requiring any subcontractor to meet those standards. These information security safeguards (the "Information Security Program") shall be materially consistent with, or more stringent than, the safeguards described in this Exhibit.

a) Professional's information security safeguards shall address the following elements:

- Data Storage, Backups and Disposal
- Logical Access Control (e.g., Role-Based)
- Information Classification and Handling
- Secure Data Transfer (SFTP and Data Transfer Specification)
- Secure Web Communications
- Network and Security Monitoring
- Application Development Security

- Application Security Controls and Procedures (User Authentication, Security Controls, and Security Procedures, Policies and Logging)
 - Incident Response
 - Vulnerability Assessments
 - Hosted Services
 - Personnel Security
- b) Subcontractors. Professional may use subcontractors, though such activity shall not release or absolve Professional from the obligation to satisfy all conditions of this Agreement, including the data security measures described in this Exhibit, and to require a substantially similar level of data security, appropriate to the types of services provided and Customer Data received, for any subcontractor Professional may use. Accordingly, any release of data, confidential information, or failure to protect information under this Agreement by a subcontractor or affiliated party shall be attributed to Professional and may be considered to be a material breach of this Agreement.
9. Confidential Information is not to be stored on any local workstation, laptop, or media such as CD/DVD, USB drives, external hard drives or other similar portable devices unless the Professional can ensure security for the Confidential Information so stored. Work stations or laptops to be used in the Work will be required to have personal firewalls on each, as well as have current, active anti-virus definitions.
10. The Agreement not to disclose Confidential Information as set forth in this Exhibit shall apply during the term of the Work and at any time thereafter unless specifically authorized by the City in writing.
11. If Professional breaches this Agreement, in the City's sole discretion, the City may immediately terminate this Agreement and withdraw Professional's right to access Confidential Information.
12. Notwithstanding any other provision of this Agreement, all material, i.e., various physical forms of media in which Confidential Information is contained, including but not limited to writings, drawings, tapes, diskettes, prototypes or products, shall remain the sole property of the Disclosing Party and, upon request, shall be promptly returned, together with all copies thereof to the Disclosing Party. Upon such return of physical records, all digital and electronic data shall also be deleted in a non-restorable way by which it is no longer available to the Receiving Party. Written verification of the deletion (including date of deletion) is to be provided to the Disclosing Party within ten (10) days after completion of engagement, whether it be via termination, completion or otherwise.

Professional acknowledges that the City may, based upon the representations made in this Agreement, disclose security information that is critical to the continued success of the City's business. Accordingly, Professional agrees that the City does not have an adequate remedy at law for breach of this Agreement and therefore, the City shall be entitled, as a non-exclusive remedy, and in addition to an action for damages, to seek and obtain an injunction or decree of specific performance or any other remedy, from a court of competent jurisdiction to enjoin or remedy any violation of this Agreement