

## Bizo End User Agreement

Business Online Ltd (Bizo) provides Services on the basis of the following agreed terms.

Bizo advises customers to read through and be familiar with these terms, any terms outlined in associated Service Level Commitments, and also other policies on our website. By using Bizo Services You agree to be bound by these terms and policies and any modifications. Bizo reserves the right to suspend or terminate Your account for any violation of this agreement or published policy.

Complete Service Descriptions detailing the particular features and Service Level Commitment for each of the Bizo Services can be found on our website ([www.bizoservices.com](http://www.bizoservices.com)). If You have any questions regarding these terms please look on our website or contact us.

### Definitions

"You", "Your" or "Yours" means the Customer

"We", "us" or "our" means Business Online Services Limited

"Service Level Commitment" means the document that outlines specific service level commitments for each individual Service that You use.

"Service Offer" means the written offer by us to provide You with any service.

"Agreement" means the Service Offer, these standard terms, policies, Service Level Commitments and service descriptions.

"Bizo" means Business Online Services Limited.

"Bizo Website" means the Bizo website found at [www.bizoservices.com](http://www.bizoservices.com)

"Business Hours" means between the hours between 8:30am and 5:00pm on any normal working day in New Zealand; excluding weekends and Public Holidays.

"Commencement Date" means the date on which we notify You that the service is installed. The service contract term begins on the Commencement Date.

"Data" means all information in an electronic form which is provided by You to Us through You using the Services.

"End User Agreement" means these standard terms as may be amended from time.

"Equipment" means any equipment we supply You.

"Force Majeure" means any events beyond Bizo's reasonable control that cause a delay or failure in the performance of Bizo's obligations under this End User Agreement or any Bizo Service Level commitment, including, without limitation, acts of any governmental body, war, insurrection, sabotage, terrorism, embargo, fire or other acts of God, labour disturbances, third party Internet system unavailability, virus attacks, unavailability of or interruption or delay in services from third party telecommunication providers, or hackers, or failure of third party software.

"Services" means any goods and Services we provide as specified in the Service Offer.

"Service Level Commitments" means the specific commitments that Bizo makes regarding service levels for each of its individual services. These are outlined on the Bizo Website for all services

that they apply to and become part of this Agreement.

"Wholesale Service Provider" means any telecommunication or IT service providers that are contracted by Us to deliver the Services.

### Service Charges

You agree to pay all service charges as described in the Service Offer. Charges begin from the Commencement Date. Fixed charges are payable monthly in advance and other charges are payable in arrears by the 20<sup>th</sup> of the following month.

All prices are quoted in New Zealand dollars and are exclusive of GST.

Overdue interest at 2% per month, compounding will be charged on the overdue amount so will all costs of collection, enforcement, or attempted enforcement on a full indemnity basis. Discrepancy and dispute must be notified to us within 10 days after receipt of the invoice or it will be deemed to be correct and payable.

Any additional Services activated during a month will be charged on the next full month's billing.

### Disputed Accounts

Where You wish to dispute any item(s) appearing on an invoice,

You must write to or email Bizo within 60 days of the disputed invoice and seek resolution of the disputed amount.

You shall pay any undisputed amount by the Payment Due Date, otherwise interest or late payment charges may be imposed on the undisputed balance.

If We agree there is a mistake, the account balance will be corrected as soon as practicable. If We find there is no mistake, You will pay the outstanding amount immediately on being notified of our finding, or by the Payment Due Date, whichever is the latter.

### Data

All Your data that is processed by, or stored, as a result of the Services shall be kept confidential and shall not be disclosed to anyone except as required or permitted by applicable law or legal process.

All such data shall be and remain Your property. We will exercise reasonable care for the protection of such data and shall maintain reasonable data integrity safeguards against the deletion or alteration of such data.

### Voice

Calls made using Bizo Voice Services are subject to a one minute minimum charge.

Calls longer than one minute duration are rounded up to the next second.

We will not charge for unsuccessful calls (i.e. if the number You call is engaged)

If Your line agreement with an alternative Service Provider (including, but not limited to Telecom or Telstra) remains in place then you must continue to meet Your responsibilities under that agreement (including the responsibility to pay charges accruing under it).

Bizo Voice Services may not be compatible with all of an alternative Service Provider (including, but not limited to Telecom or Telstra) Services. If You have any of the following services on Your phone line, services may not be able to be delivered: DDI Extension, Dual Number, Faxability, Calltrack, and Priority Service

### Our Commitment to You

We agree:

- To provide Services to You with reasonable care and skill, although we do not guarantee they will be free from interruption.
- To use reasonable endeavours to minimise the duration of all service interruptions.
- That if we vary the Services from time to time or decide to stop providing a particular service we will notify You prior to making the variation and will tell You about any substitute service we have available.
- That our Services are compatible with most computer and software configurations. However, we are not responsible for ensuring any service we provide You will be compatible with and will not damage Your computer, other equipment, software or data. You accept that is Your responsibility.
- To provide a secure design for Services provided but we are not responsible for ensuring the data You access or make available through the Services will be private, secure or that it will not damage Your equipment, software or data.

### Phone Numbers and Internet Protocol ("IP") Addresses

We may allocate phone numbers and/or IP addresses to You to enable You to use the Services. The allocation of these numbers does not confer any ownership, licence holder, nor leaseholder rights to those numbers and/or IP addresses, and You may not transfer those numbers

and/or IP addresses to any other party.

If it is necessary to do so for operational reasons, We may change any phone number or IP address allocated to You. However We will give You as much notice of Our intention as is reasonably possible to do so, where required.

If You require the phone numbers or IP addresses after the termination of this Agreement, We may assign the right to use the numbers to the You at Our discretion, provided that it is possible and reasonable to do so.

### Your Commitment to Us

You agree:

- To use our Services for lawful purposes only, and to abide by, the Bizo Acceptable Use Policy as published on the Bizo Website from time to time.
- Not to use the Services in any way which could damage or interfere with the network (or another operator's network) or other customers' use of the network.
- To follow our reasonable directions for usage of our Services.
- That You will not on-sell any Services.
- To pay for the Services by the due date.
- To make sure all information You give us is correct, complete and current.
- To promptly advise us in writing if You have any complaint about our Services.
- To comply with all policies relating to the Services on the Bizo Website
- To keep Your billing number, password or other security data confidential.
- To immediately report any misuse of Your account or disclosure of Your security data.
- To make sure everyone who accesses the Services also complies with these responsibilities.
- To reimburse us for any loss or damage we suffer as a result of Your breach of these terms.

- Where required you will ensure free, unrestrained access for us to your points of network termination within the building.

## Support Response Time Targets

The following are the Bizo Silver Service Level targets for Normal Business Hours and After Hours. These represent our minimum Response Time Targets and Bizo offers a Gold and Platinum service if required. At all times Bizo will make its best endeavours to meet these targets.

Silver SLA				
PRIORITY	P1	P2	P3	P4
<b>PRIORITY DEFINITION</b>	A critical fault, resulting in the majority of users unable to use the Service.	Fault resulting in multiple users unable to use the service	Customer reports repeated quality problems, intermittent faults or degraded service. No major service impacts.	Customer reports non-service or business impacting issue.
<b>RESPONSE TIME</b>	20 Minutes	60 Minutes	8 Business Hours	8 Business Hours
<b>REMOTE TARGET RESOLUTION TIME</b>	4 Hours	8 Hours	3 Business Days	10 Business Days
<b>ON-SITE TARGET RESOLUTION TIME</b>	Next Business Day	2 Business Days	3 Business Days	10 Business Days
<b>HARDWARE REPLACEMENT UPDATES SLA</b>	Next Business Day	2 Business Days	3 Business Days	10 Business Days
	Every Hour	Every 2 Hours	1 Business Days	On Completion
<b>Clock</b>	Business Hours	Business Hours	Business Hours	Business Hours

(a full screen view of this table can be found along with the Bizo End User Agreement on the Bizo website)

"Response Time" means Bizo's response to a Customer incident measured from the Incident Notification Commencement time;

"Remote Resolution" means the resolution of an incident that can be effected remotely by the Bizo without the requirement for a site visit;

"On-Site Resolution" means the resolution of an incident that cannot be effected remotely and requires a site visit;

"Resolution" means the target resolution time of the incident, measured from the Incident Notification Commencement time, whether fully or partially by way of a patch or work around, such that the negative effects of the incident cease from the Customer's perspective. If resolution is by way of a patch or workaround, then Bizo shall complete the final resolution within 5 (five) Business Days after resolution has occurred, and confirm the same in writing to the relevant Customer(s).

## Service Availability Target

Bizo Services shall be available for use by You 99.9% of the time as calculated on a monthly basis, 24 hours per day, 365 days per year, excluding Scheduled Maintenance, Emergency Maintenance and Force Majeure Events.

This Service Availability Target does not include the administration provisioning web interface. All efforts will be made to make sure that provisioning is available. In the case where You can use the Service but the provisioning system is unavailable the Service Availability Target is considered met.

Bizo Services are monitored from the Bizo core Internet routers. All availability calculations are done using data gathered from this monitoring location. Outages affected by Your network and/or the Internet are not included in calculating the Service Availability Target and are not considered a Bizo Service outage.

The Service Level metric for availability is 99.9%, measured on a monthly basis, calculated by the following equation:

$$\text{Service Availability} = (A-B-C) / (A-B)$$

Where:

- A = Total Monthly minutes
- B = Maintenance minutes
- C = Downtime minutes

Maintenance minutes include:

- Scheduled Maintenance Minutes
- Emergency Maintenance Minutes
- Force Majeure Event Minutes

## Service Credits

Where Bizo does not meet its Service Availability Target for any particular Service as outlined in this Agreement, Bizo will make available Service Credits to You as per the following calculation:

Service Availability	Service Credit Available
99.98% - 99.0%	5% of normal monthly fee for the affected service
98.99% - 98.0%	7.5% of normal monthly fee for the affected service
97.99% - 97.0%	10% of normal monthly fee for the affected service
96.99% to 96.0%	15% of normal monthly fee for the affected service
95.99% to 95.0%	20% of normal monthly fee for the affected service
Less than 95%	50% of normal monthly fee for the affected service

In order to receive a Service Credit under this Agreement, a written request must be made by You within thirty (30) days of the service impact and must be confirmed by Bizo's measurements of the SLA.

Each valid credit will be applied to an invoice of Yours within two billing cycles after Bizo's receipt of Your request. Credits are exclusive of any applicable taxes charged to You or collected by Bizo.

Notwithstanding anything in this Agreement to the contrary, the total Service Credit credited to You in connection with a request for any calendar month will not exceed the fee paid by You for the corresponding Bizo service for such month.

## Scheduled Maintenance

Scheduled Maintenance activities will only occur between 10:00pm and 6:00am New Zealand Standard Time, for the implementation of patches, upgrades and fixes. Please note, however, that Emergency Maintenance may be conducted at any time that Bizo deems the scope of the maintenance urgent enough to warrant immediate action.

Bizo will provide You notification 72 hours in advance of any scheduled maintenance time.

## Emergency Maintenance

Critical patches, upgrades and fixes are defined as:

- security patches from vendors that are recommended by such vendors to be implemented immediately, or
- software/hardware modifications that repair or prevent service-impacting situations.

These emergency procedures may be scheduled at any time as part of an Emergency Maintenance activity. Bizo will make reasonable efforts to provide You with advanced notice prior to applying critical patches, updates, or fixes.

## Your Equipment

You agree:

- To make sure any of Your equipment or cabling required for delivery of the service meets our requirements before we begin installation or supply of our Services.
- To pay us any reasonable expenses incurred due to service interruptions as a result of Your equipment.

## Our Equipment

Any Equipment we supply to You will be fit for the purposes for which the Equipment is provided. You agree to our directions for usage and not to damage or interfere with our equipment. We retain title in all equipment until paid for in full.

If our equipment is located at Your premises You agree:

- To provide a safe and secure operating environment for our equipment
- To pay our charges for repair or replacement of any of our equipment that is lost, stolen or damaged.
- To let us have reasonable safe access our equipment.
- To provide and pay for suitable electric power for the Equipment

- If You have any problems with any Equipment within 12 months of obtaining it from us You may at your cost return the Equipment to us. If we are responsible for the fault we will repair or replace the Equipment. We have no other obligations in respect of the Equipment.

## Service Termination

If You cancel Your contract before service activation You may be liable for the full installation fee.

If You cancel Your contract during the agreed term You may be liable for 100% balance of the remaining duration contract period. You agree to give us not less than 30 days written notice and pay the termination fees specified.

Unless You provide written notice of termination, prior to 30 days from the end of the initial contract term, this agreement will be automatically extended, however, after this point, as long as You provide written notice 30 days in advance of termination, there will be no cancellation fees due.

Either Party may terminate any or all the Services immediately where the other party materially breaches these standard terms or Bizo policies, or go into liquidation, bankruptcy or receivership.

Notwithstanding the above, if;

The Bizo Service does not meet its 95% Service Availability Target as outlined in this Agreement for more than two consecutive periods in any single calendar month  
AND

if You provide written notice to Bizo of these incidents within 5 business days of them occurring, and Bizo does not within 5 business days of Your notice present You with an acceptable plan to ensure that these outages will not re-occur and have this proposed solution implemented within 20 business days of the plan being accepted;

You may choose to terminate this contract without penalty by giving not less than 1 months notice.

## Compensation and Liability

Under no circumstances will either party be liable under the law of tort, contract or otherwise for any loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with the performance or non-performance of this Agreement.

We exclude all warranties and all liability we may have to You, that may be legally excluded, except as described in these terms. This exclusion applies whatever loss You are claiming for and however the liability claimed may arise. This exclusion and limitation is for the benefit of Bizo, our officers, employees, contractors, agents, authorised resellers and anyone else for whom any of these people are responsible.

If for any reason we, or any of the other people listed above, cannot rely on the exclusion and limitation of liability set out above, then You agree our total liability will not exceed \$5,000 for any event or series of related events and \$10,000 in any 12 month period. Nevertheless we will not be liable for any event outside of our reasonable control.

## The Consumer Guarantees Act 1993

You acknowledge that You are acquiring the Services for the purposes of a business and the Consumer Guarantees Act 1993 does not apply.

## Title Reservation and PPSR

Where we are a supplier of goods in this contract We reserve full ownership and title in any goods supplied to You until payment in full in cleared funds has been made to us. If We deliver the goods to You before they are paid for in full in cleared funds We still reserve full title and ownership in them. You agree that you will not modify, or on sell the goods to anyone else or part with possession of them until they

have been paid for in full in cleared funds. If You default in payment when due You confirm We are irrevocably authorized to enter any premises where the goods are being stored and to remove them. You confirm that We are authorized to register and maintain a security interest under the Personal Property Securities Register (PPSR) to further protect the rights We retain in the goods supplied. You waive the right to receive a verification statement in respect of any financing statement that We register under the PPSR.

### Intellectual Property

You acknowledge that You do not, as a result of any agreement with us, acquire any intellectual property rights from us. We retain all our intellectual property rights in the Services, the Equipment, any software we provide You and the content of our website.

### Privacy

You authorise us to collect any personal information provided by or concerning You or Your use of the Services. The information may be obtained from You and others or from within the equipment used to provide the Services.

You may decide whether to provide any information to us. If You do not provide the information, we may not be able to provide the Services to You.

We may use the information, and share it with our contractors, agents or business partners, for the purposes of:

- providing and managing the Services.
- credit checks, sending You invoices
- and recovering money You owe us.
- improving customer Services.
- informing You of new or existing Services available.

You may ask to see information we hold about You, and for any details that are wrong to be corrected.

### Notices

We will send invoices and notices by email to the address You have given us. You will be deemed to have received a notice at the time the email is sent.

### Our Business Partners

We may transfer to our business partners all or part of our rights and obligations under these terms and have them perform our obligations under these terms. Third parties may take the benefit of rights expressed to be for their benefit in accordance with the Contracts (Privity) Act 1982.

### Changes to Bizo End User Agreement and Policies

We may amend these terms and conditions at any time, but we will put a notice on our normal monthly invoice to you and on our website advising of a pending change at least one month prior to making any such change.

### New Zealand Law

This Agreement is governed by the laws of New Zealand. Each Party submits to the non-exclusive jurisdiction of the courts of New Zealand.