

BIZAGI CLOUD END USER LICENSE AGREEMENT – US GOVERNMENT

PLEASE READ THIS BIZAGI CLOUD END-USER LICENSE AGREEMENT – US GOVERNMENT (“EULA”) CAREFULLY. BY ACCESSING OR USING THE SERVICES, YOU AGREE TO THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT ACCESS OR USE THE SERVICES. THIS EULA IS A BINDING CONTRACT BETWEEN BIZAGI CORP. (“BIZAGI” OR “WE”) AND THE US GOVERNMENT AGENCY OR OTHER ENTITY THAT THE INDIVIDUAL ACCEPTING THIS EULA REPRESENTS (“END USER”). BIZAGI AND END USER ARE ALSO REFERRED TO INDIVIDUALLY AS A “PARTY” AND COLLECTIVELY AS THE “PARTIES”. THIS EULA GOVERNS END USER’S ACCESS TO AND USE OF THE BIZAGI CLOUD SERVICE, AS MORE FULLY DESCRIBED IN SCHEDULE 1, WHICH IS OFFERED THROUGH A BIZAGI AUTHORIZED RESELLER AND ACCESSED BY END USER VIA THE INTERNET (THE “**SERVICES**”). THIS AGREEMENT IS EFFECTIVE AS OF THE DATE ACCEPTED BY END USER (THE “EFFECTIVE DATE”).

Last Updated: March 24th, 2021

1. License Grant

- a. Subject to End User’s strict compliance with the terms of this EULA, and payment of any applicable Fees, Bizagi hereby grants to End User, during the Subscription Term, a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Services via username and password over the Internet up to (a) the number of BPUs permitted for the Performance Level subscribed to and / or (b) the number of users permitted under the Subscription, as applicable.
- b. The Services provided by Bizagi and Documentation are “commercial items”, “commercial computer software” and “commercial computer software documentation,” pursuant to DFAR section 227.7202 and FAR section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Bizagi’s Services and Documentation by the U.S. Government shall be governed solely by this EULA and shall be prohibited except to the extent expressly permitted by this EULA. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.

2. Use Restrictions

Except as expressly permitted herein, Customer shall not directly or indirectly, without the express written consent of Bizagi:

- a. make any Services available to, or use any Services for the benefit of, anyone other than End User or its Authorized Users;
- b. use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-Party privacy rights;
- c. use the Services to store or transmit malicious code;
- d. interfere with or disrupt the integrity or performance of the Services or third-Party data contained therein;
- e. permit direct or indirect access to, or use of, any Services in a way that circumvents the usage limits set out in the applicable Order Form;
- f. copy the Services, including the software elements of the Services, or any feature, function or user interface thereof;

- g. perform or disclose any of the following security testing of the Services or associated infrastructure without Bizagi's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing;
- h. cause or permit others to perform or disclose any benchmark or performance tests of the Services;
- i. use the Services in violation of Bizagi's current acceptable-use policy or for any unlawful purpose;
- j. license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services or the Documentation to any third party;
- k. modify the software elements of the Services;
- l. create derivative works of the Services or the Documentation or any components thereof;
- m. translate, reverse engineer, decompile, disassemble or otherwise attempt to discover for any reason any source code, underlying ideas or algorithms of the Services or Documentation; or
- n. remove any legends relating to the copyright, trademarks, patents, or confidentiality from any copies of the Documentation or any print of a screen display from the Services.

3. Ownership

The Services are licensed, not sold. Except as expressly set forth herein, Bizagi retains any and all rights in the Services, including all intellectual property rights therein. The Bizagi name and logo, and any other product names associated with the Services are trademarks of Bizagi or Bizagi's licensors and no right or license is granted to use them, other than as set forth herein.

4. End User Data / Data Protection / Security

- a. Subject to the terms set forth herein, Bizagi does not own any data, information, or material that End User or Authorized Users submit in the course of using the Services or any information or data developed or derived therefrom ("End User Data"). End User has sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right of use of all End User Data.
- b. End User hereby grants to Bizagi during the Subscription Term a limited, terminable worldwide, royalty-free, fully paid-up, fully sublicensable (through multiple tiers), transferable license to use the End User Data for purposes of providing the Services to End User. End User shall be solely responsible for handling and processing all notices sent to End User (or any Authorized User) by any third party claiming that the End User Data violates such party's rights.
- c. End User shall obtain at its sole expense any rights and consents from third parties necessary for the End User Data, as well as other vendors' products provided by End User that End User uses with the Services, including such rights and consents as necessary for Bizagi to perform the Services under this Agreement.
- d. To the extent Bizagi processes any Personal Data under this EULA, the terms of the Bizagi Data processing Agreement located at: <https://www.bizagi.com/sa?BLI&CL&DPA> shall apply.
- e. The Bizagi Cloud Technical and Organizational Security Measures that Bizagi has implemented are available at: <https://www.bizagi.com/sa?BC&CL&DS>.

5. Term / Termination

- a. Term. This EULA shall apply commencing on the Effective Date and will continue for as long as End User has access to the Services (the "Subscription Term") in accordance with End User's contract with the Bizagi Authorized Reseller.
- b. Termination For Breach. Either Party may terminate this EULA for cause (a) if the other Party breaches any material term or provision of this EULA and, if capable of cure, such Party fails to cure such breach within thirty (30) days after receipt of notice of such breach; or (b) upon any insolvency of the other Party, any filing of a petition in bankruptcy by or against the other Party, any appointment of a receiver for the other Party, or any assignment for the benefit of the other Party's creditors.
- c. Suspension: Bizagi may temporarily suspend End User's password, account, and access to or use of the Services if End User violates any provision of the EULA, or if in Bizagi's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Bizagi may also suspend End User's access to the Services immediately if the Bizagi Authorized Reseller notifies Bizagi that End User has breached any material term of the agreement between End User and the Bizagi Authorized Reseller, including without limitation any payment obligations therein.
- d. Termination of Bizagi Authorized Reseller's agreement with Bizagi. Following any termination or expiration of the Bizagi Authorized Reseller's agreement with Bizagi authorizing Bizagi Authorized Reseller to resell the Services, each End User's subscription to the Services outstanding at the time of such termination or expiration ("Existing Order") shall remain in effect until the end of its subscription term, and shall continue to be governed by this EULA, provided that Customer is not in breach of this EULA and Bizagi has received all payments due in connection with such Existing Orders. Except as provided herein, following a termination or expiration of a Bizagi Authorized Reseller's agreement with Bizagi, Bizagi is under no obligation to provide the Services directly to End User, or to assume a direct contractual relationship with End User.
- e. Upon expiration of the Subscription Term or termination of this EULA for any reason, End User shall cease all use of and access to the Services; provided however that End User may access the Services for the period of time set forth in Section 7 for the sole purpose of retrieval of End User Data.

6. Maintenance and Support

Unless agreed to otherwise in the agreement between End User and the Bizagi Authorized Reseller, Bizagi will provide End User with Software Maintenance, and where applicable, Premium Support, as set forth at the following URL: <https://www.bizagi.com/sa?BC&CL&PS>. In each of the foregoing documents, references to Customer shall be deemed to refer to End User.

7. Data Retrieval

Upon the expiry of the subscription, End User shall not access or use the Services, including the Documentation; however, at End User's request, and for a period of up to 60 days for Automation Services and 15 days for Studio Collaboration Services and Modeler Studios, after the effective date of termination ("Retrieval Period"), Bizagi will make available the End User's data so that it may be retrieved by End User. At the end of the Retrieval Period, Bizagi will have no obligation to maintain or provide any End User's data and will thereafter delete or destroy all copies of the End User Data in the Services or otherwise in Bizagi's possession or control, unless legally prohibited from doing so.

8. Confidentiality

- a. Exclusions: The confidentiality obligations of this EULA do not apply to any information that: a) is or becomes generally known to the public at the time of disclosure without breach of any obligation owed by the Receiving Party to the Disclosing Party; b) was rightfully known to the Receiving Party other than by a breach of an obligation of confidentiality prior to its disclosure by the Disclosing Party under this EULA; c) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party, as substantiated by written evidence; or d) is lawfully received from a third party without an obligation of confidentiality.
- b. Non-Disclosure: Except as otherwise permitted in writing by the Disclosing Party and subject to the Freedom of Information Act ("FOIA") (5 U.S.C. §552), the Receiving Party will: a) protect the Disclosing Party's Confidential Information from unauthorized disclosure and use the same degree of care that the Receiving Party uses to protect its own Confidential Information, but in no event less than a commercially reasonable degree of care, b) not use the Disclosing Party's Confidential Information for purposes other than those necessary to exercise a right or fulfill an obligation of this EULA, and c) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors, attorneys, financial advisors, and agents who need such access for the Receiving Party to exercise a right or fulfill an obligation of this EULA, who have been informed of the confidential nature of such information, and who are subject to confidentiality obligations with the Receiving Party containing protections no less stringent than those herein.
- c. Compelled Disclosures: The Services and Documentation are Bizagi's Confidential Information and are exempt from disclosure under FOIA. If the Receiving Party is compelled by applicable law (including but not limited to FOIA) to disclose any Confidential Information then, to the extent permitted by applicable law, such Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this section; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives its rights or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, such Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.
- d. Survival: The provisions of this Section shall survive the termination of this EULA for a period of five (5) years from such termination; provided that the confidentiality obligations for Confidential Information that constitutes a trade secret (as determined under applicable law) shall survive the termination or expiration of this Agreement for as long as such Confidential Information remains a trade secret under applicable law.

9. User Accounts

End User shall ensure that only Authorized Users can access the Services. User accounts may not be shared among individuals or used to provide access to the Services to individuals who are not the individual associated with the corresponding user account.

10. End User Responsibilities

End User will **(a)** be responsible for Authorized Users' compliance with this EULA, **(b)** be responsible for the accuracy, quality and legality of the End User Data and the means by

which it was acquired, **(c)** use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Bizagi promptly of any such unauthorized access or use, and **(d)** use the Services only in accordance with the Documentation and all applicable local, state, national, and foreign laws, treaties and government regulations, including those related to data privacy, international communication, and the transmission of technical or personal data in connection with End User's use of the Services.

11. Equipment and Software

End User must provide at its own expense Internet access, compatible software and compatible equipment to access and use the Services. End User must meet the system requirements that Bizagi specifies.

12. Notice of unauthorized use

End User must report to Bizagi or the Bizagi Authorized Reseller immediately, and use reasonable efforts to stop immediately, any actual or suspected copying or distribution of the Services in violation of this EULA.

13. Availability

Bizagi will endeavor to make the Services available 99.95% of the time for Automation Services and 99.9% of the time for Modeler Services and Studio Collaboration Services, as further described in the Bizagi Cloud Service Level Agreement available at: <https://www.bizagi.com/sa?BC&CL&SLA> (the "SLA"). End User must submit any requests for Service Credits that it is owed in accordance with the SLA to the Bizagi Authorized Reseller.

14. Warranty

- a. Bizagi warrants that during the Subscription Term the Services will perform in all material respects as described in the Documentation.
- b. **DISCLAIMER:** BIZAGI DOES NOT GUARANTEE THAT (A) THE SERVICES WILL OPERATE ERROR-FREE OR UNINTERRUPTEDLY, OR THAT BIZAGI WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH END USER DATA OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY BIZAGI, AND (C) THE SERVICES WILL MEET END USER'S REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. END USER ACKNOWLEDGES THAT BIZAGI DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. BIZAGI IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. BIZAGI IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM END USER'S CONTENT THIRD-PARTY CONTENT. BIZAGI DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF ANY THIRD-PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.
- c. **ADDITIONAL DISCLAIMER:** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-

INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE. END USER FURTHER ACKNOWLEDGES THAT IN ENTERING THIS EULA IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.

- d. **EXCLUSIVE REMEDY:** FOR ANY BREACH OF THE WARRANTY SET FORTH IN SECTION 14(a), END USER'S EXCLUSIVE REMEDY AND BIZAGI'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF BIZAGI CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, END USER MAY TERMINATE THE AFFECTED SERVICES AND SUBMIT TO THE BIZAGI AUTHORIZED RESELLER A CLAIM FOR REFUND OF ANY PREPAID FEES COVERING THE REMAINDER OF THE SUBSCRIPTION TERM. IN ANY CASE, IN ORDER FOR END USER TO SUBMIT A WARRANTY CLAIM UNDER THIS EULA, END USER MUST SUBMIT A SUPPORT TICKET IN ORDER TO RESOLVE THE NON-CONFORMITY AS SET FORTH IN SECTION 6.

15. Limitation of liability / exclusion of consequential and related damages

- a. IN NO EVENT SHALL BIZAGI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY END USER TO THE BIZAGI AUTHORIZED RESELLER FOR THE SERVICES. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.
- b. EXCEPT FOR ANY LIABILITY THAT CANNOT BE LIMITED BY LAW, IN NO EVENT WILL BIZAGI HAVE ANY LIABILITY TO END USER FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF BIZAGI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
- 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: (1) the parties' obligations under Section 16; or (2) violation of the other's intellectual property rights.
- d. Federal Agencies. For End Users that are Federal Agencies, this Section shall not impair your right to recover for fraud or crimes arising out of or related to this Agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

16. Indemnification

- a. **Indemnification by Bizagi:** Bizagi will indemnify and hold End User harmless, from and against any claim against End User brought by a third party alleging that the Services infringes or misappropriates such third party's valid patent, copyright, trademark or trade secret (an "**IP Claim**"). Bizagi shall, at its expense, defend such IP Claim and pay damages finally awarded against End User in connection therewith, including the reasonable fees and expenses of the attorneys engaged for such defense, provided that **(a)** End User promptly notify Bizagi of the threat or notice of such IP Claim; **(b)** End User fully cooperates with Bizagi in connection therewith. Notwithstanding the foregoing, in accordance with 28 U.S.C. § 516, the U.S. Department of Justice has the sole right to represent the United States in any action related to this Section 16(a). This provision shall not be construed to limit End User's rights, claims, or defenses which arise as a matter of law or pursuant to any other provision of this EULA.

- b. Indemnification Exclusions. Bizagi shall have no obligations under this section or any other liability for any claim of infringement or misappropriation resulting or alleged to result from: (a) any modification, alteration or enhancement to the applicable Services by any person or entity other than Bizagi; (b) any use of the applicable Services by End User in any manner for which such Services were not designed or otherwise in a manner inconsistent with the Documentation; (c) the combination, operation or use of the applicable Services or any part thereof in combination with any equipment, software, data or documentation not approved by Bizagi; (d) materials, items, resources, or services provided or performed by End User (whether or not used in connection with or incorporated into the Services); and (e) End User's continued use of the allegedly infringing Services after being notified thereof or after being informed of and provided with modifications that would have avoided the alleged infringement.
- c. Indemnification Remedy: In the event an infringement or misappropriation claim as described in Section 16(a) arises, or if Bizagi reasonably believes that a claim is likely to be made, Bizagi shall have the right, at its sole option and in lieu of indemnification, to: (a) modify the applicable portion of the Services to become non-infringing but functionally equivalent; (b) replace the applicable portion of the Services with material that is non-infringing but functionally equivalent; (c) obtain for End User the right to use the applicable portion of the Services upon commercially reasonable terms; or (d) remove the infringing or violative aspect of the Services if it can be removed without material degradation of the applicable Services.
- d. End User Indemnification / Liability :
 - i. Bizagi reserves the right to seek indemnification from End User as follows in the event a Federal statute permits such indemnification. In such case, End User will defend Bizagi against any claim, demand, suit or proceeding made or brought against Bizagi by a third party alleging that End User Data, or End User's use of the Services in breach of this EULA, infringes or misappropriates such third party's intellectual property rights or violates applicable law; (a "Claim Against Bizagi"), and will indemnify Bizagi from any damages, attorney fees and costs finally awarded against Bizagi as a result of, or for any amounts paid by Bizagi under a court-approved settlement of, a Claim Against Bizagi, provided Bizagi (a) promptly give End User written notice of the Claim Against Bizagi, (b) give End User sole control of the defense and settlement of the Claim Against Bizagi (except that you may not settle any Claim Against Bizagi unless it unconditionally releases Bizagi of all liability), and (c) give End User all reasonable assistance, at End User's expense.
 - ii. Further, End User agrees to pay for any loss, liability, or expense which arises out of or relates to End User's acts or omissions with respect to its obligations hereunder or its use of the Services, where a final determination of liability on the part of End User is established by a court of law or where settlement has been agreed to by the End User with, where appropriate, coordination of the Department of Justice.

17. General provisions

- a. Usage Review: Bizagi may review, at its own expense, End User's use of the Services to assess whether such use is in accordance with this EULA and to ensure End User's compliance with the terms of this EULA or the terms of the agreement between End User and the Bizagi Authorized Reseller. The End User agrees to cooperate with Bizagi's review and provide reasonable assistance and access to information. Any such review shall not unreasonably interfere with the End User's normal business operations. Any discrepancies found in such review may result in a charge to the End

User. Bizagi will issue any such invoice to the Bizagi Authorized Reseller, which will in turn invoice such charges to the End User. Any disputed charges will be resolved through the Disputes clause at FAR 52.233-1.

- b. Service Analyses: Bizagi may (i) compile anonymous statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services, to create statistical analyses, and for research and development purposes (“Service Analyses”) which may be made publicly available.
- c. Marketing: Only with End User’s prior written consent, Bizagi may: (i) include End User’s name and logo in a list of Bizagi’s customer to publicize the execution of this EULA, (ii) refer to End User’s name and logo on Bizagi’s website; and (iii) refer to End User’s name and logo in marketing materials. Further, End User agrees to serve as a reference for Bizagi following the go-live date of End User’s solution, upon written agreement between the Parties at that time.
- d. Governing Law Dispute resolution: This EULA is governed by Federal Law. Any action to enforce this EULA must be brought in the state of Delaware. Any disputes relating to alleged breaches of this EULA shall be handled in accordance with the Contracts Disputes Act, 41 U.S.C. §§7101-7109.
- e. Export Restrictions: Export laws and regulations of the United States of America and any other relevant local export laws and regulations apply to the Services. End User agrees that such export laws govern its use of the Cloud Services (including technical data) provided under this Agreement, and the End User agrees to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). End User agrees that no data, information, software programs and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
- f. Survival: Notwithstanding anything to the contrary contained herein, all terms of this EULA relating to confidentiality, proprietary rights, indemnification, disclaimers of warranty and limitations of liability, as well as those terms that by their nature survive any expiration or termination of this EULA shall survive any termination or expiration of this EULA.
- g. Relationship: No joint venture, partnership, employment, or agency relationship exists between End User and Bizagi as a result of this EULA or End User’s use of the Services.
- h. Entire Agreement: This EULA, together with all referenced Schedules, constitutes the full and complete understanding and agreement between the Parties with respect to the subject matter of this EULA and constitutes a full statement of the terms of their agreement. This EULA supersedes all prior written agreements and contemporaneous oral agreements with respect to the subject matter hereof. End User has not relied upon any representation or promise made or given by or on behalf of Bizagi that is not set forth herein as an inducement to enter into this Agreement. End User has not relied on the delivery of any future functionality regardless of any verbal or written communication about Bizagi’s future plans.
- i. Amendment: This EULA may only be modified by a written agreement signed by duly authorized representatives of End User and Bizagi.
- j. Severability: If any provision of this EULA is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

- k. Waiver: Bizagi's failure to enforce any right or provision in this EULA shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Bizagi in writing.
- l. Assignment: This EULA may not be assigned by End User without Bizagi's prior written approval. Assignments of this EULA by Bizagi will be regulated by FAR 41.1200 - 1205.
- m. Force Majeure: Excusable delays shall be governed by FAR 52.212-4(f) to the extent to inconsistent with this EULA. All Parties will use reasonable efforts to mitigate the effect of any force majeure event. If such event continues for more than 30 days, either Party may cancel unperformed Services and affected orders upon written notice. This section does not excuse End User's obligation to pay for any Services to the extent Bizagi is still able to deliver such Services in accordance with this EULA.
- n. Documents Incorporated Via Link: Certain documents are incorporated via link into this EULA. All references to "Customer" in such links will be deemed to apply to End User, and any references to a main agreement shall be deemed to apply to this EULA. If any such documents contain an indemnification provision which requires indemnification by the End User, such provision shall not apply unless a Federal statute permits such indemnification. Further if any such documents contain a provision which (a) allows for the automatic renewal of Services and / or fees; (b) requires the governing law to be anything other than Federal law; and / or (c) otherwise violates Federal Law, such provisions shall not apply with respect to End user.
- o. Shrink-wrap. No provisions of any shrink-wrap or any click-through agreement that is provided in conjunction with the Services accessed under this EULA shall apply in place of, or serve to modify any provision of this EULA, even if End User or its authorized officer affirmatively accepts such shrink-wrap or click-through provisions. For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this EULA, then the relevant term or condition of this EULA shall govern and supersede the purchase of such Services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

GLOSSARY

- a. **Affiliate:** is any entity that, with respect to a Party to this Agreement, controls, is controlled by, or is under common control with such Party, either directly or indirectly, by share ownership, contract or otherwise. For purposes of this definition, the term “control” and correlative terms mean ownership, directly or through one or more Affiliates, of fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, or status as a general partner in any partnership, or any other arrangement whereby a Party controls or the power to direct or cause the direction of the management and policies of an entity
- b. **Authorized Users:** means those employees, consultants, agents, contractors, and third parties, who are authorized by the End User to use the Services in accordance with this EULA. Authorized User access control shall be integrated with End User’s own user authentication system or can be managed by End User using Bizagi’s own authentication system. Only Authorized Users can access the Services.
- c. **Bizagi Authorized Reseller:** means the entity that has been authorized and certified as a reseller of the Services and that resells the Services to the End User pursuant to a separate contract between such entity and the End User.
- d. **Bizagi Performance Units (BPUs):** A BPU is a unit of measurement for the performance (processing capacity) of an Automation Service environment. One BPU encompasses the different resources needed for an environment to execute 10,000 steps per month.
- e. **Confidential Information:** means any non-public information or materials belonging to, concerning or in the possession or control of a Party or its affiliates ("Disclosing Party") that is furnished, disclosed, or otherwise made available (directly or indirectly) to the other Party ("Receiving Party"), which is either clearly identified as confidential at the time of disclosure or is of a type that a reasonable person would recognize it to be confidential, including without limitation each Party’s respective business and marketing plans, technology and technical information, product designs, business processes, financial information (including costs, profit or margin information), inventions, research and development, employee skills and salaries, and customer information. The Parties agree to disclose only information that is required for the performance of obligations under this EULA.
- f. **Documentation** means all user manuals, operating manuals, technical manuals and any other instructions, specifications, documents or materials, in any form or media, that describe the functionality, installation, testing, operation, use, maintenance, support, or technical or other components, features or requirements, of the Services, which are available at <http://help.bizagi.com> or any other URL as may be provided to End User from time to time.
- g. **Model Owner:** means the Authorized User who creates and stores a new process. Owner can also “invite” Editors to view, modify and collaborate.
- h. **Performance Levels:** means the performance levels available to customers which are measured in Bizagi Performance Units (BPUs).
- i. **Step:** A step is any shape in a process diagram, except for the start and the end shapes.
- j. **Third Party Content:** means information obtained by the End User from publicly available sources or made available directly to the End User by other companies or individuals under separate terms and conditions, that the End User decides to use and or store in the Services.

Schedule 1 – Product Specific Terms

1. **BIZAGI CLOUD AUTOMATION SERVICES.**

- a. The Bizagi Cloud – Automation Service is a subscription-based service that provides all the power of Bizagi Digital Business Platform in the cloud. Use of the Bizagi Cloud – Automation Service is measured on a per-usage basis and has no limit on the number of Authorized Users or process applications that can use the platform. The number of BPU's included in End User's subscription is as set forth in the agreement between End User and the Bizagi Authorized Reseller.
- b. Bizagi Cloud – Automation Service provides a private cloud for each customer. Each private cloud is isolated so that the cloud is not shared with other customers, and access is only granted to Authorized Users.
- c. Scale Up
 - i. End User may request to scale up the Performance Level or add new environments during the Subscription Term by contacting the Bizagi Authorized Reseller. Such Bizagi Authorized Reseller will coordinate with Bizagi to comply with such request. End User will be required to pay any fees to the Bizagi Authorized Reseller resulting from such scale up in Performance Level in accordance with the payment terms of its agreement with the Bizagi Authorized Reseller.
 - ii. Automatic Scale Up / BPU Report. Bizagi will generate a BPU usage report on a monthly basis which shows End User's BPU consumption during the previous month ("BPU Report"). If the BPU Report shows that End User has exceeded the maximum number of BPU's included in the contracted Performance Level as permitted in its subscription for two consecutive months and End User fails to upgrade to the appropriate Performance Level during such two (2) month period, then Bizagi will notify the Bizagi Authorized Reseller and automatically scale up End User to the appropriate Performance Level. The appropriate Performance Level will be determined based on the average BPU usage during the previous two (2) month period. End User will be required to pay any fees to the Bizagi Authorized Reseller resulting from such scale up.
- d. Scale Down. Upon End User's request to the Bizagi Authorized Reseller, Bizagi will permit Customer to Scale Down to a lower Performance Level, with such Scale Down going into effect at the time of the next renewal.
- e. System Reliability. Bizagi automatically maintains three replicas of database and servers to protect against hardware failure and increase system reliability.
- f. Upgrading Service. Whenever updates/upgrades are available, Bizagi will inform its end users and provide documentation and release notes. End User decides when to upgrade and requests the start of the upgrade procedure through the Bizagi Authorized Reseller. The Bizagi team will schedule the execution of the upgrade at an agreed date/time with the End User. In any event the upgrades must be completed within non-working days or hours.
- g. Virtual Private Network (VPN Service). If purchased, End User may choose to purchase a VPN Service to extend the End User's private network and provide a tunnel over the communication channel between Bizagi Cloud – Automation Service and the End User's corporate premises. The VPN Service includes initial setup, connectivity tests, and technical support. To use the VPN service the Customer needs a supported VPN device located on-premises, with a Public IP address (Ipv4) assigned, with capabilities to be configured using the IPsec protocol. In the event that Customer has purchased a VPN Service, in the terms of this section 14, as well as Bizagi Cloud – Disaster Recovery Service, a second VPN Service must be acquired to access the Bizagi Cloud – Disaster Recovery Service.

2. **BIZAGI CLOUD – MODELER SERVICES**

- a. Editors of a Model uploaded to the Bizagi Cloud Modeler Services can design, review and change the process flow from anywhere, using the Modeler desktop, and provide real-time feedback via online discussions with other team members. Changes to the process are visible in real time by all Editors or Contributors. Modeler Services provides an isolated private cloud where the definition of all End User's Processes is securely stored in an environment that can only be accessed by Authorized Users.
- b. A subscription to Bizagi Cloud Modeler Services is required to be able to use the collaboration features, to save in the cloud process repository, to have a process portal and enjoy all other features included in the Service. An "Enterprise" subscription plan allows End User to invite Editors or Contributors.
- c. End User must have a current subscription for the Authorized Users of its Enterprise subscription plan. Each invitation (i.e., email address) may be used only by a single individual. All Authorized Users must be part of the Enterprise subscription plan.
- d. In the subscription, all processes are uploaded to the process repository and become part of Modeler Services. If End User adds more Authorized Users during the term of the Order Form, End User will be responsible for paying the yearly prorated fee. That is, End User will only be charged for the remaining number of days until the end of the Term.
- e. All Authorized Users are created as "Editors", who have the ability to (1) upload their models, which will be part of the subscription, (2) open a shared Model with Modeler desktop to change process flow; (3) open a shared Model with Modeler desktop to include or change its documentation; and (4) include comments on any Model, diagram or shape via Modeler desktop or a browser. "Editors" can invite other users of the subscriptions as "Contributors" to (1) view the process flow and its documentations, and (2) include comments on any Model, diagram or shape using a browser. Contributors have no access to editing process flow or documentation. Contributors have no access to edit process flows or Documentation in Modeler. Customer Data Representations
- f. Editors acknowledge that any data submitted by them to Cloud Models may be retained indefinitely, distributed, displayed, published, modified, and used for any purpose by that Cloud Model's Owner, notwithstanding any other provision of this Agreement. Bizagi has no responsibility to enforce any confidentiality obligation the Model's Owner may have to End User. If an Editor submits content to a process, the Owner of that process may publish or distribute End User Data to a third party, revoke the Editor's permission to access a Process and End User's Data within it, or transfer all rights in the process to a third party.
- g. The Bizagi Cloud Modeler Services include features that permit Owners to invite Editors to view, modify and collaborate. Bizagi has no liability for any distribution, publication, display, use or disclosure of Customers Data by other users of the Bizagi Cloud Modeler Services to whom Customer provides or submit its data.

3. **BIZAGI CLOUD – STUDIO COLLABORATION SERVICES**

- a. Bizagi Cloud Studio Collaboration Services, also mentioned as Studio Collaboration Services, offers Authorized Users the ability to work from anywhere on the automation of the processes that are shared with them. Changes are visible in real time, allowing users to co-develop and accelerating the project's time to market. Bizagi Cloud Studio Collaboration Services provides an isolated private cloud where the definition and

resources of automated processes are securely stored, in an environment that can only be accessed by Authorized Users.

- b. A subscription to Bizagi Cloud Studio Collaboration Services is required to invite users to create projects in the cloud development environment, run a work portal on the cloud development environment and enjoy all other features included in the Service. The initial subscription includes one user package that provides access to the Services for 5 Authorized Users, one cloud development environment where Authorized Users can upload and store an unlimited number of projects and run one project.
- c. In the subscription, all projects that are uploaded to the development environment become part of Bizagi Cloud Studio Collaboration Services.
- d. All Authorized Users have the ability to (1) upload their projects, which become part of the subscription, (2) open a shared Project with Bizagi Studio, (3) to automate processes shared with them and (4) share projects with other Authorized Users.
- e. The Customer is assigned a unique URL to access the Studio Collaboration Services via Bizagi Studio, which shall follow the format: <https://build-companyname.bizagi.com>
- f. Customer Data Representations
 - i. Authorized Users acknowledge that any data submitted by them to a Cloud Project may be retained indefinitely, distributed, displayed, published, modified, and used for any purpose by that Cloud Project's Owner, notwithstanding any other provision of this Agreement. Bizagi has no responsibility to enforce any confidentiality obligation the Owner may have to Customer. If an Authorized User submits content to a Cloud Project, the Owner of that Cloud Project may publish or distribute Customer Data to a third party, revoke Customer's permission to access a Cloud Project and End User's Data within it, or transfer all rights in the Cloud Project to a third party.
 - ii. The Services include features that permit Owners to invite other users to build and collaborate on a Cloud Project. Bizagi has no liability for any distribution, publication, display, use or disclosure of Customer's Data by other users of the Services to whom Customer provides or submit its data.