

BiziBar **Subscription Terms**

1. BiziBar is an on-line service which is available by monthly subscription service fee only. Fees are paid in advance via credit card or PayPal and charged on the first day of each month.
2. There is no contract term and customers may cancel at any time. No refunds will be issued for monthly fees already charged.
3. Discounts are offered for 12 or 24 month subscription terms. These longer-term agreements are paid 12 months in advance.
4. Each Role Center (Group KPI user bundles) has a subscription service fee which includes five named users with one concurrent connection per user. (The term “KPI” refers to Key Performance Indicators.)
5. Additional named user bundles may be purchased for each Role Center.
6. An enterprise agreement provides ten named users (one concurrent named connection per user) for each of the Role Centers.
7. For the KPI bundle(s) purchased, a set-up fee will be charged for month-to-month subscribers. No set-up fee is charged for subscribers who elect the 12 or 24-month packages. The setup includes:
 - a. Installing BiziBar API set
 - b. Installing data extraction scripts
 - c. Verifying secure data transfer to BiziBar server
8. Certain KPIs require statistical data to be collected and summarized. For these KPIs (see listing on price sheet) standard IFS background jobs must be run. If you require assistance setting up or scheduling these jobs, an additional fee will be charged. The total fee will be dependent on number and type of KPIs selected.
9. If customer makes changes to IFS; installs a modification or patch, activates a new module, or upgrades to a new version that disrupts data being collected by BiziBar then additional service fees will apply.
10. Only standard Role Center KPIs will be provided for the monthly subscription fees quoted. Each KPI provided in a Role Center Group will be defined in a specification which must be acknowledged at the time of subscription purchase. Customers requiring modified or non-listed KPIs can purchase services to design and build the required KPIs.



BiziBar Software Subscription Agreement

1. LICENSE GRANT.

Subject to the terms and conditions of this Agreement, ENSYNC SOLUTIONS grants to Subscriber and Subscriber accepts from ENSYNC SOLUTIONS a non-transferable, non-exclusive license to access the Software via the Service solely for internal business purposes by the number of licensed users specified in Pricing Schedule for which the license fees set forth therein have been paid.

2. RESTRICTIONS ON USE.

Subscriber may not: (a) modify, translate, reverse engineer, decompile, disassemble, upload, post or create derivative works based on the Software or Service; (b) assign, rent, lease, grant a security interest in, or otherwise transfer any rights to the Software or Service; or (c) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Service. In addition, Subscriber agrees not to make any attempt to gain unauthorized access to databases of any other subscriber using the Service.

3. FEES.

Subscriber shall pay to ENSYNC SOLUTIONS the installation and configuration fee and monthly subscription fees set forth in Pricing Schedule for access to the Software via the Service. Month-to-month Subscribers are responsible for a set-up fee. This setup includes: installing the BiziBar API set, installing data extraction scripts, and verifying data transfer to the BiziBar server. Subscriber is responsible for all charges incurred while its account and password(s) are being used. All charges for the Software and Service shall be in accordance with the then current fee schedule set forth in Pricing Schedule hereto. Subscriber agrees to pay all fees (including applicable taxes) on account of use of the Software and Service. ENSYNC SOLUTIONS reserves the right to change its fees for the Software and Service at any time. ENSYNC SOLUTIONS will notify Subscriber in writing of any such changes. Subscriber shall bear sole responsibility for the payment of any taxes imposed on Subscriber's use of the Software and Service by national and/or local jurisdictions of and within the country of Subscriber's use.

Certain KPIs require statistical data to be collected and summarized. For these KPIs (see listing on price sheet) background jobs must be run. If Subscriber requires assistance in setting up or scheduling these jobs, an additional fee will be charged. The total fee will be dependent upon number and type of KPIs selected.

If customer makes changes to IFS; installs a modification or patch, activates a new module, or upgrades to a new version, then additional service fees may or may not apply.

4. OWNERSHIP/DATA

(a) ENSYNC SOLUTIONS holds all right, title and interest in and to the Software (including without limitation, copyrightable or patentable subject matter, trade secrets, or other intellectual property rights). All modifications, adaptations, revisions, changes, enhancements, translations, abridgements, condensations, expansions, conversions, upgrades or additions made to the Software shall be the sole and exclusive property of ENSYNC SOLUTIONS and shall be considered a part of the Software, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto. Subscriber acknowledges that ENSYNC SOLUTIONS owns all United States and international copyrights in the Software and any portions thereof. Subscriber shall not do anything to infringe upon, harm, or contest the validity of any intellectual property rights of ENSYNC SOLUTIONS. Subscriber shall not remove or obscure ENSYNC SOLUTIONS proprietary rights notices or fail to reproduce them on all copies of the Software in any form.

(b) Any data entered by Subscriber, including financial data and Subscriber information generated by the Software ("Subscriber Data") shall remain the sole property of Subscriber and will be held in confidence in accordance with Section 5 of this Agreement.

(c) Subscriber acknowledges and agrees that its use of the Software and Service, and any data or information accessed using the Software and Service will be at Subscriber's own risk. Subscriber acknowledges and accepts that ENSYNC SOLUTIONS shall not be responsible in any manner whatsoever for any errors in the Subscriber Data, or in the accuracy or timeliness thereof or in the use of any such information. The Subscriber and each authorized user shall make and rely on their own independent investigation of the truth, completeness, accuracy, and suitability of the data provided by Subscriber and each authorized user. Subscriber accepts and agrees that ENSYNC SOLUTIONS is not liable for loss of Subscriber Data.

5. CONFIDENTIALITY

(a) Subscriber acknowledges that the Software is a confidential and proprietary product and process, that it embodies valuable trade secrets of ENSYNC SOLUTIONS, and that ENSYNC SOLUTIONS has certain intellectual property rights in and to the Software including, but not limited to, patents, copyrights, trade secrets, trademarks, and service marks. Subscriber agrees to retain and treat the Software, Software specifications and all supporting documentation in confidence, and shall not provide, disclose or otherwise make available the Software, or any part thereof, in any form to any person or entity, other than its employees or authorized third party consultants, without the prior written consent of ENSYNC SOLUTIONS. Subscriber shall prevent and not allow any of such information or materials to be disclosed, used, sold, assigned, leased, sub-licensed, commercially exploited or marketed in any way or manner by Subscriber or its employees, agents or representatives to any third parties. Subscriber shall use its best efforts to safeguard the confidentiality of the Software, shall take steps to advise its employees of the confidential nature of the Software, and will ensure that they abide by the restrictions and requirements of this Section 5. Further, Subscriber shall immediately advise ENSYNC SOLUTIONS of any suspected breaches by such third parties.

(b) ENSYNC SOLUTIONS acknowledges that the Subscriber Data is confidential and ENSYNC SOLUTIONS agrees to retain and treat the Subscriber Data in confidence, and shall not provide, disclose or otherwise make available the Subscriber Data, or any part thereof, in any form to any person or entity, without the prior written consent of Subscriber. ENSYNC SOLUTIONS shall not use the Subscriber Data except to support such data or in the course of providing the Service to Subscriber. ENSYNC SOLUTIONS shall use its best efforts to safeguard the confidentiality of the Subscriber Data, shall take steps to advise its employees and other involved parties of the confidential nature of the Subscriber Data and will ensure that they abide by the restrictions and requirements of this Section 5. Further, ENSYNC SOLUTIONS shall immediately advise Subscriber of any suspected breaches by third parties.

(c) FRANCHISEES.

If the Subscriber is a Franchisee and the Franchisor has signed a Franchise Subscription agreement with ENSYNC SOLUTIONS, then the Subscriber agrees to allow ENSYNC SOLUTIONS to provide the Franchisor access to all of the Subscriber data.

6. EQUIPMENT.

Subscriber shall, at its own expense, acquire the compatible hardware and accessories needed to gain access to the Software by means of the Service. Subscriber shall be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Software and Service.

7. SUPPORT.

(a) From the Effective Date of this Agreement, ENSYNC SOLUTIONS shall provide Licensee with Technical Support Service for the Software and for any active Revisions, Updates, Enhancements, or New Major Releases provided to and in use by Subscriber. The monthly Technical Support Service fee shall be as set forth in Pricing Schedule on a monthly basis following the Effective Date. Thereafter, the monthly support fee shall be at ENSYNC SOLUTIONS's standard prevailing rate which is subject to change upon notice by ENSYNC SOLUTIONS. For purposes of this Section 7, Technical Support Service shall be defined to be (i) correction of unacceptable software errors, as determined by ENSYNC SOLUTIONS; (ii) all Revisions, Updates, and Enhancements (as such terms are defined below) to the Software and revised Software documentation, if any, that corresponds to such Revision, Update or Enhancement; and (iii) telephone support between the hours of 8:30 AM and 5:30 PM, Central Time, not including holidays, to be provided to a single individual designated by Subscriber as specified in Pricing Schedule. The words "Revisions," "Updates," or "Enhancements" shall be defined as error corrections, modifications and all changes and/or improvements to the Software that relate to operating performance but do not alter the basic function of the Software as determined by ENSYNC SOLUTIONS.

(b) ENSYNC SOLUTIONS' BizBar support is not intended to replace the support provided by Subscriber's cellular, wireless, or internet provider.

(c) Additional support, including engineering consulting, customization, modification, and data migration services may be made available to Subscriber, upon Subscriber request and as agreed upon by ENSYNC SOLUTIONS. Such additional services shall be provided to Subscriber at ENSYNC SOLUTIONS's standard prevailing rate, plus ENSYNC SOLUTIONS' reasonable out-of-pocket expenses incurred to provide such services.

(d) ENSYNC SOLUTIONS reserves the right to interrupt Service, as necessary, to perform routine maintenance or error corrections, modifications or other changes. ENSYNC SOLUTIONS agrees to notify Subscriber via e-mail and shall not interrupt the Service, except outside of normal business hours.

8. PASSWORD.

ENSYNC SOLUTIONS shall provide one user-ID and a password to allow on-line access from any site by an authorized user for up to the number of user licenses purchased by Subscriber. An authorized user of Subscriber must be (a) Subscriber, if Subscriber is an individual, (b) a person employed by Subscriber, or (c) a person approved by Subscriber. Subscriber shall maintain its user-ID and password(s) in strict confidence. Subscriber agrees to monitor and require each authorized user's strict compliance with this Agreement. Subscriber may create additional user-IDs and passwords for up to the number of user licenses purchased by Subscriber, subject to ENSYNC SOLUTIONS's policies and fees then in effect. All terms and conditions of this Agreement are applicable to all passwords issued under this Agreement and Subscriber agrees to assume sole responsibility for compliance therewith, for all charges incurred for each and every password and for maintaining the security of each and every password. Subscriber shall be liable for all use of the Software and Service if such use is via Subscriber's password(s) and user ID. ENSYNC SOLUTIONS reserves the right to modify or suspend access to the Software or Service at any time for any reason without notice or refund.

9. NO WARRANTY.

THE SOFTWARE AND SERVICES ARE PROVIDED TO SUBSCRIBER "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ANY OTHER WARRANTY, CONDITION, GUARANTY OR REPRESENTATION, WHETHER ORAL, WRITTEN OR IN ELECTRONIC FORM, INCLUDING BUT NOT LIMITED TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION THEREIN OR PROVIDED BY THE SERVICE.

10. DISCLAIMERS

(a) ENSYNC SOLUTIONS shall not be liable for any damages to, or viruses that may infect Subscriber's computer equipment or other property on account of Subscriber's access or use of the Software or Service. Subscriber acknowledges and agrees that the Software accessed through the Service, as well as the medium Subscriber may use to gain access to such services, are not fault-tolerant, and may suffer from service outages, bottlenecks, and similar Internet system failures. Subscriber agrees that ENSYNC SOLUTIONS shall have no liability for such failures and that its only recourse shall be limited to terminating this Agreement pursuant to Section 15.

(b) ENSYNC SOLUTIONS disclaims any and all loss or liability resulting from, but not limited to: (1) loss of data; (2) loss of software or hardware; (3) loss or liability resulting from access delays or access interruptions; (4) loss or liability resulting from computer viruses; (5) loss or liability resulting from the non-delivery or mis-delivery of data; (6) loss or liability resulting from any errors, omissions or misstatements in any and all information obtained on or through the Software or Service; (7) loss or liability resulting from disclosure of confidential data; and h) loss or liability resulting from acts of God.

11. EXCLUSION OF DAMAGES.

NEITHER ENSYNC SOLUTIONS NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE AND/OR DATABASE CONTENT IS LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING IN WHOLE OR IN PART TO SUBSCRIBER'S ACCESS TO, OR USE OF, OR INABILITY TO USE, THE SERVICE AND/OR THE DATABASE CONTENT, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR GOODWILL, LOSS OF PROFITS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, LITIGATION, OR SIMILAR DAMAGES, UNDER ANY CIRCUMSTANCES, OR LEGAL THEORY, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, EVEN IF ENSYNC SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

12. LIMITATION OF LIABILITY.

WITHOUT LIMITING THE FOREGOING, SUBSCRIBER UNDERSTANDS THAT ITS EXCLUSIVE REMEDY AND THE CUMULATIVE LIABILITY OF ENSYNC SOLUTIONS FOR ANY AND ALL CLAIMS RELATING TO THE SOFTWARE OR SERVICE PROVIDED BY ENSYNC SOLUTIONS, IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF THE BASIC SUBSCRIPTION FEES PAID TO ENSYNC SOLUTIONS FOR SERVICES WITHIN THE PRIOR YEAR. THE LIMITATION OF DAMAGES SET FORTH HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SUBSCRIBER AND ENSYNC SOLUTIONS. THE SOFTWARE AND SERVICE WOULD NOT BE PROVIDED WITHOUT SUCH LIMITATIONS.

13. INDEMNIFICATION.

ENSYNC SOLUTIONS shall indemnify and hold Subscriber harmless from any third party claim, expense, liability, or damage arising out of or in connection with the Subscriber's use of the Software or Service.

14. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date, shall continue for one (1) month, and shall automatically renew for successive one month terms thereafter (upon payment of the subscription fee on or before the renewal date). Subscriber may terminate this Agreement immediately by non-payment on the due date or by written notification to ENSYNC SOLUTIONS. ENSYNC SOLUTIONS may terminate the Agreement by providing written notice thirty days

before the date of the proposed termination. Upon any termination of this Agreement, ENSYNC Solutions' sole obligation to Subscriber will be to return to Subscriber the Subscriber Data.

15. ASSIGNMENT.

Subscriber shall not assign or transfer its rights, or delegate its rights or responsibilities under this Agreement without the prior written consent of ENSYNC SOLUTIONS. Any purported assignment or delegation in violation of this Section shall be null and void and of no force or effect. ENSYNC SOLUTIONS may assign this Agreement and/or payments due hereunder without requirement for Subscriber permission or approval.

16. GOVERNING LAW/ACTIONS.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas, without giving effect to its conflicts of law provision. No action arising out of the license of the Software or otherwise under this Agreement may be brought by either party more than one year after the cause of action arises, except that an action for non-payment may be brought at any time within one year of the date of the last payment made hereunder.

17. ARBITRATION.

Any dispute, controversy or claim arising out of or related to this Agreement or the breach thereof, shall be resolved by arbitration substantially in accordance with the Commercial Arbitration Rules of the American Arbitration Association, in Overland Park, Kansas. Judgment upon any arbitration award may be entered into any court having jurisdiction, the parties hereby consenting to the jurisdiction of such courts for this purpose. Each party shall be entitled, under the supervision of the Arbitrator, to the amount of pre-arbitration discovery deemed reasonable by the Arbitrator. The discovery period shall not exceed sixty (60) days. The Arbitrator shall give full effect to Sections 10, 11, 12, and 13 and shall not deviate there from.

18. NOTICES.

Any notices required or permitted under this Agreement shall be in writing and shall be effective when delivered in person or sent by registered or certified mail (return receipt requested, with proper postage affixed) or by personal courier to the address set forth in this Agreement or any more recent address of which the sending party has been apprised.

19. AMENDMENT.

No modification, amendment or other change in this Agreement shall be effective for any purpose unless specifically set forth in writing signed by the party to be bound thereby. Either party may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom or practice to the contrary.

20. ENTIRE AGREEMENT.

This Agreement and its Exhibits, which are attached hereto and incorporated herein, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions of the parties.

21. BINDING EFFECT.

This Agreement shall be binding upon both parties hereto, their respective heirs, personal representatives, successors, and assigns, and without limitation, any corporate successor by merger, consolidation or other corporate reorganization.

22. NO WAIVER.

Neither party's failure to exercise any of its rights under this Agreement shall constitute or be deemed to constitute a waiver or forfeiture of such rights or of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

23. SEVERABILITY.

If any term or provision of this Agreement is found to be invalid or unenforceable or illegal under applicable law, such provision shall be narrowly construed to such an extent as is necessary to make it enforceable or, if such narrow construction is not possible, deemed to be deleted with the validity or enforceability of the remainder of this Agreement not effected thereby.