



Data Oz Solutions
Suite 7 – 267 Raymond St
Sale. Vic. 3850.

Phone: (03) 5143 3128 Fax: (03) 5143 1828 Support: 1300 765 928
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Standard Service Agreement

Data Oz Solutions

ABN 60 261 608 958

This agreement is between:

Data Oz Solutions of Suite 7 – 267 Raymond St, Sale, Victoria. 3850.

Ph: (03) 5143 3128, Fax: (03) 5143 1828, Email sysadmin@dataozsolutions.com.au

("Data Oz Solutions, Data Oz, we, us, our")

And

Customer of Data Oz Solutions ("Customer, you")

Your use of our services is subject to this agreement.

Data Oz Solutions provides and You acquire a service with Data Oz Solutions.

You certify that you are over 18 years of age.

You agree to be bound by the Standard Service Agreement, the Acceptable Use Policy and the Privacy Policy which can be found on our website www.dataozsolutions.com.au

We may update these policies from time to time.

You agree to provide proof of age if we request it.

You agree that you have read and understood this Standard Service Agreement by acquiring and accepting a service(s) with Data Oz Solutions.

1. Definitions and interpretation

1.1 Definitions

1.1.1 Acceptable Use Policy means the policy published on our website www.dataozsolutions.com.au

1.1.2 Agreement means the agreement made between us consisting of this Standard Service Agreement, Acceptable Use Policy, Privacy Policy and anything else agreed between us when you ordered the services.

1.1.3 Application means application form, the electronic, paper, voice or other form of application lodged by You.

1.1.4 Business means an activity undertaken as a commercial enterprise on a going concern basis, or engaged in for the purpose of profit on a continuous and repetitive basis.

1.1.5 "Billing Period" means Monthly by Calendar Month.

1.1.6 "Charges" means all Charges due to Data Oz Solutions for use of our service, in accordance with this Agreement.

1.1.7 "Customer" means a person who is seeking the supply of a service with Data Oz Solutions.

1.1.8 "Defined Abuse" means misuse of the Internet Access in an unlawful manner to menace or harass others.

1.1.9 "Equipment" means any hardware or related goods supplied to You by Data Oz Solutions for use of our services.

- 1.1.10 "Implied Term" means a term implied into this Agreement by consumer protection legislation and which such legislation prohibits from being excluded, modified or restricted.
- 1.1.11 "Internet Access" means connection to the Internet using hardware, software and protocols supported by Data Oz Solutions, and use of any additional services provided by Data Oz Solutions.
- 1.1.12 "Data Oz Solutions" means Data Oz Solutions. ABN 60 261 608 958 and its successors in business, agents, administrators, substitutes and permitted assigns.
- 1.1.13 "Material" means information sent or received through the Internet Access. This includes without limitation text, graphics, software, sound, video, e mail, and any other form of electronic information.
- 1.1.14 "notice" means any written notice that we send to you at the physical address, postal address, email address or fax or telephone number in our records.
- 1.1.15 "the service", "service" and "services" means any of the services that we provide to you under this agreement, including any advice that we may give you.
- 1.1.16 "System" refers to any device, computer, and network or telephone circuit used by us to supply your service(s).
- 1.1.17 "Terms and Conditions" means the terms and conditions on which a Broadband Service is supplied by Data Oz Solutions to you, the Customer, including mandatory terms and conditions required under Data Oz Solutions.
- 1.1.18 "third party" means any entity we engage to assist with provision of Your services.
- 1.1.19 "You" means the person named in the Application.
- 1.1.20 "Your" means in relation to You.

1.2 Interpretation

In this Agreement:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a gender includes the other genders;
- 1.2.3 the headings are used for convenience only and do not affect the interpretation of this Agreement;
- 1.2.4 other grammatical forms of defined words or expressions have corresponding meanings;
- 1.2.5 a reference to a document includes the document as modified from time to time and any document replacing it;
- 1.2.6 if something is to be or may be done on a day that is not a Business Day then it may be done on the next Business Day;
- 1.2.7 the word "person" includes a natural person and any body or entity whether incorporated or not;
- 1.2.8 where a party comprises more than one person or entity, this Agreement binds each of them jointly and severally;
- 1.2.9 the word "month" means calendar month and the word "year" means 12 months;
- 1.2.10 the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- 1.2.11 a reference to a thing includes a part of that thing;
- 1.2.12 a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- 1.2.13 wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- 1.2.14 money amounts are stated in Australian currency unless otherwise specified; and
- 1.2.15 a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body.

2. Data Oz Solutions Service

2.1 You Indemnify Us for any inability to provide services which are beyond our control, as we cannot guarantee that any service will be available at any given time or that any files, information or services will be error free or fault free.

2.2 Customer support is available via telephone from Monday to Friday during the hours of 9am to 5pm (excluding public holidays) and online support is provided between the hours of 8am to 12 midnight via the members area to assist You with any service we provide.

2.3 Data Oz Solutions will endeavour to make its services available 24 hours a day, seven days a week (except for network maintenance, that, when possible, we will notify you in advance). Data Oz Solutions does not guarantee that You will gain access to the service at any particular time.

2.4 To ensure optimal service to our clients and performance efficiency for our networks, we may choose to implement traffic shaping. (Please refer to our Acceptable Use Policy)

2.5 Your service(s) is provided via the carrier we choose and to the standard provided to us and your service(s) will cease to be our obligation if you transfer our service to another provider.

2.6 In order to provide some services to you (like international calls), we enter into arrangements with third parties and may be charged by them. If the third parties charge us more than we charge you for the service, we can charge you the difference in addition to our charge if we think your use of the services has been excessive or unusual.

3. Customer Responsibility and Acceptable Use Policy

3.1 You must retain a backup of data or software to maintain or replace any data stored on Data Oz Solutions data storage facilities.

3.2 You will not reveal to others Your account access password, nor assign, transfer or delegate Your responsibilities and obligations to any other person. You are responsible for any charges incurred through access gained by the production of its account access password.

3.3 For your own security you must not disclose any username or passwords we provide to you.

3.3 You agree to use the Service for legal purposes only and the transfer or storage of any material through the Service that breaches any law or regulation is strictly prohibited. This includes but is not limited to, data, material and information that is protected by copyright, or that is obscene, slanderous, discriminatory, threatening or in breach of any law or regulation.

3.4 You are responsible for making sure you comply with our Terms and Conditions.

3.5 You are responsible for paying us for all services used under your account and name.

3.6 You are not allowed to resell this service or assign or transfer this agreement to another person or corporation.

3.7 You are responsible for providing any equipment necessary for you to connect and access our service(s).

3.8 You cannot place, store or replay software or information on our system which is unlawful or disruptive to our system.

3.9 You are responsible for any data, files, content or directories you place on our Web Hosting servers and you must make sure that it does not infringe any copyright, trademark, patent or proprietary rights of others and is not libelous, illegal, harmful, defamatory, harassing, abusive or threatening to anyone or thing.

3.10 It is your responsibility to perform and maintain backups of your own files and data.

3.11 You must also comply with Data Oz Solutions' Acceptable Use Policy available at www.dataozsolutions.com.au

3.12 You will be liable for any fines, fees or damages charged to Data Oz Solutions or any other party because of Your actions.

3.13 You must regularly check the email address you have provided on your application form, and/or the members area for important notices from Data Oz Solutions, as all notices are deemed to have been sent by Data Oz Solutions when stamped by our sending mail server and/or posted in the members' area.

4. Service Fees and Payment Procedure

4.1 Service Fee. Your account is payable in advance and Data Oz Solutions may charge You a fee of \$45 each month on the outstanding balance.

4.2 Payment Procedure

4.2.1 For Credit Card payments Your card will be billed by Data Oz Solutions and your bank statement will show Data Oz Solutions.

- 4.2.1.1 For Direct Debits Your Bank Account will be billed by Ezi Payment Solutions Pty Ltd and Your Bank Statement will show Data Oz Solutions.
- 4.2.2 Your initial payment (on signup) will consist of any connection/activation fees. Any pro-rata charges for the previous month (which are calculated on a daily basis) will be included in Your first Monthly payment.
- 4.2.3 It is your responsibility to ensure that you have sufficient funds in your nominated account to enable the payment to be honoured by your financial institution. Automatic payments usually occur on the 1st of the Month, however transactions can take up to three (3) days depending on your financial institution. If your payment falls on a weekend or public holiday, it will be processed on the next working day.
- 4.2.4 You are advised to verify account details against a recent bank statement and if uncertain you should contact your financial institution.
- 4.2.5 If your payment is dishonoured or returned by your financial institution for any reason, Data Oz Solutions reserves the right to charge a dishonour fee of up to but not more than \$35 which will be added to your next scheduled payment and re-present the payment for processing again on the next business day.
- 4.2.6 Any dispute arising from this or subsequent payments are to be directed to Data Oz Solutions in writing to the address provided below.
- 4.2.7 If you lodge a Direct Debit (Bank) customer claim form with your financial institution they will investigate whether the transaction was authorised by you. If the transaction date was no earlier than 12 months from the date of your claim you should receive a response within 30 days from the date of your claim.
- 4.2.8 We will keep your information about your nominated account at the financial institution private and confidential unless this information is required to investigate a claim made in relation to an alleged incorrect or wrongful debt, or otherwise required by law.
- 4.2.9 You may stop, cancel, alter or defer your Direct Debit Request at any time by providing at least 14 day's written notification to Data Oz Solutions at the address below.
- 4.2.10 I/we authorise the Debit User to verify the details of the abovementioned account with my/our financial institution.
- 4.2.11 I/we authorise the financial institution to release information allowing the Debit User to verify the above mentioned account details.
- 4.2.12 I/we agree to accept payment notification from the business either by email or sms as determined by Data Oz Solutions. If I do not wish to receive such notifications I will contact Data Oz Solutions directly so as to be omitted from such notifications.
- 4.2.13 First Payment notice: is sent via email to the email address you have nominated one week prior to the scheduled debit date.
- 4.2.14 Payment reminder: is sent via email to the email address you have nominated on the 8th day of each month.
- 4.2.15 Final Payment Notice: is sent via email to the email address you have nominated on the 14th day of each month.
- 4.2.16 If you request a paper invoice to be posted or faxed to you, we will charge your account \$15 each time.
- 4.2.17 If Data Oz Solutions does not receive payment for your account after you have received a payment reminder you will be issued a notice in writing to your nominated postal address and a fee of \$15 will be charged to your outstanding account.
- 4.2.18 If your account is not paid by the due date, we may suspend or disconnect your service(s) without further notice and you may be charged a \$45 reconnection fee.
- 4.2.19 If we terminate, restrict or suspend Your service for any reason, we reserve the right not to reinstate the service until you have paid all amounts outstanding on all your accounts.
- 4.2.20 We may suspend Your service without notice if we reasonably believe that your use of Your service may be a credit risk to us.
- 4.2.21 If Your service is restricted or suspended, charges will continue to accrue at the same rate that would have been applicable had Your service not been restricted or suspended.

4.2.22 Failure to respond to any of the notices issued pursuant to clauses 4.2.13, 4.2.14, 4.2.15 and/or 4.2.17 will result in your account being referred to a debt collection agency to recover any money you owe to Data Oz Solutions. A debt collection fee of \$45 will be charged to your outstanding account.

4.2.23 If you dispute an individual amount on your charges you must pay the full amount and the amount you are disputing will be investigated and resolved before your next account falls due.

4.2.24 We will use our best endeavours to bill you promptly. However due to circumstances outside our control it is not always possible for us to include all charges for a billing period on the bill for that period. Some charges may appear on a later bill. In some cases, we may bill you for earlier charges after Your service has been terminated.

4.2.25 We may set off any amount payable to you against any amount payable by you to us.

4.2.26 We may report any payment default to a credit reporting agency.

5. Installation and Access

5.1 You must allow us safe access to your premises:

5.1.1 to enable us to provide the equipment and the services to you;

5.1.2 as required by us in connection with the provision, maintenance, repair or termination of Your service;

5.1.3 to inspect, test or modify equipment which may be causing interference or danger; and

5.1.4 this right of access will not end until all equipment is returned to us, even if this agreement has terminated in the meanwhile.

5.2 You must, to the extent possible under the terms of your occupation of the premises where the equipment is installed, allow us to, and, where applicable, will ensure that the landlord or any other relevant entity allows us to, enter and remove the equipment upon expiry or termination of this agreement.

5.3 We may charge you the replacement value of our equipment if you do not return it to us in good condition within 14 days of the termination of the service.

5.4 You must pay all costs associated with returning any equipment to us, including any freight and insurance charges.

6. Exclusion of Liability

6.1 Data Oz Solutions accepts no liability for loss resulting from use of the Service unless that liability cannot be excluded by law - in which case, Data Oz Solutions limits its liability to re-supply or replacement of the goods or services.

6.2 You Indemnify Data Oz Solutions for all direct, indirect and consequential losses, damages, costs, expenses, actions and claims arising out of or otherwise in connection with this Agreement, whether based on an action or claim in contract, equity, negligence, intended conduct, tort or otherwise

6.3 You indemnify us for any liability to provide services which are beyond our control, as we cannot guarantee that any service will be available at any given time or that any files, information or services will be error free or fault free.

6.4 If you signed the application form as a director, you accept 100% liability for any debt or loss incurred.

6.5 Where the account is in the name of a company and the facility falls in arrears greater than 60 days, the account will be charged to the name of the director as signed.

6.6 You understand that the Internet contains viruses, Trojan programs and other computer programs that may destroy or corrupt data on your own system. You agree to protect your system against viruses on a regular basis. You agree that we have no control over such programs or viruses and that we are not liable for any damage to, or loss of data caused by a virus or other similar program. You are solely liable for all charges arising from use of your account as a result of viruses, Trojan programs, or other computer programs.

6.7 You expressly agree that use of the Service including any content you may obtain through or on the Service including reproduction, communication or making available of material derived from your use of the Service is at your sole risk.

6.8 You agree that the Service, including any CD ROM provided to you in connection with the Service, is provided without warranties of any kind, either express or implied, unless such warranties are legally incapable of exclusion.

6.9 The liability of the Data Oz Solutions Internet Services and its providers for breach of any term, condition or warranty or under any remedy implied by law (which cannot be excluded) will be limited (if permitted by law) to the repair or re-supply of equipment or Services or the payment of the cost of having the equipment or Services re-supplied (at Data Oz Solutions' Internet Services' option) and reduced to the extent that such liability is caused by your negligent acts or omissions, or a breach by you of the terms of this Agreement.

6.10 You agree that we are not responsible for any unsolicited or unwelcome information disseminated via the Internet to you or the consequences of you receiving such information.

6.11 You agree that we do not warrant that the Service will be available continuously or free of faults.

6.12 You agree that we are not liable in any way if your equipment fails.

6.13 This Agreement is governed by and construed in accordance with the laws of the State of Victoria and the parties hereby submit to the non-exclusive jurisdiction of the courts of that State.

6.14 This Agreement constitutes the full and entire understanding and agreement between the parties with regard to the supply of the Service.

7. Variations of this Agreement

7.1 Data Oz Solutions may vary these terms and conditions (including pricing and any other terms) at any time.

7.2 If Data Oz Solutions varies these terms after the Customer has been given access to the Service, We will provide You with 30 days notice of that change (unless any change is required by law or necessary to prevent fraud or for security/technical reasons, in which case Data Oz Solutions will give the Customer as much warning as it reasonably can).

7.3 If we do not enforce all parts of this Agreement you should not interpret this as a variation of this agreement.

8. Severability

8.1 For the avoidance of any doubt, if any of the separate and independent terms and conditions set out in this Agreement is or becomes invalid or unenforceable for any reason:

8.1.1 without limiting the operation of that term or condition, if the term or condition in question would be valid or enforceable if any activity was deleted, then the term or condition must be read down by deleting that term or condition, to the minimum extent necessary to achieve that result.

9. Privacy

9.1 You authorise us to obtain, use, disclose and exchange personal information and credit information with other telecommunications companies and sub-contractors, credit agencies, credit reporting agencies and other credit providers for the following purposes (or purposes related to these purposes):

9.1.1 conducting credit checks, obtaining credit reports and maintaining your credit records;

9.1.2 entering into this agreement and establishing and managing your account;

9.1.3 developing, researching and promoting our products and services and the products and services of other entities;

9.1.4 reporting or gaining information on overdue payments, serious credit infringements and dishonoured payments;

9.1.5 managing your relationship with us and marketing our products and services and the products and services of other entities to you;

9.1.6 submitting your details to the Integrated Public Number Database; and

9.1.7 as required or permitted under law, including the Privacy Act 1988 (Cth).

9.2 You acknowledge and agree that we do not guarantee the security of information conveyed over our network and that we are not liable to you for any loss or damage resulting from the diversion, publication, corruption or inappropriate or unlawful use of any information provided over our network.

9.3 You authorise us and our sub-contractors to contact you by electronic mail regarding anything to do with this agreement, Your services or any other services we may wish to offer you.

10. Third Parties

We may engage third parties to provide any part of Your services. All our rights and benefits under this agreement (including indemnities) are also for the benefit of third parties and may be exercised by them. Nothing in this agreement entitles you to make any claim against a third party. The words “we”, “us” and “our” may be interpreted to include a third party in support of the intent of this clause.

11. Termination

11.1 Either party may terminate this agreement at the end of any contracted period, or - if there is no contracted period, at any time by giving thirty (30) days written notice.

11.2 If You are committed to a fixed term contract (e.g. 6, 12 or 24 months) and wish to terminate the contract before the end of the term, a cancellation fee of \$175 will be charged to your account.

11.3 Your service(s) may be terminated immediately if you breach any of our Terms and Conditions and you are personally liable for any money owing to us even if you have signed the application on behalf of a corporation, business or other party.

11.4 Upon a termination pursuant to term 9.3 Data Oz may terminate Your access and/or service without notice and without any credit or refund.

11.5 If you do not accept our Terms and Conditions of Service, please do not use our services.