

Terms and Conditions

SWIZZNET, LLC ("SWIZZNET")

The terms and conditions set forth herein constitute the full and complete agreement between you and SWIZZNET ("Agreement"). By using SWIZZNET programs, online services, websites, web services, any software developed by SWIZZNET, or any other products or services of SWIZZNET (together the "SWIZZNET Services"), you agree to be bound by the terms of this Agreement for use of SWIZZNET Services both past and present. The terms contained herein supersede and replace any other agreement or negotiation between you and SWIZZNET, whether oral, written or otherwise, including any statements made to you by any representative or reseller of SWIZZNET at any time with the sole exception of agreements physically signed by managing partners of SWIZZNET and delivered by hand, mail, or FAX.

1. Site Implementation.

1.1 Services and Site Implementation. Subject to the terms and conditions of this Agreement, SWIZZNET shall provide the Swizznet Services to you, such services to be provided substantially as specified on the Price Sheet.

1.2 Services Provided. SWIZZNET shall provide all data transmission capacity (bandwidth), disk storage, server capacity and other hardware and software required to run the SWIZZNET Services and maintain SWIZZNET's online Customer Database accessible by you over the internet ("Customer Database"). You shall provide all data transmission capacity (bandwidth) required to connect to and receive information from SWIZZNET using the SWIZZNET Services.

1.3 Nonexclusive Services. You understand that SWIZZNET will provide the SWIZZNET Services on a nonexclusive basis. You acknowledge that SWIZZNET has customized and provided, and will continue to customize and provide, its software and technology to other parties for use in connection with a variety of applications, including account servicing applications.

2. Payments.

2.1 Service Fees. You shall pay SWIZZNET service fees on a recurring basis on the first day of each month via the credit or debit card (American Express, Visa, MasterCard, and Discover) on file with SWIZZNET, in accordance with the specific pricing and payment procedures set forth on the Price Sheet. All payments shall be made in United States Dollars.

2.2 Prorated Service Fees. Service fees will be prorated when you are first added to the system mid-month. Prorated charges will be itemized per user and will be included in the next bill.

2.3 Rate Changes. SWIZZNET reserves the right to change the rate charged for any fee under this agreement with 30 days notice.

2.4 Taxes. You shall be responsible for all sales taxes and other similar taxes imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding taxes based upon SWIZZNET's net income.

2.5 Reseller. If you pay for SWIZZNET Services through a company other than SWIZZNET for the SWIZZNET Services, then the charges and billing terms are as stated by the other company.

2.6 Suspension. If your account is seven (7) days past due it shall be automatically suspended. Such accounts are subject to a \$50.00 reactivation fee which you must pay prior to reactivation of the account. In addition, account reactivation can require several business days. All past due and unpaid balances are subject to collection through collection agencies. In the event of such collection action, you are liable for costs of collection including but not limited to attorney's fees, court costs, and collection agency fees. Once an account has been submitted to a collection agency for collection, such account shall additionally be subject to a \$100.00 debt collection fee which you shall pay prior to reactivation of the account.

3. Acceptable Use.

3.1 Full Compliance. You agree to use the SWIZZNET Services in full compliance with the terms set forth below. Failure to so comply may result in termination of your use of the SWIZZNET Services.

3.2 Prohibited Acts. You agree not to:

3.2.1 violate the laws, regulations, ordinances or other such requirements of any applicable Federal, State or local government;

3.2.2 take any action which encourages or consists of any threat of harm of any kind to any person or property;

3.2.3 make or attempt any unauthorized access to any SWIZZNET Services or Customer Database or disclose any such information without authorization;

3.2.4 attempt to install any executable software on any SWIZZNET hosting system without prior without written authorization from SWIZZNET;

3.2.5 transmit any unsolicited commercial or bulk email, will not engage in any activity known or considered to be "spamming" and carry out any "denial of service" attacks on any other website or internet service;

3.2.6 infringe any copyright, trademark, patent, trade secret, or other proprietary rights of any third party.

3.2.7 collect, attempt to collect, publicize, or otherwise disclose personally identifiable information of any person or entity without their express consent (which may be through the person or entity's registration and/or subscription to your services, in which case you must provide a privacy policy which discloses any and all uses of information that you collect) or as otherwise required by law, and you shall maintain records of any such consent throughout the terms of this agreement and for three years thereafter;

3.2.8 undertake any action which is harmful or potentially harmful to SWIZZNET or its infrastructure.

3.3 Payment and Ownership. Your payment for SWIZZNET Services used by a third party does not constitute your ownership of that party's data and that you will provide a copy of that party's data to that party on their written request as soon as practicable after receipt of such request;

4. Software License Agreements

4.1 You represent and warrant that you have valid licenses to use Quickbooks Pro 2009 and Microsoft Office 2003 (or later) and any other software you use in conjunction with SWIZZNET Services. You warrant that you have not violated these third party software license agreements.

4.2 You agree that such third party license agreements are strictly between you and the software manufacturer. You understand and accept that it is your sole responsibility to ensure that your use of the third party licensed software with SWIZZNET is in compliance with all third party software license agreements.

4.3 You grant SWIZZNET the right to share with the software manufacturer of the third party licensed software your respective license information including all license-related keys and numbers for all licensed software and all related services provided by the software manufacturer.

5. Ownership of Intellectual Property.

5.1 SWIZZNET Technology. You acknowledge that SWIZZNET owns all right, title and interest in and to the SWIZZNET Technology and that you shall not acquire any right, title, and interest in or to the SWIZZNET Technology or any customizations. You shall not modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from any SWIZZNET software or documentation.

5.2 Customer Database. SWIZZNET acknowledges that you own all right, title and interest, including without limitation all trade secret rights, in and to the Customer Database.

6. Confidentiality.

6.1 Confidential Information. All information and documents disclosed or produced by either party in the course of this Agreement which are disclosed in written form and identified by a marking thereon as proprietary, or oral information which is defined at the time of disclosure and confirmed in writing within ten (10) business days of its disclosure, shall be deemed the "Confidential Information" of the disclosing party. Notwithstanding the above, the parties agree that any information (in any form, whether in tangible or intangible) relating to the SWIZZNET Program, the SWIZZNET Technology, and the Customer Database is considered Confidential Information.

6.2 Treatment of Confidential Information. Each party agrees to protect the other party's Confidential Information in the same manner as such party protects its own Confidential Information of substantially similar proprietary value, but in no case less than reasonable care. For specific privacy protections and policies, visit the [SWIZZNET Privacy Policy](#).

7. Term and Termination. The term of this Agreement (the "Term") shall commence on the date you began to use the SWIZZNET Service and shall continue in force for a period of one year thereafter, unless earlier terminated with 30 days written notice of cancellation of service

8. Indemnification. You shall indemnify, defend and hold SWIZZNET harmless from and against any third party claim brought against SWIZZNET related the information stored in the Customer Database. You shall also indemnify, defend and hold SWIZZNET harmless from and against any third party claim brought against SWIZZNET related to Customer's failure to secure all software licenses used in conjunction with SWIZZNET Services.

9. Disclaimer of Warranty. SWIZZNET does not warrant that the SWIZZNET Services will meet all of your requirements or that performance of the SWIZZNET Services will be uninterrupted or error-free. SWIZZNET MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NONINFRINGEMENT.

10. Limitations of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OF FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOST DATA, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. IN NO EVENT WILL SWIZZNET'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE NET AMOUNT SWIZZNET HAS ACTUALLY RECEIVED FROM YOU UNDER THIS AGREEMENT. THE PARTIES AGREE THAT THIS SECTION 8 REPRESENTS A REASONABLE ALLOCATION OF RISK.

11. Miscellaneous Provisions.

11.1 Full Agreement. This Agreement and exhibits, if any constitutes the full agreement between the parties and no promises or conditions other than those set forth herein are binding. This Agreement may be modified only by writing signed by both parties hereto.

11.2 Governing Law. This contract shall be governed and interpreted by the laws of the state of Washington.

11.3 Attorneys Fees. If either party brings litigation to enforce any terms of this Agreement, the prevailing party shall be entitled to costs and reasonable attorney's fees.

11.4 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

11.5 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the other party's prior written consent, except to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets, so long as such surviving entity or purchaser shall expressly assume in writing the performance of all of the terms of this Agreement.

11.6 Notices. Any notice required for or permitted by this Agreement shall be in writing and shall be delivered to the addresses first described above or to such other address that the receiving party may have provided for the purpose of notice under this Agreement.

11.7 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

See Also – [Swizznet Privacy Policy](#)