

WhizTech Web Hosting Services

TERMS OF SERVICE

WhizTech whose offices are located at 8 Amboy Ave., Roebling, NJ 08554 is in the business of providing computer tech support and related services to its clients. These terms of service ("Agreement") governs your purchase and use, in any manner, of all web hosting services offered by WhizTech and describes the terms and conditions that apply to such purchase and use of the Services.

NOTWITHSTANDING, BY USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN AS WELL AS ALL ACCEPTABLE USE POLICIES INCORPORATED IN THIS AGREEMENT.

WhizTech reserves the right to modify these policies at any time, effective upon posting the revised document on our web site at <http://www.whiz-tech.com> under Web Hosting Section. Clients are encouraged to check this website frequently to ensure they are familiar with any changes and/or updates.

1. General Terms and Conditions

WHIZTECH SHALL PROVIDE SERVICE, SOFTWARE, AND EQUIPMENT AS SET FORTH IN THIS AGREEMENT. WHIZTECH DOES NOT WARRANT THAT SERVICE, SOFTWARE, OR EQUIPMENT SHALL BE UNINTERRUPTED OR ERROR FREE OR PROVIDE ANY SECURITY OR PRIVACY FOR CLIENT'S DATA STORED ON OUR SERVERS, OR THAT THE INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET SHALL BE FREE FROM VIRUSES OR OTHER DISABLING CODES, OR THAT SUCH INFORMATION SHALL NOT INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS. THE CUSTOMER'S USE OF THE INTERNET AND ANY INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET SHALL BE AT THE CUSTOMER'S SOLE RISK. OTHER THAN ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, WHIZTECH DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT ITS USE OF THE WHIZTECH SERVICE SHALL NOT VIOLATE OR INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS, BE ABUSIVE, PROFANE OR OTHERWISE OFFENSIVE, OR VIOLATE ANY LAWS OR REGULATIONS. THE CUSTOMER SHALL NOT REPRESENT TO ANY THIRD PARTY THAT WHIZTECH HAS MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE WHIZTECH SERVICE, SOFTWARE, EQUIPMENT, OR THE INTERNET. WHIZTECH SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED BY THE CLIENT IN CONNECTION WITH USE OF OR INABILITY TO USE WHIZTECH SERVICE OR SERVICES INCLUDING, BUT NOT LIMITED TO, DAMAGES FROM LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MIS-DELIVERIES, OR SERVICE INTERRUPTIONS. UNDER NO CIRCUMSTANCES SHALL WHIZTECH'S AGGREGATE LIABILITY EXCEED THE AMOUNT PAID BY CLIENT FOR WHIZTECH SERVICES. INDIRECT OR ATTEMPTED VIOLATIONS OF THESE POLICIES, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON

BEHALF OF A WHIZTECH CLIENT, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY CLIENT.

The initial term of this contract shall commence immediately upon installation and setup of Client web site(s). This contract will be renewed on a pre agreed term (quarterly or annually) basis until terminated by Client or WhizTech.

WhizTech reserves the right to change service, including, but not limited to, price structure, access procedures, hours of operation, menu structures, commands, documentation, vendors and services offered, at any time, with or without notice.

If Client wishes to terminate the service, a written request must be submitted to WhizTech 30 days in advance. WhizTech reserves the right to refuse, suspend or cancel service to a Client at any time with a 30 days notice.

2. Billing Policies and Procedures

Client agrees to pay for all charges attributable to your use of the Services at the then current WhizTech hosting plan prices including any applicable sales or service taxes. Hosting Service Agreement will be automatically renewed at the end of the Initial Term for the same period as the Initial Term unless Client provides WhizTech with notice of termination thirty (30) days prior to the end of the Initial Term or the Renewal Term.

3. Legal Responsibilities

Client shall defend, indemnify and hold harmless WhizTech and its officers, directors, shareholders, employees, consultants, agents, affiliates and suppliers (an "Indemnitee") from any and all threatened or actual claims, demands, causes of action, suits, proceedings (formal or informal), losses, damages, fines, penalties, liabilities, costs and expenses of any nature, including attorneys' fees and court costs, sustained or incurred by or asserted against any Indemnitee by any person, firm, corporation, governmental authority, partnership or other entity by reason of or arising out of or relating to: (i) Client's violation or breach of any term, condition, representation or warranty of this Agreement or any applicable policy or guideline; (ii) Client's conduct, including but not limited to Client's negligence, gross negligence, or willful misconduct; (iii) Client's use of the Services, including any improper or illegal uses; (iv) any claim by a former employee of Client's whose employment has been or may be terminated in connection with or as a result of the execution of this Agreement and performance of the Services by WhizTech; or (v) any claim relating to Client's services or products, or Client's installation and/or use of any third-party software, including but not limited to advertising, product liability claims or infringement of any trademark, copyright, patent, trade secrets or nonproprietary right of a third party (including, without limitation, defamation, libel, or violation of privacy or publicity).

4. Privacy and Security

WhizTech will not release Client's subscriber information to any third party except upon presentation of a valid court order of a government or entity within our jurisdiction. Client agrees that WhizTech has final judgment as to the validity of any court order or subpoena considered to be proper and final.

The Client is responsible for all use of the Client's account(s). WhizTech may change access passwords if Client's password is stolen, lost or otherwise compromised. In addition, Client's password and/or file permissions may be changed if WhizTech believes it compromises server security. WhizTech is not liable for any damages, usage, and/or charges incurred due to compromised and/or abused accounts.

5. Data Backup Disclaimer

WhizTech attempts to make daily off site backups of Client's data stored on their hosting servers to guard against data loss. However, this is not a substitute for Client's own backup system. WhizTech does not guarantee that it will be possible to restore information that has been deleted or damaged, and shall charge a fee to restore information that has been deleted or damaged due to Client's error. For these reasons, Client agree to maintain their own copy of all data stored on our servers (including files and database contents), and Client agrees that WhizTech is not liable for any loss of data if Client fails to maintain their own backup copy.

6. Unlawful Usage

Client agrees to use the service in a manner consistent with all applicable laws and regulations of the United States of America, the State of New Jersey, and the Client's locality. Reproduction or transmission of any material in violation of any local, state, U.S., or international law or regulation is prohibited. Client agrees that any material to be reproduced or transmitted on WhizTech's service through Client's account does not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others. Software intended to facilitate any such violations or infringements may not be stored on WhizTech's servers. Client shall defend, indemnify and hold harmless WhizTech from and against any claims, liabilities and expenses, including attorney fees, resulting from Client's use of WhizTech's service or a Client's account in an unlawful manner or otherwise in violation of or contrary to the Clients agreement with WhizTech or WhizTech's Acceptable Use Policies.

Violations of system and/or network security are prohibited. Examples of system or network security violations include, without limitation, the following:

Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of WhizTech. Interference with service to any user, host or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system, denial of service attacks, and broadcast attacks. Forging of any TCP-IP packet header or any part of the header information in an Email or a newsgroup posting.

7. Resource Usage

WhizTech may limit bandwidth, CPU and/or disk space utilization for certain hosting packages. In order to maintain a high level of service for all clients, WhizTech may determine that a Client is exceeding the bandwidth, CPU and/or disk space utilization limitation for the Client's hosting package. In the event an account exceeds such limitations, the Client will be notified by E-mail. Upon receipt of this notification Client agrees to resolve excessive account activity issues.

8. Service Guarantees

WhizTech guarantees that its hosting servers will be available 99.9% of the time in a given month, excluding scheduled maintenance. WhizTech will refund the customer 5% of the monthly fee for each 30 minutes of downtime (up to 50% of customer's monthly fee). Network downtime is measured from the time the failure occurs to the time the server is once again able to transmit and receive data.

9. Maintenance

You hereby acknowledge and agree that WhizTech reserves the right to temporarily suspend services for the purposes of maintaining, repairing, or upgrading its systems and network. WhizTech will use best efforts to notify you of pending maintenance however at no time is under any obligation to inform you of such maintenance.

10. Choice of Law and Forum

THIS AGREEMENT, WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF NEW JERSEY, WITHOUT REFERENCE TO RULES GOVERNING CHOICE OF LAWS. ANY ACTION RELATING TO THIS AGREEMENT MUST BE BROUGHT IN THE FEDERAL OR STATE COURTS LOCATED IN NEW JERSEY, AND YOU IRREVOCABLY CONSENT TO THE JURISDICTION OF SUCH COURTS.

11. Entire Agreement

This Agreement and all policies and guidelines incorporated in this Agreement by reference constitutes the entire Agreement of the parties and may not be modified or altered orally but only by an agreement in writing signed by both parties.

12. No Waiver

WhizTech's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of WhizTech's right to subsequently enforce such provision or any other provisions under this Agreement.

13. Severability

If any provision of this Agreement is deemed illegal, invalid, void or otherwise unenforceable in whole or in part, that provision shall be severed or shall be enforced only to the extent legally permitted, and the remainder of the provision and the Agreement shall remain in full force and effect. If any provision of this Agreement is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications.

14. Survival

All provisions of this Agreement relating to your warranties, intellectual property rights, limitation and exclusion of liability, Client's indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement.