

Thank you for selecting {e}care Business Continuity. Mazzanti, Inc. d/b/a/ eMazzanti Technologies ("Company") shall provide its services (the "Services") as set forth in this Agreement, to you, ("Client"), subject to these terms and the terms stated in eMazzanti Technologies' Terms of Service. Please read this Agreement carefully.

**You must accept the terms of this Agreement in order to use 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 IN THIS AGREEMENT AS WELL AS ALL POLICIES, GUIDELINES AND TERMS INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

Company reserves the right to change or modify any of the terms and conditions contained in this Agreement, any Addendums and any policy or guideline incorporated by reference at any time and from time to time in its sole discretion, and to determine whether and when any such changes apply to both existing or future customers. Any changes or modification will be effective upon posting of the revisions on the Company Web site (the "Site"). Your continued use of Services following Company' posting of any changes or modifications shall constitute your acceptance of such changes or modifications (unless you have: (i) notified us of any objection within 5 business days of such posting; and (ii) you cease utilizing the Services until we have agreed to the objections to the changes).

**AGREEMENT**

**1. Purpose and Scope of Services**

eMazzanti Technologies shall provide Client with {e}care Business Continuity, as more specifically defined below, which shall include data backup services and rental of related equipment.

**2. Term of Agreement**

This agreement is effective upon the date signed, and shall remain in force for a minimum period of two years. The {e}care Business Continuity Service Agreement automatically renews for a subsequent one year term, beginning on the day immediately following the end of the Initial Term, unless either party gives the other written notice of its intent not to renew this Agreement ninety days prior to the end of the Initial Term or ninety days prior to the end of any subsequent extension of the Initial term. This Agreement may be terminated by either Party upon ninety days written notice if the other Party:

- a. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within 90 days of receipt of written notice outlining the defect of performance.
- b. Breaches any material term or condition of this Agreement and fails to remedy such breach within 90 days of receipt of written notice outlining the breach.
- c. Terminates or suspends its business operations, unless it is succeeded by a successor that accepts assignment of this Agreement and the eMazzanti Technologies Terms of Service, and the other party consents to the assignment, which shall not be unreasonably withheld.

Upon termination of {e}care Business Continuity, all sums due for services provided shall be due and payable and any equipment loaned or provided to Client by Company shall be immediately returned to Company. Assuming all sums are so paid and rental equipment returned, eMazzanti Technologies shall provide information and cooperation to facilitate transfer of network documentation to the Client; time spent on this task shall be billed to client at eMazzanti Technologies' then-current standard rates, which shall be prepaid upon demand of eMazzanti Technologies. In the event that all sums due and owing are not paid or any equipment loaned or provided to Client by Company is not returned to Company immediately upon termination, eMazzanti Technologies shall have no obligation to provide transfer of network information to the Client.

**3. Early Termination**

Client recognizes that in order to provide the services described here-in at the preferred rate defined in this Service Agreement, eMazzanti incurs substantial set-up costs for each account. In the event that Client terminates this Agreement, for any reason, before the initial term of two years, Client agrees to pay an early termination fee as liquidated damages equal to 50% of the remaining fees that would have been due had the Client not terminated this Agreement. Early cancellation fees will apply as well to any subsequent renewal term, as the costs incurred to provide the Services are averaged over the anticipated term of the Agreement.

**4. Loaned Equipment**

The Client agrees that the NAS unit utilized by eMazzanti Technologies, in the execution of this service shall remain the property of eMazzanti Technologies, and must be returned if requested. Client shall not grant any security interest in the NAS unit to any third party or otherwise exercise any indication of legal ownership of the NAS unit. Client grants eMazzanti the right, after default under the terms of this Agreement, upon twenty four hours advance notice, to enter upon the premises of Client for the purpose of removing the NAS unit. Client further agrees to cease the use of and return immediately any technology that remains the property of eMazzanti Technologies upon termination of this agreement. If the NAS unit is stolen, lost, damaged or destroyed, the client must pay:

250GB NAS DEVICE	\$6500	1TB NAS DEVICE	\$9800	2TB NAS DEVICE	\$12200	4.5TB NAS DEVICE	\$14800
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As long as the monthly fees are current, no additional charges will be incurred for hardware failure. Firmware updates are also included. No other SERVICE AGREEMENT PAGE 1 OF 4

warranties exist, expressed or implied.

#### 5. Ownership of the Data

The Backup data being stored on the NAS and at the Data Center remains the sole property of the Client. If the Client chooses to terminate services, eMazzanti Technologies will assist Client in the orderly termination of services. This could involve copying the backup image to an external drive. Client agrees to pay eMazzanti Technologies the costs of rendering such assistance in accordance with the rate schedule on the Service Order.

#### 6. Fees and Payment Schedule

Fees will be billed per month, invoiced to Client on a monthly basis, and will become due on the first day of each month. With the exception of the first month's bill, billings received by Client correspond with services to be performed during the following month. Unless the service is scheduled to begin on the first day of the month, the first invoice shall include the prorated fee for the current month and the next full monthly fee. A Late fee of \$150 will be applied to the Client's account if payment is not received within 5 days following the due date. Services may be suspended if payment for monthly service plus the late fee are not received within 10 days following date due.

Service fees will be stated on the Service Order Form. Client must pay a Deposit equal to one month's service fee to eMazzanti Technologies along with a payment for the first month's service in order to begin receiving {e}care Business Continuity. Upon termination, this deposit will be returned to the client, once all fees outstanding have been paid. The Deposit shall not be used as payment for the last month's service. Rather, Client agrees to pay the respective bill for the last month of service, and the Deposit will be returned once all outstanding issues have been addressed.

Fees for local onsite backup, full warranty of the NAS, and management of the backup will be invoiced to Client on a monthly basis, and will become due and payable net 15 day terms. Services will be suspended if payment is not received within 5 days following date due.

Fees for off-site remote storage at the two data centers along with management of those backups will be invoiced to Client for storage. Storage space used monthly is calculated and invoiced to Client on a monthly basis, and will become due and payable net 15 day terms. Services will be suspended if payment is not received within 5 days following date due.

In the event of a catastrophe, fees for the "Disaster Recovery Service" will be due plus all applicable freight and shipment costs to deliver a new NAS that will contain the most current data loaded at the Data Center. Additionally, any service required to provide access to that data is included. The fees noted in #4 and #6 will remain in effect and cover the costs associated with the new NAS.

IT IS UNDERSTOOD THAT ANY AND ALL SERVICES REQUESTED BY CLIENT THAT FALL OUTSIDE OF THE TERMS OF THIS AGREEMENT WILL BE BILLED SEPARATELY ON A TIME AND MATERIALS BASIS. IT IS FURTHER UNDERSTOOD THAT CHANGES TO THE NETWORK ENVIRONMENT WILL RESULT IN CHANGES TO THE FEE STRUCTURE AT ANY POINT DURING THIS CONTRACT.

#### 7. Coverage

Service Hours are those defined in eMazzanti Technologies Terms of Services ("TOS") as well as any other associated attachments and agreements. Support of Hardware/Systems outside of eMazzanti Technologies coverage area as defined by the Terms of Service are still subject to eMazzanti Technologies' coverage hours and may be serviced by a 3<sup>rd</sup> party or subcontractor as deemed necessary by eMazzanti Technologies to provide timely support.

#### 8. Support and Escalation

eMazzanti Technologies shall use best efforts to respond to Client's support requests. Support Requests shall only be opened by Client's designated Technical Contacts, only by submission of an online support request, email, or on the technical support phone line if email is unavailable. All Technical support requests shall be billed according to the Rate Schedule on the Service Order.

CALLS MADE DIRECTLY TO EMAZZANTI TECHNOLOGIES EMPLOYEES ARE CONSIDERED OUTSIDE OF THE SUPPORT PROCEDURE. . ATTEMPTING TO CONTACT EMPLOYEES DIRECTLY MAY ALSO RESULT IN SERVICE DELAYS.

## 9. Equipment & Facilities

The Client agrees that eMazzanti Technologies may utilize certain items of The Client's equipment and may gain access to certain The Client facilities. The Client retains title and ownership in all of The Client's equipment owned by The Client and utilized by eMazzanti Technologies, and must grant authority for the eMazzanti to access The Client's facility. Facility access may be denied for any reason at any time, however if access to facilities is denied, The Client understands that eMazzanti Technologies may be unable to perform their duties adequately and if such a situation should exist, eMazzanti Technologies will be held harmless.

## 10. Data Transfer

The base image will be transmitted across the internet to the primary remote storage facility. The time that it takes to perform this remote backup will vary significantly depending on the amount and types of files being backed up and on the upload speed of the Client's internet connection. These factors both determine the time it takes to build the base backup image. The client understands that the transfer of data will consume bandwidth on the connection and may slow the performance of that connection for other tasks. It is the responsibility of the client to provide an internet connection that carries adequate bandwidth to support these functions.

## 11. Minimum Remote Storage Requirements

Remote storage is provided in increments of 1GB. There is no minimum storage requirement tied to this Agreement. Remote storage is tracked on a monthly basis and usage is billed for the prior month on each month's invoice.

Client shall implement any additional requirements that are specific to the Client's network environment, which may be attached to this Services Agreement or later proscribed by eMazzanti in a written notice.

Services required to bring Client's environment up to these Minimum Standards or those specified in the Service Order are not included in this Agreement. The requirement of particular hardware/software/service does not imply that the maintenance, servicing, or installation of those products or services is included in this Agreement. Items that fall outside of the terms of this agreement will be billed separately on a time and materials basis.

## 12. Excluded Services

Services rendered under this Agreement do not include:

- a. NAS device, hardware replacement cost and the cost associated with hardware replacement falls outside this agreement.
- b. Local data may reside on your desktop and laptop machines. This services encompasses data on Windows Servers only.
- c. Restoration of data.
- d. The cost of any parts, equipment, or shipping charges of any kind.
- e. Consolidation/organization of client data to facilitate backup.
- f. The cost of any 3<sup>rd</sup> Party Vendor or Manufacturer Support or Incident Fees of any kind.
- g. The cost to bring Client's environment up to minimum standards required for Services.
- h. Support for UPS/Power Management, Physical Cabling, Electrical Equipment, HVAC Equipment.
- i. Failure due to Acts of God, criminal or fraudulent acts, physical abuse or misuse of the hardware, War or Terrorism, building modifications, water damage, dust damage, power failures and any other adverse environmental conditions, or any other similar circumstances, force majeure, or frustrating factors that are beyond eMazzanti Technologies' control.
- j. Service and repair made necessary by the alteration or modification of equipment other than that authorized by eMazzanti Technologies, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than eMazzanti Technologies.
- k. Service and Repair made necessary by the sending of mass email campaigns that result in service outages including, but not limited to, cancellation of hosting or internet services or inbound/outbound bandwidth problems.
- l. Training Services of any kind.
- m. Time spent by eMazzanti personnel physically waiting at the Client's premises for access to hardware, cabling, electricity, personnel, or any other Client resource or asset.
- n. Damages caused by, and recovery from, virus infection not detected and quarantined by the latest Antivirus definitions.

## 13. Miscellaneous

This Agreement constitutes an Attachment to the Terms of Service (TOS) Agreement between the Client and eMazzanti Technologies, describing specific terms pertaining to {e}care Business Continuity for monitoring/maintenance/service of all equipment listed in the Service Order, and its terms and conditions shall prevail should there be any conflict with the TOS or of any requests or orders submitted by Client.

## 14. Limitation of Liability

In no event shall eMazzanti Technologies be held liable for indirect, special, incidental or consequential damages arising out of the Services provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs

## 15. Indemnification

The Client shall at all times indemnify and hold eMazzanti Technologies harmless against and from all losses, liability, expenses, and other detriments of every nature and description to which Client may be subjected by reason of any act or omission of eMazzanti Technologies, its SERVICE AGREEMENT

subcontractors, consultants, agents, officers, directors, and employees where such loss, liability, expense or other detriment arises out of or in connection with the performance of the work, including, but not limited to, personal injury (including death) and loss of or damage to property of Client or others. This indemnity shall not extend to any claims, damages, losses and expenses which are due to the sole negligence of eMazzanti Technologies. Client shall indemnify and hold eMazzanti Technologies harmless from and against any loss, cost and/or expense, including but not limited to reasonable legal fees and costs, incurred by eMazzanti Technologies in the: (i) enforcement of the terms of this Agreement in; or (ii) the recovery of any equipment loaned or provided by Company to Client.

#### 16. Confidentiality

Neither party shall disclose any proprietary or confidential information obtained from the other unless so directed by a court of law or government authority. The Client agrees not to disclose rate(s), term(s), or any information regarding this Agreement without the prior written consent of eMazzanti Technologies.

#### 17. Acceptance of Service Agreement

This Service Agreement covers only those Services and equipment listed in the Service Order. eMazzanti Technologies may deem any equipment/Services Client may want to add to this Agreement after the effective date acceptable. The addition of equipment/Services not listed in the Service Order at the signing of this Agreement, if acceptable to eMazzanti Technologies, shall result in an adjustment to the Client's monthly charges and shall be listed on additional Service Orders.