

ECARE NETWORK MANAGEMENT TERMS



Thank you for selecting {e}care Network Management. 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 HEREIN 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 Network Management, as more specifically defined below, which shall include regular remote network software management, and both remote and on-site technical assistance in accordance with the service plan they choose.

2. Term of Agreement

This agreement is effective upon the date signed, and shall remain in force for a minimum period of one year. The {e}care Network Management Service Agreement automatically renews for a 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 Network Management, all sums due for services provided shall be immediately 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, 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 one year, 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. 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 Network Management. 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.



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.

5. Coverage

Service Hours are those defined in eMazzanti Technologies Terms of Services ("TOS") as well as any other associated attachments and agreements. Network Monitoring Services will be provided 24/7/365. 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 3rd party or subcontractor as deemed necessary by eMazzanti Technologies to provide timely support.

6. 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.

CALLS MADE DIRECTLY TO EMAZZANTI TECHNOLOGIES EMPLOYEES ARE CONSIDERED OUTSIDE OF THE SUPPORT PROCEDURE. THEY SHALL BE BILLED HOURLY ACCORDING TO THE RATES LISTED ON THE SERVICE ORDER. ATTEMPTING TO CONTACT EMPLOYEES DIRECTLY MAY ALSO RESULT IN SERVICE DELAYS.

7. Service Calls Where No Trouble is found

If Client requests that Company provide Services and no problem is found or reproduced, Client shall be billed at the current applicable rates as indicated in the Service Order. All hours that are spent on responding to requests for Services where no problem is found or reproduced shall constitute Excluded Services, and are not included under the terms of this Agreement.

8. Hardware/System Support

eMazzanti Technologies shall provide support of hardware and systems specified in the Service Order, provided that such Hardware is covered under a currently active Vendor Support Contract and is no more than 5 years old; or replaceable parts are readily available, and all Software be Genuine, Currently Licensed, Updated and Vendor-Supported. Should any hardware or systems fail to meet these provisions, they will be excluded from this Service Agreement. Should 3rd Party Vendor Support Charges be required in order to resolve any issues, these will be passed on to the Client after first receiving the Client's authorization to incur them. eMazzanti makes no warranties of the manufacture or physical performance of the equipment covered under this Agreement and shall not be financially responsible for the replacement of equipment should it fail.

9. Suitability of Existing Environment

Minimum Standards Required for Services - In order for Client's existing environment to qualify for eMazzanti Technologies' {e}care Network Management, the following requirements must be met:

- a. All Servers with Microsoft Windows Operating Systems must be running the most current available version of the Server Operating System (a three (3) month grace period is observed upon the release of a new version) and have all of the latest Microsoft Service Packs and Critical Updates installed.
- b. All Desktop PC's and Notebooks/Laptops with Microsoft Windows Operating Systems must be running the most current available version of the Business Class Desktop Operating System (a three (3) month grace period is observed upon the release of a new version), and have all of the latest Microsoft Service Packs and Critical Updates installed.
- c. All Server and Desktop Software must be original, genuine, licensed and vendor-supported.
- d. The environment must have a currently licensed, up-to-date and vendor-supported antivirus software solution protecting all network devices including, but not limited to, Servers, Desktops, Notebooks/Laptops, PDA's, Smart Phones, tablets, and Email.
- e. The environment must have a currently licensed, up-to-date and Vendor-Supported Anti-Malware and Anti-Spyware Solution protecting all network devices including, but not limited to, Servers, Desktops, Notebooks/Laptops, PDA's, Smart Phones, tablets, and Email.
- f. The environment must have a currently licensed, Vendor-Supported Server-based Backup Solution.
- g. System Backup of Servers must be automated where no human interaction is required for data to be backed up. An examples of such a device is a Tape Library with Bar Code Scanner and / or Disc based system with Tape Virtualization or {e}care Data Backup.
- h. Backup Systems that utilize tape mediums must replace the medium every 10 months or 20 uses, whichever comes first.
- i. An actively working spare desktop/terminal client must be maintained at the Client site at all times.
- j. The environment must have a currently licensed, Vendor-Supported Hardware Firewall between the Internal Network and the Internet.
- k. Any wireless data traffic in the environment must be secured with a minimum of 128bit data encryption.
- l. Client takes responsibility for the physical security/access of all network equipment.
- m. Client shall utilize climate controls such as air conditioning and dehumidifiers to ensure the proper functionality of network equipment.
- n. Client shall provide UPS/Power Management Systems for surge suppression, availability of power, and battery backup equipment, which are necessary or advisable to ensure the proper functionality of network equipment.
- o. Client shall create and enforce a companywide "Acceptable Use of Technology" Policy.
- p. Client must provide configuration and proper ownership documentation for all hardware and software.
- q. An individual in the Client's office must be designated to initiate all support requests on behalf of the client. Client represents that this individual has the authority to approve/deny work that falls outside the scope of included services. It is the sole responsibility of the Client to maintain internal escalation procedures.
- r. All email campaigns generated by the client must be created and sent using mailing service in compliance with the CAN-SPAM Act of 2003.
- s. 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 modify or change Client's current 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.

10. Excluded Services

Services rendered under this Agreement do not include:

- a. The cost of any parts, equipment, or shipping charges of any kind.
- b. The cost of any Software, Licensing, or Software Renewal or Upgrade Fees of any kind.
- c. The cost of any 3rd Party Vendor or Manufacturer Support or Incident Fees of any kind.
- d. The cost to bring Client's environment up to minimum standards required for Services.
- e. Support for UPS/Power Management, Physical Cabling, Electrical Equipment, HVAC Equipment.
- f. 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.
- g. 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.
- h. Restoration of Service or System when no backups of system have been made.
- i. Maintenance of Applications software packages, whether acquired from eMazzanti Technologies or any other source unless as specified in Appendix B.
- j. Programming (modification of software code) and program (software) maintenance unless as specified in Appendix B.
- k. Service and Repair made necessary by the sending of mass email campaigns that result in service outages including, but not limited to, ISP-imposed restrictions, cancellation of hosting or internet services, inbound/outbound bandwidth problems and further email delivery.
- l. Virtual Machines, virtual servers, virtual desktops or any other virtualization software where an eCare agent is not installed in the virtual environment is not supported.
- m. Hosting of any kind including but not limited to Application, Internet or Service hosting. On any equipment that hosting is performed negates support of that equipment.
- n. Training Services of any kind that are not already posted to <http://www.emazzanti.net/guides>
- o. 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.
- p. Damages caused by, and recovery from, virus infection not detected and quarantined by the latest Antivirus definitions.
- q. Documentation that is not included in the Quarterly Business Review. The production of additional network documentation shall be billed hourly according to the rate schedule and shall be provided in digital format via email.

11. 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 Network Management 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.

12. 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

13. 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 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.

14. 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.

15. 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 the Service Order, if acceptable to eMazzanti Technologies, shall result in an adjustment to the Client's monthly charges and shall be listed on additional Service Orders.

