

Terms

Mazzanti, Inc. ("Company") is a leading managed services provider to middle market companies. This Services Agreement ("Agreement") governs your purchase and use, in any manner, of MXINSPECT and all services provided by Company and any of its affiliates under the INSPECT product line (the "Services").

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 ACCEPTABLE USE POLICIES INCORPORATED 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.

1. Term and Payment for Services

1.1. Term This Agreement shall be for an "Initial Term" as chosen by you in the Order Form at the time you register for the Services. This Agreement will be automatically renewed (the "Renewal Term") at the end of the Initial Term for the same period as the Initial Term unless you provide Company with notice of termination thirty (30) days prior to the end of the Initial Term or the Renewal Term. You must provide Company with your notice of termination by mail, email, or as otherwise provided by this Agreement. Any notice of termination will be effective following thirty (30) days after Company's receipt thereof.

1.2. Termination Policy If you terminate your receipt of the Services prior to the end of the Initial Term or the Renewal Term, whichever is then applicable, (a) Company will not refund to you any fees paid in advance of such termination and (b) you shall be required to pay 100% of Company's standard monthly charge for each month remaining in the term, unless otherwise expressly provided in this Agreement. Your termination request or notice must be submitted to Company in the manner described in Section 1.1. Company may terminate this Agreement at any time and for any reason by providing to you written notice prior to the date of termination. If Company terminates this Agreement, Company will refund to you the pro-rata portion of pre-paid fees attributable to Services (excluding set-up fees) not yet rendered as of the termination date unless otherwise expressly provided in this Agreement. Notwithstanding the above, Company shall not be liable to you for any damages arising out of the termination of Services.

1.3 Default and Cure In the event that either party hereto defaults in the performance of any of its material duties or obligations under this Agreement, including failure to make any payments due under this Agreement, and such default is not cured within ten (10) business days after written notice is given to the defaulting party specifying the default, then the party not in default, after given written notice thereof to the defaulting party, may terminate this Agreement.

1.4. Charges You agree to pay for all charges attributable to your use of the Services at the then current Company prices, which shall be exclusive of any applicable taxes. You are responsible for the payment of all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services, other than taxes based on Company's net income.

1.5. Payment All charges for Services must be paid in advance according to the then current prices applicable to the Services. Upon entering this Agreement, you must choose to pay either by direct charge to a credit or debit card, or receive an invoice and submit subsequent payment. If you choose to pay by credit or debit card upon registering for the Services, you thereby authorize Company to charge your credit or debit card to pay for any charges relating to the Services that may apply to your account. You agree that Company may accumulate any supplemental charges, incurred by you in your use of the Services ("Supplemental Charges") until such charges exceed \$20 and then charge your account. You must notify Company of any changes to your card account (including, without limitation, applicable account number or cancellation or expiration of the account), your billing address, or any information that may prohibit Company from charging your account. If you choose to be invoiced upon registration for Services, Company will invoice you for the Services applicable to the period for which you have registered for the Services. Company may also create periodic invoices for any applicable Supplemental Charges associated with your use of the Services. Company will send you a statement reflecting the accumulated invoices. You agree to pay to Company the amount indicated in each invoice by the due date reflected on that invoice. If you fail to pay any fees and taxes by the applicable due date for credit card or invoice payments, late charges of the lesser of one and one-half per cent (1½%) per month or the maximum allowable under

applicable law but at no time less than \$15 shall also become payable by you to Company. In addition, your failure to fully pay any fees and taxes within ten (10) days after the applicable due date will be deemed a material breach of this Agreement, and Company may, in addition to any other remedy it may have: (i) suspend its performance of the Services and/or terminate this Agreement; and/or (ii) take possession and ownership of any of your property (including any and all intellectual property) in Company's possession at the time of such non-payment and liquidate such property in any reasonable manner in partial or full satisfaction of any unpaid amounts. You agree to sign any documents to facilitate such a transfer of your property and, in the event that Company is unable for any reason to secure your signature to any document required for such transfer, you hereby irrevocably designate and appoint Company and its authorized officers and agents as your agent and attorney-in-fact to act on your behalf to execute such documents. Any such suspension or termination of the Services would not relieve you from paying past due fees plus interest. In the event of collection enforcement, you will be liable for any costs associated with such collection, including, without limitation, reasonable attorneys' fees, court costs and collection agency fees.

2. Use of Services

2.1. **Applicable Use Policy** The Company Acceptable Use Policy (the "Usage Policy") govern the general policies and procedures for use of the Services. The Usage Policy is posted on Company's Web site (or such other location as Company may specify) and may be updated from time-to-time. **YOU SHOULD CAREFULLY READ THE USAGE POLICY. BY USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THE USAGE POLICY AND ANY MODIFICATIONS.** Company RESERVES THE RIGHT TO TERMINATE YOUR ACCOUNT FOR ANY VIOLATION OF THE USAGE POLICY OR THIS AGREEMENT.

2.2. **Use and Conduct** During the term of this Agreement, Company grants to you a terminable at will non-exclusive license to use and display the Service, and to download materials available through the Service, all solely for your commercial and personal use in accordance with the MXINSPECT Order Form. You may only use the Service at your place of business on a number of computers limited to the number listed on the Order Form. If additional computers are purchased, you should contact your sales agent at Company. You may not transfer, assign, sub-license, lend, or re-sell the rights granted under this license or any other document relating to the Service. You may not use the Service in furtherance of any crime or in violation of State or Federal regulations. Customer will cooperate in any investigation of Customer's alleged illegal use of Company's facilities or other networks accessed through the Service. If Customer fails to cooperate with any such investigation, Company may suspend Customer's Service. Additionally, Company may modify or suspend your Service in the event of illegal use of the Service or as necessary to comply with any law or regulation, including the Digital Millennium Copyright Act of 1998, 17 U.S.C. 512, as reasonably determined by Company. Any use in violation of these limits shall constitute a violation of the terms of this license.

3. Enforcement

3.1. **Investigation of Violations** Company may investigate any reported or suspected violation of this Agreement, its policies or any complaints and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers and/or third parties. Company will not access or review the contents of any e-mail or similar stored electronic communications except as required or permitted by applicable law or legal process.

3.2. **Actions** Company reserves the right and has absolute discretion to restrict or remove from its servers any content that violates this Agreement or related policies or guidelines, or is otherwise objectionable or potentially infringing on any third party's rights or potentially in violation of any laws. If we become aware of any possible violation by you of this Agreement, any related policies or guidelines, third party rights or laws, Company may immediately take corrective action, including, but not limited to, (a) issuing warnings, (b) suspending or terminating the Service, (c) restricting or prohibiting any and all uses of content hosted on Company's systems, and/or (d) disabling or removing any hypertext links to third party Web sites, any of your content distributed or made available for distribution via the Services, or other content not supplied by Company which, in Company's sole discretion, may violate or infringe any law or third-party rights or which otherwise exposes or potentially exposes Company to civil or criminal liability or public ridicule. It is Company's policy to terminate repeat infringers. Company's right to take corrective action, however, does not obligate us to monitor or exert editorial control over the information made available for distribution via the Services. If Company takes corrective action due to such possible violation, Company shall not be obligated to refund to you any fees paid in advance of such corrective action.

3.3. **Disclosure Rights** To comply with applicable laws and lawful governmental requests, Company may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and content residing on Company's servers and systems. Company also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties.

4. Intellectual Property Rights

4.1. Your License Grant to Company You hereby grant to Company a non-exclusive, worldwide, and royalty-free license for the Initial Term and any Renewal Term to use your content as necessary for the purposes of rendering and operating the Services to you under this Agreement. You expressly (a) grant to Company a license to cache materials distributed or made available for distribution via the Services, including content supplied by third parties, and (b) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

4.2. Company Materials and Intellectual Property All materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by Company or its suppliers or agents pursuant to this Agreement, and any know-how, methodologies, equipment, or processes used by Company to provide the Services to you, including, without limitation, all copyrights, trademarks, patents, trade secrets and other proprietary rights are and will remain the sole and exclusive property of Company or its suppliers, including but not limited to any software programs, inventions, products and/or technology innovations and methodologies utilized, developed, or disclosed by Company during the term of this Agreement. Unauthorized copying, reverse engineering, decompiling, and creating derivative works based on the any such software is expressly forbidden except as permitted in this Agreement. You may be held legally responsible for violation of any patent rights, copyright or trade secret rights that is caused or encouraged by failure to abide by the terms of this Agreement.

5. Warranty; Warranty Disclaimer

5.1. Customer and/or Third Party Acts Company is not responsible in any manner for any nonconforming Services to the extent caused by you or your customers. In addition, Company is not responsible for loss or corruption of data in transmission, or for failure to send or receive data due to events beyond Company's reasonable control.

5.2. No Express or Implied Warranty ALL SERVICES, SYSTEMS AND PRODUCTS PROVIDED BY Company UNDER THIS AGREEMENT ARE PROVIDED WITHOUT ANY EXPRESS OR IMPLIED WARRANTY IN FACT OR IN LAW, WHATSOEVER. YOU ACKNOWLEDGE AND AGREE THAT Company EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH Company' COMPUTERS, NETWORK HUBS AND POINTS OF PRESENCE, OR THE INTERNET. Company DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR COMPLETELY SECURE, AND DOES NOT MAKE ANY WARRANTIES WITH RESPECT TO PATENT, COPYRIGHT, TRADE SECRET OR TRADEMARK INFRINGEMENT. ALL SERVICES PERFORMED UNDER THIS AGREEMENT ARE PERFORMED "AS IS" AND WITHOUT WARRANTY AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, Company DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE ALL RELIANCE ON, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SERVICES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONDITIONS OF QUALITY, AND ANY WARRANTIES WITH RESPECT TO PATENT, COPYRIGHT, TRADESECRET OR TRADEMARK INFRINGEMENT.

5.3 Your Warranties and Representations to Company You warrant, represent, and covenant to Company that (a) you are at least eighteen (18) years of age or are a duly organized and validly existing entity; (b) you possess the legal right and ability to enter into this Agreement; (c) you will use the Services only for lawful purposes and in accordance with this Agreement and all applicable policies and guidelines; (d) you will be financially responsible for the use of your account.

6. Limitation and Exclusion of Liability

6.1. Limitations IN NO EVENT SHALL Company HAVE ANY LIABILITY WHATSOEVER FOR DAMAGE, UNAUTHORIZED ACCESS TO, ALTERATION, THEFT OR DESTRUCTION OF INFORMATION PROVIDED TO Company, DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES. Company SHALL HAVE NO LIABILITY UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF Company HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE LIABILITY OF Company TO YOU FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO Company BY YOU UNDER THIS AGREEMENT DURING THE THIRTY (30) DAYS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY Company UNDER THIS AGREEMENT HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

ACCORDINGLY, YOU HEREBY RELEASE Company FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THE LIMITATION STATED IN THIS SECTION 6.1. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, OUR LIABILITY IS LIMITED TO THE EXTENT PERMITTED BY LAW.

6.2. Interruption of Service You hereby acknowledge and agree that Company will not be liable for any temporary delay, outages or interruptions of the Services. Further, Company shall not be liable for any delay or failure to perform its obligations under this Agreement, where such delay or failure results from any act of God or other cause beyond its reasonable control (including, without limitation, any mechanical, electronic, communications or third-party supplier failure).

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

7. Indemnification

You will defend, indemnify and hold harmless Company 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) your violation or breach of any term, condition, representation or warranty of this Agreement or any applicable policy or guideline; (ii) your conduct, including but not limited to your negligence, gross negligence, or willful misconduct; (iii) your use of the Services, including any improper or illegal uses; (iv) any claim by a former employee of yours 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 Company; or (v) any claim relating to your services or products, or your 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 non-proprietary right of a third party (including, without limitation, defamation, libel, or violation of privacy or publicity).

8. Miscellaneous

8.1 Confidentiality The parties each agree that all Confidential Information (as defined below) communicated to it by the other is done so in confidence and will be used only for the purposes of this Agreement and will not be used to compete with the other party or disclosed to any third party without the prior written consent of the other party except as permitted under this Agreement. "Confidential Information" means all information in any form, including, without limitation, printed or verbal communications and information stored in printed, optical or electromagnetic format, which relates to the Services; or computer, data processing or electronic commerce programs and software; electronic data processing applications, routines, subroutines, techniques or systems; information which incorporates or is based upon proprietary information of either party; or information concerning business or financial affairs, product pricing, financial conditions or strategies, marketing, technical systems of either party; or any information concerning customers or vendors of either party; or any data exchange between a party and any customers or vendors. Exceptions to Confidential Information include (1) information in the public domain; (2) information developed independently by a party without reference to information disclosed under this Agreement; or (3) information received from a third party without restriction and/or breach of this or a similar Agreement. It is not a violation of this provision to disclose Confidential Information in compliance with any legal, accounting or regulatory requirement beyond the control of either Party or, but in such case, prior to disclosure, the disclosing Party shall give written notice to the other Party to permit that Party an opportunity to challenge such disclosure. If either Party is subpoenaed, such Party shall give written notice to the other Party to permit that Party an opportunity to challenge the disclosure of Confidential Information. Upon the termination of this Agreement and upon written request of the disclosing Party, each Party shall promptly return all Confidential Information of the other Party. This provision shall survive the termination of this Agreement for two (2) years.

8.2. Notices All notices, reports, requests, or other communications given pursuant to this Agreement shall be made in writing, shall be delivered by hand delivery, overnight courier service, fax, or electronic mail, shall be deemed to have been duly given when delivered.

8.3. Choice of Law and Forum THIS AGREEMENT, WILL BE GOVERNED BY THE LAWS OF THE UNITED STATES AND THE STATE OF DELAWARE, 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.

8.4. 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.

8.5. No Fiduciary Relationship; No Third-Party Beneficiaries Company is not the agent, fiduciary, trustee or other representative of you. Nothing expressed or mentioned in or implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of the parties hereto.

8.6. Assignments You may not transfer or assign your rights, duties, or obligations under this Agreement without Company's prior written consent. Company may assign its rights and obligations under this Agreement and may utilize affiliate and/or agents in performing its duties and exercising its rights under this Agreement, without your consent. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and assignees.

8.7. No Waiver Company's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Company's right to subsequently enforce such provision or any other provisions under this Agreement.

8.8. 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.

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

9. Third Party Products

To the extent your use of Services provided by Company involves any use of Third Party Software Products ("Software Products"), you shall be subject to the terms of this Agreement.

9.1. You shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on the Software Products or that appear during use of the Software Products;

9.2. You shall not reverse engineer, decompile or disassemble the Software Products, except and only to the extent that such activity is expressly permitted by applicable law;

9.3. Neither Company nor Third Party, to the extent permitted by law, warrants the performance of the Software Products. Neither Company nor Third Party shall have any liability for any damages, whether direct, indirect or consequential, arising from the use of the Software Products;

9.4. Third Party does not provide any support services related to the use of the Software Products;

9.5. You may not resell the use of the Software Products, and you may not allow your customers or clients to resell or in anyway redistribute use of the Software Products. You shall assume all liability for, and hold Company harmless from, any and all damages resulting from any violation of this restriction against resale or redistribution; and

9.6. In order to comply with possible reporting requirements to Third Party, Company may monitor your and your customers use of the Software Products, and you shall provide any information reasonably requested about such use to Company in a timely fashion. You hereby grant Company the right to share all such usage information with Third Party

Thank you for purchasing the MXINSPECT products and services. By using the product, you have agreed and assented to the aforementioned terms and conditions. Please be advised that these terms and conditions are published on the Company website, and may change at any time. From time to time, please refer to the website for the most up to date copy.