

Thank you for selecting {e}care Business Continuity. Mazzanti, Inc. d/b/a/ eMazzanti Technologies (“eMazzanti”) 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’s Terms of Service. Please read this Agreement carefully.

**You must accept the terms of this Agreement in order to use the Services.**

NOTWITHSTANDING ANYTHING HEREIN, 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.

eMazzanti 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 eMazzanti Web site (the "Site"). Your continued use of Services following eMazzanti’s 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 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 three (3) years (the “Initial Term”). The Initial Term shall automatically renew for subsequent one (1) year periods, unless either party gives the other written notice of its intent not to renew this Agreement ninety (90) days prior to the end of the Initial Term or ninety (90) days prior to the end of any subsequent extension of the Initial term. Notwithstanding the foregoing, termination of this Agreement shall not cause the termination of any Addendum(s) or Scope of Work(s) or Service Orders then in progress unless also terminated in accordance with the terms of any such Addendum(s) or Scope of Work(s) or Service Orders, in which case this Agreement shall continue in existence until the termination of such Addendum(s) or Scope of Work(s) or Service Orders.

Upon termination of this Agreement, all sums due for services provided, as well as any early termination fees, shall be due and payable and any equipment loaned or provided to Client by eMazzanti shall be immediately returned to eMazzanti. 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’s then-current standard rates, which shall be prepaid upon demand of eMazzanti. In the event that all sums due and owing are not paid or any equipment loaned or provided to Client by eMazzanti is not returned to eMazzanti immediately upon termination, eMazzanti 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 herein 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, Client agrees to pay an early termination fee as liquidated damages equal to 100% of the remaining fees that would have been due to eMazzanti had the Client not terminated this Agreement (or any Addendum(s), or Scope of Work(s) or Service Orders). 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, in the execution of this service shall remain the property of eMazzanti, 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 shall 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 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. If payment of an invoice is not received within five (5) days following the due date, Client shall pay a fee equal to: (i) a late charge of U.S. \$150.00 for each overdue invoice; and (ii) 1.5%, applied monthly, for any overdue invoice, calculated from the due date. In addition, if payment of an invoice is not received within ten (10) days following the due date, eMazzanti reserves the right to terminate or suspend providing Client Services until such time as eMazzanti receives all payments due Mazzanti in full. However, eMazzanti may choose, in its sole discretion, to continue providing Client Services for such period of time as it shall determine and may cease providing such services prior to receipt of all amounts due eMazzanti. In the event that eMazzanti is obliged to retain the services of legal counsel or a collection agency to effectuate the collection of any sums that may be due hereunder from Client, Client, in addition to any other sums that are due hereunder, shall pay such costs of collection and reasonable attorneys' fees. Acceptance of Client Services after notice that Client has failed to timely pay invoices shall constitute clients consent to the foregoing terms.

Service fees will be stated on the Service Order Form. Client must pay a Deposit equal to one month's service fee to eMazzanti 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 as set forth in its Master Service Agreement ("MSA") as well as any other associated attachments and agreements. Support of Hardware/Systems outside of eMazzanti's coverage area as defined by the MSA are still subject to eMazzanti's coverage hours and may be serviced by a 3<sup>rd</sup> party or subcontractor as deemed necessary by eMazzanti to provide timely support.

## 8. Support and Escalation

eMazzanti 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 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 may utilize certain items of the Client's equipment and may gain access to certain Client facilities. The Client retains title and ownership in all of Client's equipment owned by Client and utilized by eMazzanti, and must grant authority for the eMazzanti to access 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 may be unable to perform their duties adequately and if such a situation should exist, eMazzanti 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. These services encompass 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's control.
- j. Service and repair made necessary by the alteration or modification of equipment other than that authorized by eMazzanti, including alterations, software installations or modifications of equipment made by Client's employees or anyone other than eMazzanti.
- 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 MSA between the Client and eMazzanti, 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 MSA or of any requests or orders submitted by Client.

## 14. Warranties, Limitation of Liability

EMAZZANTI MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY CLIENT SERVICES PURSUANT HERETO, COMPUTER HARDWARE OR SOFTWARE OF ANY KIND, EMAZZANTI PROMOTIONAL MATERIALS, OR ITS WEBSITE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, OR NON-INFRINGEMENT.

EMAZZANTI SHALL NOT BE RESPONSIBLE FOR ANY (A) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT AND OTHER, ASSOCIATED AGREEMENTS INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS ARISING FROM A LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CLIENT BY ANY THIRD PARTY EVEN IF EMAZZANTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND EMAZZANTI'S REASONABLE CONTROL; OR (C) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST EMAZZANTI MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EMAZZANTI'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY OR OTHERWISE SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE FEES ACTUALLY RECEIVED BY EMAZZANTI PURSUANT TO THIS AGREEMENT FOR THE THREE MONTH PERIOD PRIOR TO THE FILING OF ANY CLAIM.

EMAZZANTI PROVIDES NO FURTHER OR ADDITIONAL WARRANTY TO ANY THIRD-PARTY LICENSED SOFTWARE OR EQUIPMENT SUPPLIED TO CLIENT AS PART OF CLIENT SERVICES.

EMAZZANTI WILL NOT BE LIABLE FOR ANY ERRORS OR DEFECTS IN ANY THIRD-PARTY SOFTWARE OR HARDWARE OR THIRD-PARTY PRODUCT OR FOR ANY NON-PERFORMANCE THEREOF. ANY CLAIM BASED ON, RELATED TO, OR ARISING OUT OF THE USE OF ANY THIRD-PARTY SOFTWARE OR THIRD-PARTY EQUIPMENT OR PRODUCT WILL BE GOVERNED EXCLUSIVELY BY THE TERMS OF CLIENT'S AGREEMENT WITH THAT-THIRD PARTY.



EMAZZANTI'S WARRANTIES WILL BE VOID IF CLIENT OR ANY THIRD PARTY AUTHORIZED BY CLIENT USES AND/OR MODIFIES THE CLIENT SERVICES, INCLUDING SOFTWARE, HARDWARE, MODIFICATIONS OR DELIVERABLES IN ANY MANNER OTHER THAN AS AUTHORIZED BY EMAZZANTI.

#### 15. Indemnification Regarding Third-Party Claims

Each of eMazzanti and Client agree to defend, indemnify and hold the other harmless for any third-party loss, cost, claim or damage (including reasonable attorney's fees) that the Party seeking indemnification incurs which arises out of the gross negligent or intentional act, infringement of license, trademarks, copyrights, logos, sourcing of hardware or software of the indemnifying Party in performing their respective obligations under this Agreement. The Party seeking indemnification (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") promptly of any legal claim, demand, right or cause of action asserted, instituted or threatened against the Indemnified Party (a "Claim") for which the Indemnified Party is seeking indemnification pursuant to this Section 15. The Indemnifying Party may thereafter assume control of the defense against such Claim, but neither the Indemnifying Party nor the Indemnified Party may settle such Claim or consent to any judgment with respect thereto without the consent of the other Party (which consent may not be unreasonably withheld). The Indemnified Party hereby agrees to provide the Indemnifying Party with a reasonable amount of assistance in connection with defending or settling any such Claim.

#### 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. If the parties have previously entered into any confidentiality or non-disclosure agreements between them, all such agreements are hereby amended to add thereto the provisions of Section 20 of this Agreement, which shall supersede any provisions covering the same subject matter.

#### 17. Modifications, Attachments and Affiliates

It is intended that Addendum(s) or Scopes of Work(s) will be added to this Agreement from time to time. Such Addendum(s) and Scope of Work(s) shall be incorporated into this Agreement as if expressly stated herein. eMazzanti reserves the right to modify this Agreement at any time by updating this Agreement on the eMazzanti website. By accepting or requesting services from eMazzanti thirty (30) days after the change in terms of this Agreement are posted, Client is deemed to consent to this Agreement as modified on the eMazzanti website. Client may view the most up to date MSA at: <http://www.emazzanti.net/terms>. Client may only modify this Agreement in a writing signed by both parties and such modification shall only be effective for the dates outlined therein. This Agreement shall apply to, and bind, Client and any of its "Affiliate(s)", which term means, with respect to an entity, any entity that controls, is controlled by, or is under common control with, that entity, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through the ownership of voting securities, contract or otherwise. For the avoidance of doubt, Client may extend the use and benefit of any Client Services to any of its Affiliates (e.g., authorize its Affiliates to access and benefit from the Client Services without entering into a separate Addendum or Scope of Work or Service Order, provided that eMazzanti will have no obligation to invoice or provide any Client Services directly to that Affiliate and further provided that Client and its Affiliates are solely responsible for securing any applicable licenses necessary to use any third party software necessary to enable eMazzanti to perform the Client Services.

#### 18. Acceptance of Service Agreement

This Agreement covers only Services and equipment listed in Service Orders. If Client wishes to increase the volume of services or equipment listed on a Service Order, or add additional services or equipment, eMazzanti may, if it accepts Client's request to do so, add any such equipment/Services changes to the existing Service Order without the necessity of Client signing a new or revised Service Order. The addition or increase of equipment/Services not listed in the initial Service Order shall result in an adjustment to the Client's monthly charges and shall be listed on revised or additional Service Orders—which shall be binding upon Client without Client's signature.

#### 19. Ability to Dispute Invoices

Client waives the right to dispute the validity or amount due for any invoice unless specified in writing to eMazzanti, setting forth the specific amount(s) to which Client objects, within forty-five (45) days from the submission of such invoice.

#### 20. Law and Forum

- A. Governing Law. This Agreement, and the relationship between the Parties and any dispute, controversy, proceedings or claim of whatever nature (including any non-contractual disputes or claims) arising under, out of or in any way relating to this Agreement or its formation and the transactions contemplated thereby, shall be governed by and construed in accordance with the laws of the State of New Jersey (without regard to conflict or choice of law rules, provisions or principles) and the laws of the United States to the extent applicable.
- B. Arbitration. The Parties agree that any dispute, controversy, proceedings or claim of whatever nature (including any non-contractual disputes or claims) arising under, out of or in any way relating to this Agreement or its formation and the transactions contemplated thereby, shall be settled by binding arbitration in the State of New Jersey. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Such Rules are incorporated herein and made a part of this Agreement by reference. English shall be the language for any arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in the technology sector and shall include a written record of the arbitration hearing. The Parties reserve the right to object to any individual as an arbitrator who shall be employed by or affiliated with a competing organization or entity or party. An award of arbitration may be confirmed in a court of competent jurisdiction.

C. Venue and Waiver of Jury Trial. If and to the extent that the Parties do not resolve any dispute or any issue in the course of arbitration in accordance with this Section 20 and any dispute or issue regarding this Agreement is to be resolved in any judicial proceeding, each Party irrevocably submits to the exclusive jurisdiction of the New Jersey state and federal courts, waives any objection to the personal jurisdiction and venue of the state and federal courts therein, and waives the right to trial by jury. One Party's breach of its obligations hereunder may irreparably injure the other Party, and could not adequately be compensated by monetary damages. Accordingly, each Party, without posting bond, may seek and obtain injunctive relief from the breach or threatened breach of such provisions, in addition to and not in limitation of any other remedies.

21. Waiver

No consent or waiver, express or implied, by either Client or eMazzanti, or of any breach or default by either Party in the performance by any Party of its respective obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such Party of the same or any other obligation of such Party hereunder. Failure on the part of a Party to complain of any act or failure to act of any other Party to declare such other Party in default (except for the obligation of the Client to dispute any invoice within forty-five (45) days after submission), irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

22. Force Majeure

Neither Client nor eMazzanti shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reason of any act of God, fire, natural disaster, act of government, strikes or labor disputes, inability to provide raw materials, power or supplies, or any other act or condition beyond the reasonable control of the parties; provided that the Party so affected uses reasonable efforts to avoid or remove the causes of nonperformance and continues performance immediately after those causes are removed.

23. English Language

It is the express wish of the parties that this Agreement and all related documents, including notices and other communications, be drawn up in the English language only. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant, y compris les avis et les autres communications, soient rédigés et signés en anglais seulement.*

24. Counterparts

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Facsimile signatures, or signatures contained in PDF copies of this Agreement sent to another Party by email, shall be accepted the same as an original signature.

25. Signatories

The persons signing this Agreement are duly authorized to execute and deliver this Agreement on their behalf, and each individual signing this Agreement on behalf of a body corporate or other legal entity represents and warrants that he or she is authorized to sign this Agreement on its behalf.

SIGNATURES UPON ACCEPTANCE OF eCARE BUSINESS CONTINUITY TERMS

Client: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Company: Mazzanti, Inc. d/b/a eMazzanti Technologies  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

