

MASTER SERVICES AGREEMENT



This "Master Services Agreement ("MSA", or this "Agreement") shall govern and control the relationship between Mazzanti, Inc., doing business as eMazzanti Technologies ("eMazzanti") and you, (the "Client") with regard to the non-exclusive supply of technology services, consulting services, third-party software and services, equipment and supplies provided by eMazzanti to Client ("Client Services"). eMazzanti and Client are sometimes hereinafter referred to in the singular as "Party" and collectively as the "Parties". Please read this MSA carefully. Return of a completed and signed copy of this MSA to eMazzanti. The submission by a Client of a completed and signed MSA shall constitute acceptance of the terms and conditions of this MSA.

SIGNATURES UPON ACCEPTANCE OF MSA

In Witness Whereof, the undersigned have executed this Agreement on the date(s) set forth below, effective upon the last signature hereto as of the date signed by eMazzanti (the "effective date").

Client : _____	Mazzanti, Inc. d/b/a eMazzanti Technologies
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

CLIENT COMPANY INFORMATION

COMPANY NAME: _____ COMPANY EIN: _____
(legal entity name)

COMPANY ADDRESS: _____

AFFILIATED ENTITIES: _____

CLIENT TECHNICAL CONTACT

NAME: _____ EMAIL ADDRESS: _____

TELEPHONE: _____ FAX: _____

CLIENT BILLING CONTACT

NAME: _____ EMAIL ADDRESS: _____

TELEPHONE: _____ FAX: _____

eMAZZANTI ACCOUNT REPRESENTATIVE

NAME: _____

EMAIL ADDRESS: sales@emazzanti.net

TELEPHONE: 844-360-4400

TERMS OF SERVICE

1. **INDEPENDENT CONTRACTOR.** eMazzanti is an independent Contractor and is not employed by Client. eMazzanti is hereby contracting with Client for the Client Services that may be described herein or in Addendums or Scope of Works or Service Orders hereto (the "Client Services"). eMazzanti reserves the right to determine the method, manner, and means by which Client Services will be performed. eMazzanti is not required to perform Client Services during a fixed hourly or daily time, unless specified in an Addendum or Scope of Work or Work Order. eMazzanti shall not be required to devote full time to the performance of Client Services, and it is acknowledged that eMazzanti has other clients and offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of eMazzanti.
2. **EMPLOYEES HIRED BY THE OTHER PARTY.** If during the Term of this MSA and for a period of eighteen (18) months thereafter, either Party employs or hires any employee of the other Party (either as an employee or independent contractor) directly or through a subordinate or affiliated entity, such Party agrees to be liable for and pay the other Party a fee equal to: 100% of the employee's first year's compensation as an employee or independent contractor of such Party or a subordinate or affiliated entity, as and for liquidated damages. The Parties agree that such fee is fair and appropriate compensation to the former employer for the cost of advertising, recruiting, screening, video and in person interviewing, background checks, onboarding and orientation, training, certifications, loss of productivity and revenue during a learning period, disruption of business, obtaining software licenses for new employees, paying a premium over existing salary level to encourage leaving a former employer (which continues during the term of the new employment).
3. **WARRANTIES, LIMITATION OF LIABILITY.**

(A) WARRANTIES:

- (1) 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.
- (2) EMAZZANTI PROVIDES NO FURTHER OR ADDITIONAL WARRANTY TO ANY THIRD-PARTY LICENSED SOFTWARE OR EQUIPMENT SUPPLIED TO CLIENT AS PART OF CLIENT SERVICES.
- (3) EMAZZANTI'S WARRANTIES WILL BE VOID IF CLIENT OR ANY THIRD PARTY AUTHORIZED BY CLIENT USES AND/OR MODIFIES THE CLIENT SERVICES THAT ARE NOT INTENDED TO BE MODIFIED DUE TO THEIR NATURE, FUNCTIONALITY, OR FEATURES, INCLUDING SOFTWARE, HARDWARE, MODIFICATIONS OR DELIVERABLES, AND WHERE SUCH MODIFICATION RESULTED IN A BREACH OF WARRANTY CLAIM THAT WAS CAUSED BY SUCH MODIFICATION IN ANY MANNER OTHER THAN AS AUTHORIZED BY EMAZZANTI.

(B) LIMITATION OF LIABILITY

- (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 15 OR SECTION 29 (B) OR ANY OTHER PROVISION OF THIS MSA, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR ANY OF THE FOLLOWING, WHETHER ARISING UNDER BREACH OF CONTRACT (INCLUDING BREACH OF ANY REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE) OR STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES:
 - (a) LOSS OF USE OF DATA OR PROGRAMMING, INTERRUPTION OF BUSINESS OR DAMAGES OR COSTS (REGARDLESS OF THEIR NATURE), AND DAMAGE TO EQUIPMENT, OR CLAIMS AGAINST A PARTY BY ANY THIRD PARTY;
 - (b) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY EITHER PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS MSA DUE TO ANY CAUSE BEYOND THE PARTY'S REASONABLE CONTROL;
 - (c) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS OR REVENUE (IRRESPECTIVE OF WHETHER A STATUTE, COURT OR ARBITRATOR CONSIDERS DAMAGES FOR LOSS OF PROFITS OR REVENUE TO BE GENERAL, DIRECT, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES), EXCEPT AS OTHERWISE PROVIDED IN SECTION 3 (B)(3) WITH RESPECT TO SECTION 14 OR SECTION 3 (B)(4); OR

(d) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST EITHER PARTY BY THE OTHER PARTY MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

- (2) 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.
- (3) EACH PARTY'S LIABILITIES UNDER THIS MSA, WHETHER UNDER CONTRACT LAW, TORT LAW (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), INDEMNIFICATION, BREACH OF WARRANTIES OR REPRESENTATIONS OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE FEES ACTUALLY RECEIVED BY EMAZZANTI PURSUANT TO THIS MSA FOR THE THREE-MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION FIRST AROSE. NOTWITHSTANDING THE FOREGOING, THE LIMITATION IN THIS SECTION 3 (B) (3) SHALL NOT APPLY TO ANY AMOUNT PAYABLE BY EITHER PARTY TO THE OTHER PARTY PURSUANT TO SECTION 2, OR TO EARLY TERMINATION FEES DUE UNDER SECTION 14, OR TO ANY COLLECTION COSTS (INCLUDING REASONABLE LEGAL FEES) UNDER SECTION 19, WHICH SHALL BE IN ADDITION TO ANY AMOUNT OTHERWISE PAYABLE BY SUCH PARTY TO THE OTHER PARTY.
- (4) FOR THE AVOIDANCE OF DOUBT, IT IS THE PARTIES EXPRESSED INTENTION THAT DAMAGES FOR LOSS OF PROFITS OR REVENUE FOR BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT, SHALL NOT BE LIMITED UNDER SECTION 3 (B), IRRESPECTIVE OF WHETHER A STATUTE, COURT OR ARBITRATOR CONSIDERS SUCH DAMAGES TO BE GENERAL, DIRECT, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES.

4. **OWNERSHIP OF DATA.** Any of Client's data (including data of clients and customers of Client) being stored on eMazzanti equipment, and at any offsite remote storage facility, remains the sole property of Client, or its clients or customers as appropriate. If Client chooses to terminate this MSA, eMazzanti will assist Client in the orderly termination of Client Services as set forth in the Transition Section of this MSA. Client agrees to pay eMazzanti the costs of rendering such assistance in accordance with the then current hourly rate schedule on the eMazzanti website.
5. **DATA INTEGRITY.** Client shall be responsible for the integrity, and security, of Client's data (including data of clients and customers of Client). Daily backups, frequent verification of the validity of the backups and the restoration process are also the responsibility of Client. eMazzanti shall undertake to preserve and protect Client's data (including data of clients and customers of Client) while performing Client Services; however, eMazzanti shall not be liable for the loss of data, or a breach of its integrity as the result of any Client Services.
6. **OWNERSHIP OF EQUIPMENT.** Client agrees that any equipment that is: (i) loaned to Client by eMazzanti; or (ii) rented to Client by eMazzanti, whether or not pursuant to a rental agreement that contains an option to purchase, shall remain the property of eMazzanti, and must be returned to eMazzanti upon the earlier of the termination of this MSA or the demand of eMazzanti. Client shall not grant any security interest in this equipment to any third party or otherwise exercise any indication of legal ownership of the equipment. Client further agrees to cease the use of and return immediately any equipment that remains the property of eMazzanti upon termination of this MSA by expiration or default. If termination or cancellation of any rental or lease falls outside of the existing term, Client shall be responsible for the remainder, in full, of said term. If the equipment is stolen, lost, damaged, destroyed, decommissioned or otherwise not returned to eMazzanti for any reason, Client shall be responsible to pay eMazzanti for replacing the equipment with equipment with the same capabilities or better. For the avoidance of doubt, the foregoing provisions shall apply to the termination of any Addendum, Service Order, Service Added, SOW, or other additional order.
7. **DEPOSITS.** Any deposits required for individual Client Services will be set forth on an Addendum, Service Order, Service Added, SOW, or other additional order. Upon termination of this MSA and any Addendum, Service Order, Service Added, SOW, or other additional order, deposits may be returned to Client after deducting any outstanding unpaid fees, including but not limited to any applicable early termination fees. Any deposit shall not be used as payment.
8. **HOURS OF SERVICE.** Except as may be specifically set forth in an Addendum, compensation for Client Services shall be billed at "Regular Consulting Rates", which are deemed to be Client Services performed during any time between the hours of 8:00 AM to 5:00 PM EST/EDST Monday through Friday, excluding the following United States holidays "Regular Consulting Hours"):

New Year's Day	Labor Day
Memorial Day	Thanksgiving
July Fourth (observed)	Christmas Day

Regular Consulting Rates (payable in U.S. Dollars) shall be provided by employees of eMazzanti as follows:

RESOURCE	STANDARD RATE
Vice President	\$250/hr.
Network Architect	\$225/hr.
Senior Consultant	\$200/hr.
Project Manager	\$185/hr.
Network Engineer	\$150/hr.

9. EXTENDED CONSULTING HOURS. Extended Consulting Hours consist of any hours outside of the period defined as Regular Consulting Hours. This includes weekends, the period 5:00 PM to 8:00 AM EST/EDST during weekdays, and all United States holidays. In the event that Client Services are performed by eMazzanti at Client's request, Client shall be liable for an increased hourly rate for Client Services performed during that period. Hourly rates for services performed weekdays from 5:00 PM to 8:00 AM shall be billed at a rate of 150% of the standard hourly rate, and hourly rates for Client Services performed at any time on any weekend or United States holiday shall be billed at a rate of 200% of the standard hourly rate.

10. TRAVEL AND EXPENSES. Reimbursement for fees from Client will include expenses incurred as outlined in an Addendum, Service Order, Service Added, SOW, or other additional order, plus a 12% processing and handling fee. Travel time to and from Client sites are billed at 50% of standard rates. All travel by train or air will be via coach class. Mileage to and from Client site will be reimbursed at the prevailing IRS rate for mileage. Ground transportation by rental car, taxicab or car service usage is permitted provided it is the most economical form of transportation. When an overnight stay is required to efficiently provide Client Services at Client locations, Client will reimburse eMazzanti based on standard hotel rates. Expenses which shall be eligible for reimbursement to eMazzanti are any employee overhead expenses, cell phone expenses, photocopies, or faxes. If overnight shipping is required to facilitate the Client Services, overnight shipping costs will be paid by Client. Any and all Federal, State and Local taxes applicable to the Client Services shall be added to each invoice to be submitted and shall be the responsibility of Client.

11. SUPPORT. All requests for technical assistance related to the Client Services ("Support Requests") shall be made through the online support form located at <http://www.emazzanti.net>, the technical support phone line (201) 360.4400 option 2 or via email to support@emazzanti.net in order to assure that Support Requests are handled promptly. All Support Requests shall be billed as specified on any Addendum, Service Order, Service Added, SOW, or other additional order; if no rates are specified, the rates will be at the rates described in Section 9. eMazzanti shall use reasonable efforts to respond to Support Requests.

CALLS MADE DIRECTLY TO EMAZZANTI EMPLOYEES ARE CONSIDERED OUTSIDE OF THE SUPPORT PROCEDURE. ATTEMPTING TO CONTACT EMPLOYEES DIRECTLY MAY RESULT IN SERVICE DELAYS. IF CLIENT FAILS TO DESIGNATE A CLIENT CONTACT, THEN CLIENT SHALL BE RESPONSIBLE FOR ANY CLIENT SERVICES REQUESTS GENERATED BY CLIENT'S EMPLOYEES.

12. EQUIPMENT & FACILITIES. eMazzanti may utilize certain items of Client's equipment and may need to gain access to certain Client facilities. Client retains title and ownership to all of the equipment owned by Client, and shall grant access for eMazzanti to access Client's facility and equipment. Facility access may be denied for any reason at any time, however if access to facilities or equipment is denied, Client acknowledges that eMazzanti may be unable to perform Client Services adequately and, if such a situation should exist, eMazzanti is hereby indemnified and held harmless from any loss, cost or expense that Client may incur as a result of inadequate access to Client's facilities.

13. TERM OF AGREEMENT. This MSA shall become a legally binding contract between the Parties on the effective date set forth above and will remain in force for a minimum period of three (3) years (the "Initial Term") that will commence from the date work commences, pursuant to each Addendum, Service Order, Service Added, SOW, or other additional order, whether attached hereto or subsequently agreed to in writing by the Parties. This MSA may be supplemented by successive Addendums, Service Orders, Service Added, SOWs, or other additional orders and once initialed or executed, or, in the event that Client accepts or utilizes the Client Services (set forth in an Addendum, Service Order, Service Added, SOW, or other additional order), their terms shall be incorporated herein by reference in their entirety. The Initial Terms shall automatically renew for subsequent one (1) year periods unless Client gives written notice to eMazzanti of its intent not to renew this MSA or an Addendum, Service Order, Service Added, SOW, or other additional order at least ninety (90) days prior to the end of its Initial Term or subsequent extensions thereof. Termination of this MSA shall not cause the termination of any Addendum, Service Order, Service Added, SOW, or other additional order then in progress or with an unexpired term unless also terminated in accordance with the terms of any such Addendum, Service Order, Service Added, SOW, or other additional order, in which case this MSA shall continue in existence with respect to such Addendum, Service Order, Service Added, SOW, or other additional order until the termination or expiration of such Addendum, Service Order, Service Added, SOW, or other additional order. Notwithstanding the foregoing, the three (3) year Initial Term shall be reset with respect to on the MSA and all Addendums, Service Orders, Service Added, SOWs, or other additional order as provided in Section 30.

14. EARLY TERMINATION. Client recognizes that in order to provide the Client Services, eMazzanti incurs substantial set-up costs. In the event that Client terminates this MSA or any Addendum, Service Order, Service Added, SOW, or other additional order for any reason, before the conclusion of its Initial Term or subsequent extensions thereof, such termination will cause eMazzanti damages for which Client agrees to pay to eMazzanti a net early termination fee as liquidated damages equal to 100% of the remaining fees that

would have been due to eMazzanti had Client not terminated the MSA or Addendum, Service Order, Service Added, SOW, or other additional order, less the estimated direct and indirect costs to provide such Client Services determined in good faith by eMazzanti.

Upon termination of this MSA or any Addendum, Service Order, Service Added, SOW, or other additional order, for any reason, all sums due for services provided, as well as any early termination fees, shall be immediately due and payable and any equipment loaned or provided to Client by eMazzanti shall be immediately returned to eMazzanti. The amount of the net early termination fee due shall be invoiced to Client by eMazzanti, and payable within fifteen (15) days of the invoice date. The Parties agree that the net early termination fee is a fair and appropriate liquidated damages provision.

CLIENT ACKNOWLEDGES THAT CLIENT'S ACCEPTANCE OF THE EARLY TERMINATION FEES IN THIS SECTION 14 A MATERIAL INDUCEMENT TO EMAZZANTI'S ENTERING INTO THIS AGREEMENT WITH CLIENT AND THAT WITHOUT SUCH INDUCEMENT EMAZZANTI WOULD NOT ENTER INTO THIS AGREEMENT. CLIENT AGREES THAT SUCH EARLY TERMINATION FEES ARE FAIR COMPENSATION TO OFFSET THE SUBSTANTIAL SET-UP COSTS PREVIOUSLY INCURRED AND LOSS OF PRODUCTIVITY BY EMPLOYEES ASSIGNED TO THE TERMINATED SERVICES UNTIL THEY CAN BE GIVEN NEW ASSIGNMENTS AS LIQUIDATED DAMAGES NEGOTIATED BY TWO SOPHISTICATED COMMERCIAL PARTIES AND ARE NOT PENALTIES.

- 15. INDEMNIFICATION REGARDING THIRD-PARTY CLAIMS.** Each of eMazzanti and Client agree to indemnify the other Party from any damages (including reasonable legal fees) awarded to third parties in any suit or cause of action arising out of the gross negligence or intentional act that causes infringement of such third-party's licenses, trademarks, copyrights, logos, sourcing of hardware or software by the Indemnifying Party in performing its obligations under this MSA, but only to the extent caused by the acts of the Indemnifying Party. However, such indemnification shall not include any item for which the Indemnified Party is reimbursed by insurance to the extent of such reimbursement and in no event shall any insurance company be considered a third-party beneficiary of any such indemnification. 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 Indemnified Party shall control all negotiations and 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 Indemnifying Party hereby agrees to provide the Indemnified Party with a reasonable amount of assistance in connection with defending or settling any such Claim.
- 16. FORCE MAJEURE.** Neither Client nor eMazzanti shall be deemed in default of this MSA 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 or regulation or decree of government or mandatory or recommended shutdown, quarantine, pandemic, epidemic, or outbreaks of disease, strikes or labor disputes, disruptions in supply chains or inability to provide raw materials, power or supplies, or any other act or condition beyond the reasonable control of the parties, whether or not unanticipated or unforeseen; 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.
- 17. OTHER OBLIGATIONS.**
- i. Client will: (i) respond to requests from eMazzanti on a timely basis; (ii) have at least one Client Contract Contact available during regular business hours and authorized to approve any change or amendment to Client Services and to approve any disputes related to the Client Services and provide other information and assistance to eMazzanti; (iii) provide eMazzanti with timely and accurate information and documentation; (iv) make available to eMazzanti other Client personnel familiar with the Client's requirements and with the expertise to permit eMazzanti to undertake and complete its obligations; (v) maintain a proper operating environment for the Client Services; (vi) provide a safe area for eMazzanti to perform any Client Services required to be performed on the Client's site; (vii) provide for all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required.
 - ii. Each Party will comply with all laws applicable to the performance of its obligations hereunder and to the Client Services, including laws relating to the import or export of software or technical data related thereto, including U.S. Export Administration Regulations and U.S. International Traffic in Arms Regulations, and anti-corruption laws and equivalent statutory obligations under the law of other jurisdictions where goods and services are to be supplied or used under this MSA.
 - iii. Client represents that it has and will maintain or will acquire sufficient quantities of fully valid licenses (e.g., software licenses, client access licenses, subscription agreements for cloud-based software and/or service plans) for all third-party software to fully support its requisite number of users thereof under this MSA and/or the third-party software licensor. Client further represents and warrants that Client will not (i) infringe on any third-party's copyright, patent, trademark, trade secret or other proprietary rights; or (ii) violate any applicable USA law, statute, ordinance, or regulation.
- 18. CLIENT SERVICES IN FOREIGN JURISDICTIONS.** In the event that Client shall request that eMazzanti provide Client Services in any jurisdiction besides the United States & Canada, eMazzanti may supply Client Services in the foreign jurisdiction in accordance with

this MSA, but only to the extent that the terms and conditions of this MSA do not conflict with any statute, rule, regulation, code or ordinance of such foreign jurisdiction. eMazzanti may, for any reason, refuse to supply the Client Services in any location outside of the territorial boundaries of the United States & Canada.

- 19. NON-PAYMENT.** 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 legal services or a collection agency to effectuate the collection of any sums that may be due from Client under this Agreement. In addition to any other sums or early termination fees that are due hereunder, Client shall pay such costs of collection, including reasonable legal fees. Acceptance of Client Services after notice that Client has failed to timely pay invoices shall constitute Client's consent to the foregoing terms.
- 20. TRANSITION.** Within thirty (30) days before the effective date of any termination of this MSA, Addendum, Service Order, Service Added, SOW, or other additional order, eMazzanti may, at its discretion cooperate to transition and migrate the technology environment created, serviced and monitored by eMazzanti to a new service provider to be designated by Client. eMazzanti and Client shall, as part of the migration to a new service provider perform the following, if applicable and as the case may be (the "Transition Services"):
- A. Client shall advise eMazzanti of the name and complete contact information for the new vendor designated by Client to provide technology services to Client (the "New Vendor").
 - B. eMazzanti shall transfer to Client, all licenses purchased and paid for in full by Client for software installed in Client's technology environment purchased through eMazzanti; and
 - C. If applicable, eMazzanti may assist Client with the termination of the automatic transmission of Client's computer data to the off-site storage facility selected by Client and may request confirmation from the offsite storage provider that any Client data stored by the provider is to be erased and no longer available for retrieval; and
 - D. eMazzanti shall remove all agents installed by eMazzanti in Client's technology environment at client's expense; and
 - E. Upon the full payment of open invoices, eMazzanti shall provide any and all passwords in the possession of eMazzanti to the Client's technology; and
 - F. Client shall surrender any rental or loaned equipment provided to Client by eMazzanti; eMazzanti shall retain a security interest in and to any equipment that has not been paid for by Client. eMazzanti shall be able to retrieve said equipment from the Client by any legal means possible.
 - G. Client shall pay to eMazzanti, at the hourly rates currently in effect, for all Transition Services required to be performed by eMazzanti to effectuate the smooth and cooperative transition to the New Vendor. The Transition Services shall be billed on a weekly basis and payment shall be made to eMazzanti within fifteen (15) days after receipt for Transition Services.
 - H. eMazzanti shall be deemed a user of the technology environment of Client created by new vendor and shall be accorded any access or other privileges to enable the eMazzanti and eMazzanti's consultants and employees to perform the Transition Services.
- 21. 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 thirty (30) days from the submission of such invoice.
- 22. ADDITIONAL SERVICES.** Services requested by Client and performed by eMazzanti that fall outside of the terms and conditions of this MSA and not covered by a separate Addendum, Service Order, Service Added, SOW, or other additional order will be billed separately on a time and materials basis, or such funds may be taken from any unused deposit or advance payment for Client Services. Any changes to the network environment not made in consultation with eMazzanti may result in a change in any previously agreed upon fee structure.
- 23. CONFIDENTIALITY.** Each Party acknowledges that it will receive access to facilities, personnel, information, and records of (and of third parties which it is obligated to treat as confidential ("Confidential Information")). Information that eMazzanti will acquire through such access and results and concepts it develops for Client will be considered confidential and proprietary to Client. All information each Party receives from the other Party, whether it be by direct or indirect communication or observation, or information developed by working independently or jointly with, (hereinafter collectively referred to as the "Confidential Information") shall be treated and regarded as confidential, proprietary and trade secret information which is the sole and exclusive property of the other Party.

Except for such Confidential Information which, prior or subsequent to disclosure, is published, known publicly, or is otherwise disclosed to the public through information to any third party, each Party shall not use, employ, or exploit the Confidential Information in any manner without the other Party's express written consent. Additionally, each of eMazzanti and Client shall hold in trust for the other and shall not disclose to any non-Party to this MSA, any "IP Information" of the other Party. IP Information is data, information, processes, information, or other such material which relates to research, development, trade secrets, or business affairs, but does not include information which is generally known or easily ascertainable by nonparties of ordinary skill in computer design, programming,

networking, information technology, or the specific business interests of either eMazzanti or Client and shall be treated as Confidential Information. Any IP information developed by eMazzanti with respect to Client Services shall remain the sole property 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 29 of this Agreement, which shall supersede any provisions covering the same subject matter.

- 24. MARKETING.** eMazzanti may use Client's name in describing or promoting eMazzanti's Services on eMazzanti's Website and in its marketing materials or other documents listing eMazzanti's qualifications, experience, and companies for which eMazzanti has provided professional services. Client also acknowledges its willingness to discuss its participation in case studies with eMazzanti on eMazzanti's request. Client will receive and approve the final version of any and all such materials prior to public release.
- 25. RETURN OF RECORDS AND INFORMATION.** Except as may be reasonably required for statutory or regulatory recording and reporting purposes (the "Retained Material"), eMazzanti shall promptly return to Client all records, memoranda, drawings, blueprints, manuals, letters, notes, notebooks, reports, computer disks, computer files, databases and other materials containing information related to Client and the Client Services (the "Client Information") from the computers and/or servers of eMazzanti. Upon request, and at Client's expense, eMazzanti shall also return, along with Client Information, complete and accurate copies of the Retained Material. The Retained Material and the copies of Client Information shall be transmitted and delivered to Client in a form and format that is readily recognizable by Client.
- 26. MINIMUM STANDARDS:** Client shall implement any additional requirements that are specific to Client's network environment, which may be prescribed by eMazzanti. Client Services required to bring Client's environment up to these Minimum Standards are not included in this MSA.
- 27. NOTICES.**

(i) Notices to eMazzanti should be sent to:

eMazzanti Technologies
701 Grand Street
Hoboken, NJ 07030
Email: operations@eMazzanti.net

(ii) Notices to Client should be sent to:

Email: _____

Notices hereunder will be effective when received and will be sufficient if given in writing, hand-delivered, sent by telefax or email with confirmation of receipt, sent by first class mail, return receipt requested and postage prepaid, or two (2) days after sent by nationally recognized overnight courier service and addressed to the signatories below at the addresses set forth above.

- 28. CONTRACT CONSTRUCTION.** In the event of a conflict in the provisions of any attachment hereto, or any Addendum, Service Order, Service Added, SOW, or other additional order, with the provisions set forth in this MSA, the provisions of such attachments, or any Addendum, Service Order, Service Added, SOW, or other additional order, shall govern. Notwithstanding the preceding sentence, in the event of any conflict between the terms of this MSA and the terms of a previously executed nondisclosure agreement or its equivalent, the terms of this MSA shall control with respect to Section 29 of this MSA.
- If any provision of this Agreement is deemed illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the provisions hereunder. The parties agree that the headings of each paragraph of this MSA are for convenience alone and will not affect the construction of the paragraph.

29. 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 /Meditation.** 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, subject, however, to the limits of liability set forth in Section 3 (B) of this MSA. 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. 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. Notwithstanding the foregoing, eMazzanti shall be entitled to recover all sums due eMazzanti under Section 19, including the costs of collection and reasonable legal fees notwithstanding the provisions of Section 29 (B), and whether or not eMazzanti is the prevailing Party in any arbitration proceeding related to Section 19, and for the avoidance of doubt, the arbitrator shall not award any costs, expenses or

legal fees to Client with respect thereto. Notwithstanding anything to the contrary in Section 29, either Party may request mediation in the State of New Jersey by written notice to the other Party as an alternate dispute resolution process prior to demanding formal arbitration. Each Party shall bear its own costs of mediation and/or arbitration, including, but not by way of limitation, attorneys' fees and other legal costs. If mediation does not result in agreement by both Parties to resolve the dispute within thirty (30) day, mediation shall terminate and such dispute shall be subject to the arbitration provisions herein.

(C) **Venue.** If and to the extent that the Parties do not resolve any dispute or any issue in the course of arbitration in accordance with Section 29 (B) 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 and waives any objection to the personal jurisdiction and venue of the state and federal courts therein. Each Party acknowledges that either Party's breach of its obligations hereunder may irreparably injure the other Party and could not adequately be compensated by monetary damages. Accordingly, in the event of any actual or threatened breach of such provisions, the other Party shall (in addition to any other remedies available at law and in equity) be entitled to seek temporary and/or permanent injunctive relief in any court of competent jurisdiction (notwithstanding the foregoing venue provisions) to enforce such provisions, and such relief may be granted without the necessity of proving actual damages or posting a bond, subject, however, to the limitations of liability set forth in Section 3 (B).

(D) **Waiver of Jury Trial.** Each Party knowingly, voluntarily, and intentionally waives any right the Party may have to a trial by jury in any action or proceeding, whether sounding in contract, tort (including negligence and gross negligence) or strict liability or otherwise and whether in state or federal or other courts, in any way relating to, or in connection with or arising out of this Agreement or its formation and/or the transactions contemplated by the Parties. The Parties warrant and represent that they have had the opportunity to review this jury waiver with legal counsel.

30. **MODIFICATIONS, ATTACHMENTS AND AFFILIATES.** It is intended that Addendums, Service Orders, Service Added, SOWs, or other additional orders will be initially or subsequently added to this MSA from time to time. Such Addendums, Service Orders, Service Added, SOWs, or other additional orders shall be incorporated into this MSA as if expressly stated herein. Each new Addendum, Service Order, Service Added, SOW, or other additional order shall reset the clock on the MSA and all Services and restart the three (3) year Initial Term with respect to each such Addendum, Service Order, Service Added, SOW, or other additional order. eMazzanti reserves the right to modify this MSA at any time by updating this MSA on the eMazzanti website. By accepting or requesting services from eMazzanti thirty (30) days after the change in MSA terms are posted, Client is deemed to consent to this MSA as modified on the eMazzanti website. Client may view the most up to date MSA at: <http://www.emazzanti.net/terms>. This MSA 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, Service Order, Service Added, SOW, or other additional 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. Client warrants and represents that if it extends Client Services to any of its Affiliates for their use and benefit, such use and benefit will not violate the terms of this MSA, and that such Affiliates will comply with all laws applicable to such use and benefit.

31. **CLIENT SERVICES IN FOREIGN JURISDICTIONS.** eMazzanti reserves the right to modify and supplement the terms of this MSA in the event that any of the Client Services are to be performed at a location outside of the continental limits of the United States & Canada and refuse to provide Client Services contemplated by this MSA at any location outside of the continental limits of the United States & Canada.

32. **TAXES.** Client agrees to pay promptly when due, all sales, use, excise, VAT, and all other taxes or similar charges (including any interest and penalties related thereto) imposed by any governmental body or agency upon any materials, supplies, equipment, or services provided by eMazzanti. Client further agrees to reimburse eMazzanti on demand for all such taxes or charges that eMazzanti actually pays based on eMazzanti's reasonable belief that said payment was required.

33. **COMPLETE AGREEMENT.** This MSA and all Addendums, Service Orders, Service Added, SOWs, and other additional orders contain the entire agreement between the Parties hereto with respect to the matters covered herein. No other agreements, representations, warranties, or other matters, oral or written, purportedly agreed to or represented by or on behalf of eMazzanti by any of its employees or agents, or contained in any sales material or brochures, shall be deemed to bind the parties hereto with respect to the subject matter hereof. Client acknowledges that it is entering into this MSA solely on the basis of the representations contained herein, and that the provisions of this MSA shall inure to the benefit of any successors or permitted assigns. The captions used herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Agreement.

34. **NO ASSIGNMENT OR THIRD-PARTY RIGHTS.** The terms and conditions of this Agreement are only for the benefit of eMazzanti and Client and are not intended to benefit or be enforceable by any third party (including any of Client's Affiliates). Client may not

transfer or assign its rights, duties, or obligations under this Agreement, directly or indirectly, by operation of law or otherwise without the advance written consent of eMazzanti.

35. **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 thirty (30) days after submission), irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.
36. **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.*"
37. **COUNTERPARTS.** This MSA may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single instrument. A signed copy of this MSA delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MSA. In addition, the foregoing shall apply to any Addendum, Service Order, Service Added, SOW, or other additional order.
38. **SIGNATORIES REPRESENTATIONS.** 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.

END OF DOCUMENT