

E-POSSIBLE, INC.

MASTER SERVICES AGREEMENT

This Master Services Agreement (this “Agreement”) is between **e-possible, Inc.** with offices at 16755 Von Karman Ave. Suite 200 Irvine, CA 92606 (“**us**”, “**our**”, “**we**” or “**e-possible**”), and you, the entity who physically or electronically signs this document in the signature block, below (“**you**”, “**your**” or “**Client**”). This Agreement will be effective as of the latest date of the signatures of the parties below (“Effective Date”).

- 1) **SCOPE OF SERVICES;** This Agreement governs all of the services that we perform for you (collectively, the “Services”). The Services will be described in one or more statements of work that we provide to you (each, a “SOW”). Once you and we mutually agree to a SOW (either by signing it or by electronic acceptance), the SOW will become a part of, and governed under, the terms of this Agreement. If there is a material difference between the language in a SOW and the language in this Agreement, then the language of the SOW will control, except in situations involving warranties, limitations of liability or termination of this Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement. If you request, and we agree in writing, to perform a service on a time and materials basis (or to perform any other service that falls outside of the scope of a SOW), then such work will be invoiced and payable within thirty (30) days after such work is performed.
- 2) **GENERAL REQUIREMENTS.**
 - a) *System Configuration.* For the purposes of this Agreement, “System” means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored or operated by us pursuant to a SOW. Generally, unless otherwise stated in a SOW, our fees are based upon the configuration of your System as of the effective date of the applicable SOW. Under those circumstances, if the System configuration changes for any reason, then we may adjust the scope of services and/or the fees charged to you under the applicable SOW to accommodate those changes.
 - b) *Requirements.* At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of e-possible providing its Services to you.
 - c) *Maintenance; Updates.* e-possible will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer’s or applicable vendor’s instructions.
 - d) *Third Party Support.* If, in e-possible’s discretion, a hardware or software issue requires vendor or OEM support, e-possible may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed \$75, e-possible will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
 - e) *Insurance.* If you are supplied with e-possible Equipment (defined below), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. e-possible must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to e-possible. Upon e-possible’s request, you agree to provide proof of insurance to e-possible, including proof of payment of any applicable premiums or other amounts due under the insurance policy.
 - f) *Advice; Instructions.* From time to time, we may provide you with specific advice and directions related to our provision of the Services or the maintenance or administration of the System. (For illustrative purposes, such advice or directions may include installing cooling mechanisms or environmental controls in a server room, increasing the System’s server or hard drive capacity, replacing obsolete equipment, etc.). You agree to promptly follow and implement any directions we provide to you related to the Services which, depending on the situation, may require you to make additional purchases or investments in the System or the environment in which the System is maintained, at your sole cost. e-possible will not be responsible for any System downtime caused by your failure to promptly follow e-possible’s advice or directions. If your failure to follow or implement e-possible’s advice renders part or all of the Services economically or technically unreasonable in e-possible’s discretion, then e-possible may terminate the applicable SOW for cause by providing notice of termination to you. Any services required to correct or remediate issues caused by your failure to follow e-possible’s advice or directions, as well as any services required to bring the System up to the Minimum Requirements, will be billed to you at e-possible’s then-current hourly rates.
 - g) *Prioritization.* Unless otherwise stated in a SOW, all Services will be performed on a schedule, and in a prioritized manner, as determined by e-possible.
 - h) *Authorized Contact(s).* You understand and agree that e-possible will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent (“Authorized Contacts”). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. If you desire to change your Authorized Contact(s),

please notify e-possible of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

- 3) **FEES; PAYMENT.** You agree to pay the fees described in each SOW. If the SOW does not include a fee schedule, then you agree to pay e-possible on an hourly basis pursuant to e-possible's standard hourly rate schedule, which will be provided to you prior to the commencement of Services.
 - a) *Schedule.* Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the calendar month in which the Services are to be provided to you. If applicable, payments made by ACH will be deducted from your designated bank account on the first business day of the month in which the Services are to be provided. For prepaid fees or fees paid pursuant to a service plan, payment must be made in advance of work performed, unless other arrangements are expressly stated in the SOW.
 - b) *Nonpayment.* Fees that remain unpaid for more than fifteen (15) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. e-possible reserves the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely received by e-possible. Notice of disputes related to fees must be received by us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connect fee may be charged to you if e-possible suspends the Services due to your nonpayment. Untimely payment(s) will result in automatic suspension of all e-possible's commitments for any SLA. Time is of the essence in the performance of all payment obligations by you.
- 4) **ACCESS.** You hereby grant to e-possible the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the System for the purpose of enabling e-possible to provide the Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses, permits or other permissions necessary for e-possible to provide Services to the System and, if applicable, at your designated premises. Proper and safe environmental conditions must be provided and assured by you at all times. e-possible shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.
- 5) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY.**
 - a) *Hardware / Software Purchased Through e-possible.* Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through e-possible ("Third Party Products") are nonrefundable once the applicable purchase order is placed in e-possible's queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third Party Products are provided "as is" and without any warranty whatsoever as between e-possible and you (including but not limited to implied warranties).
 - b) *Warranty Application.* Notwithstanding any provision to the contrary in this Agreement, any warranty provided by e-possible shall be deemed null and void if the applicable hardware or product is (i) altered, modified or repaired by persons other than e-possible, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by e-possible; (ii) misused, abused, or not operated in accordance with the specifications of e-possible or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than e-possible or persons approved or designated by e-possible.
 - c) *Liability Limitations.* **This paragraph limits the liabilities arising under this Agreement or any SOW, and is a bargained-for and material part of this Agreement.** In no event shall either party be liable for any indirect, special, exemplary, consequential or punitive damages, or for lost revenue, loss of profits (except for fees due and owing to e-possible), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any SOW, or the Services, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages. Except for your payment obligations and your indemnification obligations described in this Agreement, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you to e-possible for the specific Service upon which the applicable claim(s) is/are based during the three (3) month period immediately prior to the date on which the cause of action accrued. The foregoing limitation shall not apply to the extent that the Claims are caused by a Responsible Party's willful or

intentional misconduct, or gross negligence. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, or gross negligence.

- 6) **INDEMNIFICATION.** You agree to indemnify, defend and hold e-possible harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, your breach of this Agreement, or which relate to any act or omission undertaken or caused by you. The foregoing indemnification obligation includes Damages arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Services. e-possible will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. No claim for which indemnity is sought by e-possible will be settled without e-possible's prior written consent, which shall not be unreasonably delayed or withheld.
- 7) **TERM; TERMINATION.** This Agreement will begin as of the latest date of the signatures of the parties below, and will continue until terminated as described in this Section. Additionally, each SOW will have its own term, and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) the status or progress of any other SOW between the parties.
- a) *Termination Without Cause.* Unless otherwise agreed by the parties in writing, no party will terminate a SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if e-possible decides to cease providing an applicable service to all of its customers generally, then e-possible may terminate an applicable SOW without cause by providing no less than ninety (90) days prior written notice to you. If you terminate a SOW without cause and without e-possible's consent, then you will be responsible for paying the early termination fee described in the applicable SOW. If no early termination fee is listed, then prior to the effective date of termination of the SOW or this Agreement (as applicable) without cause, you agree to pay e-possible an amount equal to (i) all expenses incurred by e-possible in its preparation and provision of the Services to you, e.g., licensing fees incurred by e-possible, non-mitigatable hard costs, etc. ("Hard Costs"), as well as (ii) fifty percent (50%) of all fees that would have been paid to e-possible had the term not been terminated prematurely. If no SOW is in progress, then either party may terminate this Agreement without cause by providing the other party with five (5) days prior written notice.
- b) *Termination For Cause.* In the event that one party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If e-possible terminates this Agreement or any SOW For Cause, then e-possible shall be entitled to receive, and you hereby agree to pay to e-possible, (i) all amounts that would have been paid to e-possible had this Agreement or SOW (as applicable) remained in effect, and (ii) all Hard Costs. If you terminate this Agreement or a SOW for cause, then you will be responsible for paying only for those services that were properly delivered and accepted by you up to the effective date of termination.
- c) *Client Activity As A Basis for Termination.* In the event that (i) any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the System or any part of the System to malfunction consequently requiring remediation by e-possible on three (3) occasions or more ("System Malfunction"), and if under those circumstances, you fail to remedy, repair or replace the System Malfunction as directed by e-possible (or you fail to cease the activity causing the System Malfunction, as applicable), or (ii) you or any of your staff, personnel, contractors, or representatives engage in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Services to you, then e-possible will have the right, upon ten (10) days prior written notice to you, to terminate this Agreement or the applicable SOW For Cause or, at e-possible's discretion and if applicable, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.
- d) *Consent.* You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- e) *Equipment / Software Removal.* Upon termination of this Agreement or applicable SOW for any reason, you will provide e-possible with access, during normal business hours, to your premises or any other locations at which e-possible-owned equipment or software (collectively, "e-possible Equipment") is located to enable e-possible to remove all e-possible Equipment from the premises. If you fail or refuse to grant e-possible access as described herein, or if any of the e-possible Equipment is missing, broken or damaged (normal wear and tear excepted) or any of e-possible-supplied software is missing, e-possible will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items.
- f) *Transition; Deletion of Data.* In the event that you request e-possible's assistance to transition away from e-possible's services, e-possible will provide such assistance if (i) all fees due and owing to e-possible are paid to e-possible in full prior to e-possible providing its assistance to you, and (ii) you agree to pay e-possible its then-current hourly rate for such assistance, with up-front amounts to be paid to e-possible as may be required by e-possible. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, e-possible will**

have no obligation to store or maintain any Client data in e-possible's possession or control beyond fifteen (15) calendar days following the termination of this Agreement. e-possible will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, e-possible's deletion of your data beyond the time frames described in this Section 7(f).

8) **RESPONSE**

a) *Response.* e-possible warrants and represents that e-possible will provide the Services, in the manner and within the time period(s) designated in an applicable SOW ("Response Time") and SLA, except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which e-possible is required to suspend the Services to protect the security or integrity of your System or e-possible's equipment or network, or (iv) delays caused by a force majeure event.

i) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by e-possible but which will not occur between the hours of 8:00 AM and 6:00 PM PST (or PDT, as applicable), Monday through Friday without your authorization or unless exigent circumstances exist, during which time e-possible will perform scheduled maintenance or adjustments to its network. e-possible will use its best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.

ii) Client-Side Downtime. e-possible will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").

iii) Vendor-Side Downtime. e-possible will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or "upstream" service or product vendors.

iv) Remedies; Limitations. Except for the Onboarding Exception, if e-possible fails to meet its service level commitment in a given calendar month and if, under such circumstances, e-possible's failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, e-possible will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to e-possible, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph and in Section 7(b) are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for e-possible's failure to meet any service level commitment during the term of this Agreement.

b) *Onboarding Exception.* You acknowledge and agree that for the first thirty (30) days following the commencement date of a SOW or duration of any Project deployment(s), the Response Time commitments described in this Agreement will not apply to e-possible, it being understood that there may be unanticipated downtime or delays due to e-possible's initial startup activities with you (the "Onboarding Exception").

9) **CONFIDENTIALITY.**

a) *Defined.* For the purposes of this Agreement, Confidential Information means any and all non-public information provided to e-possible by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of e-possible, (ii) was developed independently by e-possible, or (iii) is or was lawfully and independently provided to e-possible prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

b) *Use.* e-possible will keep your Confidential Information confidential, and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill e-possible's obligations under this Agreement. If e-possible is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then e-possible will ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section 9.

c) *Due Care.* e-possible will exercise the same degree of care with respect to the Confidential Information it receives from you as e-possible normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

d) *Compelled Disclosure.* If e-possible is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, e-possible will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive e-possible's compliance with the provisions of this Section 9. e-possible will use its best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, e-possible may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that e-possible has been advised by written opinion of counsel reasonably acceptable to e-possible that it is legally compelled to disclose.

10) **ADDITIONAL TERMS; THIRD PARTY SERVICES.**

a) *EULAs.* Portions of the Services may require you to accept the terms of one or more third party end user license agreements (“EULAs”). EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs, and will look only to the applicable third party provider for the enforcement of the terms of such EULAs. If, while providing the Services, e-possible is required to comply with a third-party EULA and the third party EULA is modified or amended, e-possible reserves the right to modify or amend any applicable SOW with you to ensure e-possible’s continued compliance with the terms of the third party EULA.

b) *Third Party Services.* Portions of the Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as data hosting services, domain registration services, and data backup/recovery services (“Third Party Service”). Not all Third Party Services may be expressly identified as such in a SOW, and at all times e-possible reserves the right to utilize the services of any third party provider, or change third party providers in its sole discretion as long as the change does not materially diminish the Services to be provided to you under a SOW. e-possible will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to e-possible or to you.

c) *Data Loss.* Under no circumstances will e-possible be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) e-possible’s failure to backup or secure data from portions of the System that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, e-possible does not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.

d) *BYOD.* You hereby represent and warrant that e-possible is authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the System, regardless of whether such device(s) are owned, leased or otherwise controlled by you. e-possible will not be obligated to provide the Services to any mobile device or temporarily-connected device unless that obligation is specifically stated in an applicable SOW. Further, unless otherwise stated in a SOW, devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the System. Personal devices may not connect or be connected to the Network due to security risks associated with such connection of untrusted devices to the local network.

11) **OWNERSHIP.** Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party.

12) **ARBITRATION.** Any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before one arbitrator to be mutually agreed upon by the parties. The arbitration shall be administered and conducted by JAMS pursuant to its Streamlined Arbitration Rules and Procedures (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in the venue described in Section 13, below. The arbitrator shall determine the scope of discovery in the matter, however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

13) **MISCELLANEOUS.**

a) *Disclosure.* You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Services, or that would require us to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. Similarly, you represent that your business is not subject to the provisions of the Federal Acquisition Regulation (FAR), or any similar regulatory acquisition process or procedure. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Services.

b) *Assignment.* Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, e-possible may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all

of the assets of the business of e-possible; provided, however, that such assignee expressly assumes e-possible's obligations hereunder.

c) *Amendment.* Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by e-possible, specifically refers to this Agreement, and is accepted in writing by one of your Authorized Contacts.

d) *Time Limitations.* The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.

e) *Severability.* If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.

f) *Other Terms.* e-possible will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless e-possible has expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.

g) *No Waiver.* The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.

h) *Merger.* This Agreement, together with any and all SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided, and will not act to modify this Agreement or provide binding contractual language between the parties. e-possible will not be bound by any agents' or employees' representations, promises or inducements not explicitly set forth herein.

i) *Force Majeure.* e-possible will not be liable to you for delays or failures to perform e-possible's obligations under this Agreement or any SOW because of circumstances beyond e-possible's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by client or client's staff or any 3rd party contractors, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.

j) *Non-Solicitation.* You acknowledge and agree that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, you will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of e-possible's employees or subcontractors to discontinue or reduce the scope of their business relationship with e-possible, or recruit, solicit or otherwise influence any employee or agent of e-possible to discontinue such employment or agency relationship with e-possible. In the event that you violate the terms of the restrictive covenants in this Section 13(j), you acknowledge and agree that the damages to e-possible would be difficult or impracticable to determine, and you agree that in such event, as e-possible's sole and exclusive remedy therefore, you will pay e-possible as liquidated damages and not as a penalty an amount equal to one hundred percent (100%) percent of that employee or subcontractor's first year of base salary with you (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to any of e-possible's employees by you will be deemed to be a material breach of this Agreement, in which event e-possible shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.

k) *Survival.* The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive.

l) *Governing Law; Venue.* This Agreement and any SOW will be governed by, and construed according to, the laws of the state of California. You hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts in Orange, California, for any and all claims and causes of action arising from or related to this Agreement.

m) *No Third Party Beneficiaries.* The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

n) *Usage in Trade.* It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

o) *Business Day.* If any time period set forth in this Agreement expires on a day other than a business day in Orange, California, such period will be extended to and through the next succeeding business day in Orange, California.

p) *Notices; Writing Requirement.* Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, and email (email must be followed by a call to ensure the recipient has received the

email) as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to epossible's helpdesk email address with a confirmed reply from ticketing system assigning a Ticket ID, and (ii) the sender includes itself in the "cc" portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to e-possible regarding (a) any alleged breach of this Agreement by e-possible, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any SOW, must be delivered to e-possible by U.S. mail return receipt requested, as well as email sent to epossible's helpdesk email address unless such requirement is expressly and specifically waived by e-possible. All electronic documents and communications between the parties will satisfy any "writing" requirement under this Agreement.

q) *Independent Contractor.* Each party is an independent contractor of the other, and neither is an employee, partner or joint venturer of the other.

r) *Subcontractors.* Generally, e-possible does not utilize subcontractors; however, should e-possible elect to subcontract a portion of the Services, e-possible shall guarantee all work performed by any e-possible-designated subcontractor as if e-possible performed the subcontracted work itself.

s) *Data Access/Storage.* Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us in the event that your company requires us to modify our standard access or storage procedures.

t) *Counterparts.* The parties intend to sign and deliver this Agreement and any SOW in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign and deliver this Agreement (or any SOW) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party's signature for all purposes.