

Master Services Agreement

This Master Services Agreement (this “Agreement”) is made and entered into as of [_____], 2020 (the “Effective Date”) by and between EmOpti, Inc., located at 250 Sunnyslope Road, Suite 245, Brookfield, WI 53005 (“EmOpti”) and _____, located at _____ (“Customer”).

RECITALS

WHEREAS, EmOpti owns or otherwise holds rights with respect to one or more web-based software-as-a-service offerings defined below as the “Purchased Services”; and

WHEREAS, Customer wishes to obtain access to the Purchased Services and certain related services, and EmOpti wishes to provide the same, all on the terms and subject to the conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, EmOpti and Customer hereby agree as follows:

1. Definitions. In addition to the capitalized terms defined upon first use herein, certain capitalized terms are defined in the **MSA Schedule of Definitions** attached hereto as Exhibit A.

2. Master Agreement and Schedules; Provision and Use of Services.

2.1 This is a master agreement intended to cover one or more Schedules to be executed by the parties from time to time on or after the Effective Date. Each such fully executed Schedule shall be deemed incorporated in and become a part of this Agreement. Appendices to this agreement at the time of execution include:

- A. Definition of Terms
 - B. End User License Agreement
 - C. HIPAA Business Associate Agreement
 - D. Service Level Agreement
 - E. Business Terms
- One or more Statements of Work

2.2 EmOpti shall provide the Services to Customer on the terms and subject to the conditions set forth in this Agreement and the Schedules. EmOpti shall have no obligation to provide, and Customer shall have no obligation to pay for, Services not specified in a Schedule.

2.3 The Purchased Services are hosted software-as-a-service offerings, the specific features and functionality of which are described in the Documentation. EmOpti shall be responsible for the deployment, operation, management and hosting of the Purchased Services including the provision and maintenance of all server-side hardware and EmOpti Software. Customer shall be responsible for all hardware, software and connectivity infrastructure

required for Customer to connect to the Purchased Services from Customer’s own systems.

2.4 Customer is solely responsible for the security and proper creation, use and termination of all user IDs, passwords and other security devices used in connection with Services and shall take reasonable steps to ensure that they are kept confidential and secure, are used properly and are not disclosed to unauthorized Persons. Customer shall immediately inform EmOpti if there is any reason to believe that a user ID, password, or any other security device has or is likely to become known to any Person not authorized to use it, or is being or is likely to be used in an unauthorized way. EmOpti reserves the right (when deemed necessary or appropriate by EmOpti in its reasonable discretion) to require Customer to change the user IDs, passwords or other security devices used by particular Authorized Users, and Customer shall promptly comply with any such requirement. In addition EmOpti reserves the right to impose additional restrictions and protocols concerning the safety and security of the Services which are commensurate with industry standards, and Customer shall promptly comply with any such restrictions and protocols of which it has received notice.

2.5 Customer is solely responsible for its relationships with its Affiliates, Clients and Authorized Users, for their use of the Services, and for ensuring that they comply with all the terms and conditions of this Agreement, as well as any applicable policies (including those pertaining to safety, privacy and security) of Customer, its Affiliates and Clients. Customer shall not make any representations, warranties or guarantees to any of Clients or Authorized Users on EmOpti’s behalf. Any violation

of the terms and/or conditions of this Agreement by an Authorized User, Client or Affiliate of Customer shall be deemed to be a violation by Customer of such terms and conditions. Without limiting the foregoing, prior to making any Services available to any Client, Customer shall be required to ensure that the Client has agreed to be bound by the terms and conditions of the **End User Agreements for EmOpti Services** attached hereto as Exhibit B.

2.6 To the extent the Services include any Professional Services, EmOpti shall perform the Professional Services in accordance with industry standards, and deliver to Customer the Deliverables on the terms and subject to the conditions set forth in the Agreement and an applicable SOW. Any changes to the scope of Professional Services shall be made only by written change order or amendment signed by an authorized representative of each Party prior to implementation of such changes. Customer shall cooperate reasonably with EmOpti in EmOpti's provision of Professional Services. EmOpti shall not be liable for any delays to the extent caused by (i) any failure or delay on Customer's part to comply with this Section 2.6 or to otherwise fulfill its obligations under a SOW, (ii) inaccuracies in information provided by Customer; (iii) Customer-requested changes, except as agreed to by EmOpti in a change order or other writing; (iv) changes in Customer personnel; or (v) other factors beyond the reasonable control of EmOpti (collectively, "Unforeseen Events"). If EmOpti determines that additional work on EmOpti's part will be required as a result of an Unforeseen Event, EmOpti shall not be required to perform such additional work unless and until the Parties have executed a written change order covering such additional work.

2.7 Unless otherwise specified in an applicable SOW, all Professional Services and Deliverables shall be deemed accepted by Customer within thirty (30) days of delivery unless Customer provides notice on non-acceptance within such time. If an SOW specifies that a particular Deliverable shall be subject to acceptance testing, then Customer shall have ten (10) business days (or such other time period as may be specified in the SOW) (the "Acceptance Period") to test such Deliverable in accordance with any procedures and criteria specified in the SOW (the "Acceptance Test"). If such Deliverable does not meet the requirements set forth in the SOW, Customer shall notify EmOpti of the nature and specifics of the nonconformity in sufficient detail to enable EmOpti

to identify, understand and reproduce the nonconformity. Customer shall have no right to reject any Deliverable as nonconforming if such rejection is based in whole or in part on Customer's request for additional items, services, deliverables, specifications or scope not set forth in the applicable SOW. For those Deliverables subject to acceptance testing, EmOpti shall work to correct nonconformities of which it has been notified during the Acceptance Test, and resubmit the affected Deliverable to Customer for re-testing as promptly as reasonably practical. If Customer does not notify EmOpti of any nonconformity during the Acceptance Period, the Deliverable shall be deemed accepted. The procedures specified in this Section 2.7 shall repeat until Customer accepts or is deemed to have accepted the Deliverable; provided that Customer may terminate the Schedule under which the Deliverables are provided if EmOpti fails to cure the non-conformance in two cycles under this Section and in such event EmOpti shall refund to Customer any amounts previously paid for such Deliverable. Notwithstanding the foregoing, any Deliverable used by Customer in its regular operations, other than for testing purposes, shall be deemed accepted.

3. Rights and Limitations of Use.

3.1 Subject to the terms and conditions of this Agreement (including Customer's payment obligations hereunder), EmOpti grants to Customer a limited, non-exclusive, non-transferable right and license during the applicable Subscription Period: (a) to access and use, and permit Authorized Users to access and use, the Purchased Services and Documentation solely for the Permitted Purpose; (b) to make use of any Deliverables for the purposes and subject to any usage limitations specified in an applicable SOW; and (c) to the extent EmOpti makes available to Customer, by way of download or other form of distribution, any software, tools, materials or technology intended for use in connection with the EmOpti Services, to store, install, execute and use the same internally within Customer's, its Affiliates' and Clients' organizations, solely in connection with their authorized use of the Purchased Services for the Permitted Purpose.

3.2 Except for the rights granted in Section 3.1, no other rights in or to the EmOpti Services or any EmOpti IP, express or implied, are granted to Customer. Without limiting the foregoing, except to the extent expressly authorized by this

Agreement, Customer may not: (a) transfer to any other Person any of its rights to use the Purchased Services; (b) sell, rent, lease or share the Purchased Services; (c) permit any Person who is not an Authorized User to use or access the Purchased Services; (d) use the Purchased Services other than for the Permitted Purpose; (e) use the Purchased Services to provide outsourcing, service bureau, hosting, application service provider or online services to third Persons; (f) create any derivative works based upon any EmOpti Services or EmOpti IP; (g) copy any feature, design or graphic in any EmOpti Services or EmOpti IP; (h) attempt to circumvent any security device or access or derive the source code or architecture of any EmOpti Services or EmOpti IP; (i) engage in the development or engage in activities intended to facilitate the development of a competitive solution to any EmOpti Services or assist another person to create a competitive solution to any EmOpti Services; (j) load or penetration test any EmOpti Services or otherwise use any EmOpti Services in any way that is, or could reasonably be expected to be, detrimental to EmOpti's ability to provide services to any other customer; (k) use any EmOpti Services to access the data of any other customer of EmOpti; (l) alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on any EmOpti Services, Documentation or other EmOpti IP; (m) use EmOpti Services to transmit or store any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (n) use EmOpti Services in a manner that violates any applicable law, ordinance, regulation or administrative order; or (o) permit any other Person (including any Client or Authorized User) to do any of the foregoing.

4. Customer Data and Security.

4.1 Exhibit D attached hereto describes the administrative, physical, and technical safeguards ("Security Systems") that EmOpti has implemented and will maintain to protect the security, confidentiality and integrity of Customer Data. EmOpti may modify such Security Systems from time to time, as reasonably determined by EmOpti to be necessary or appropriate, provided that no such change may reduce in any material respect the security standards for the Services. EmOpti shall not access or use the Customer Data except in connection with the performance of Services or as otherwise expressly authorized hereunder.

4.2 Customer acknowledges that EmOpti exercises no control over and shall have no liability for the content of the Customer Data and it is Customer's sole responsibility to ensure that the provision of Customer Data to EmOpti complies with all applicable laws and regulations and any additional requirements set forth in this Agreement.

4.3 EmOpti agrees to use or disclose any Customer Data, including that which constitutes "Protected Health Information" (as defined under HIPAA), solely in the manner and for the purposes set forth in this Agreement, except as otherwise required by law. Further, each party agrees to comply with the terms of the **Error! Reference source not found.** attached hereto as Exhibit C (the "BAA").

4.4 As between Customer and EmOpti, all Customer Data shall remain the sole property of Customer. EmOpti and its Affiliates and their respective employees and agents shall have the right to reproduce, modify, use, host, transmit and display the Customer Data solely in connection with EmOpti's provision of the Services under this Agreement to Customer and its Authorized Users; provided that, notwithstanding anything to the contrary contained herein, EmOpti shall be permitted to use aggregated data generated by Customer's, its Affiliates', Clients' and Authorized Users' use of the Services, as well as data relating to attributes or characteristics of Customer Data (collectively, "Metadata"); provided that, except as may otherwise be specified in any SOW, Metadata shall not include Customer Data that specifically identifies Customer or any other Person and EmOpti may not sell or transfer or disclose such Metadata to any other person. Without limiting the foregoing, nothing contained in the BAA or elsewhere in this Agreement is intended to limit EmOpti's ability to engage in Data Aggregation (as defined under HIPAA) in compliance with HIPAA.

4.5 Customer shall use commercially reasonable efforts (including by using a generally commercially available virus detection or scanning program and conducting regular virus scans on all equipment that will be interacting with the EmOpti Services and all media containing Customer Data provided to the EmOpti Services) designed to ensure that Customer's connection to and use of the EmOpti Services does not include, and that any method of transmitting Customer Data will not introduce, any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or

programs that could harm or disrupt the proper operation of the EmOpti Services or any part thereof, with or without the passage of time or the taking of or failure to take any action.

4.6 Customer accepts sole responsibility for: (a) the accuracy, completeness and integrity of the Customer Data as provided to EmOpti; and (b) the programming, procedures and communication lines established and used by Customer for purposes of internet-based or remote access to the Purchased Services.

5. Maintenance and Support Services.

5.1 EmOpti shall make available to the Customer (but not to Clients) such web and email based technical support with respect to the Purchased Services as may be described in the applicable Schedule. Technical support shall only be provided to Customer Designated Representatives who have been appropriately trained with respect to the use of the Purchased Services. Other Authorized Users shall use the Documentation and rely on the Customer Designated Representatives for support. EmOpti shall not be obligated to provide technical support to other Authorized Users or outside of EmOpti's support hours set forth in the Schedule. If no hours are set forth in the Schedule, support shall be provided during EmOpti's normal business hours.

5.2 Customer acknowledges that the EmOpti Services were not designed or produced to Customer's individual requirements and that Customer is solely responsible for confirming that the Purchased Services meet such requirements. Customer further acknowledges that the EmOpti Services are based on a standardized service platform made available by EmOpti to a variety of customers. EmOpti will make available to Customer as part of the Purchased Services the error corrections and improvements that EmOpti makes available to its customers generally as part of their subscription to the same EmOpti Services, but specifically excluding any new products, offerings, modules, functionality or features for which EmOpti generally charges its customers a separate fee, unless Customer separately purchases a license or subscription thereto pursuant to one or more Schedules. EmOpti reserves the right to make changes to the EmOpti Services, provided such changes shall not materially decrease the functionality or performance of the Services. Customer agrees that its subscription to the Purchased Services is not contingent on the delivery of any future functionality

or features, or dependent on any statements made by EmOpti regarding possible future functionality or features.

5.3 Exhibit D describes the policies and procedures that EmOpti will follow with regard to notification and scheduling of any maintenance that is expected to require the involvement of Customer's personnel or create any interruption or disruption of Customer's use of the Purchased Services. EmOpti may implement reasonable changes to such policies and procedures from time to time upon reasonable advance notice to Customer.

5.4 Business Continuity. Exhibit D attached hereto describes the business continuity plan ("Business Continuity Plan" or "BCP") that will be implemented and maintained by EmOpti to ensure the continuation of its core operations related to the provision of the services and systems under this Agreement if an incident (event, act or omission) impairs or disrupts the delivery of such items. EmOpti may modify its BCP from time to time, as reasonably determined by EmOpti to be necessary or appropriate, provided that such modifications do not result in any material diminution in the degree of security or protection from the BCP in place prior to such modifications.

6. Fees and Payment.

6.1 Customer shall pay all fees and charges which are not the subject of a good faith dispute as specified in each Schedule. Except as otherwise set forth in this Agreement, all payment obligations are non-cancelable and amounts paid are non-refundable. Unless otherwise specified in a Schedule, all fees and charges for the initial Subscription Period are due upon the effective date of such Schedule, and Customer shall pay all other fees and charges within thirty (30) days of the date Customer receives the invoice therefor.

6.2 Unless otherwise specified in an applicable SOW, Customer will be charged on a time and materials basis for any Professional Services, at EmOpti's standard rates current at the time of performance for the types of services rendered. In addition, Customer will reimburse EmOpti for reasonable travel and living expenses incurred by EmOpti in connection with its performance of Professional Services.

6.3 EmOpti may charge Customer interest at the rate of 1.5% per month (or the highest

rate allowable by law, if less) for any past due amounts, from the date payment was due until the date paid, other than with respect to any amount disputed by Customer in good faith where Customer is cooperating diligently to resolve the dispute. Customer shall bear any costs (including attorneys' fees and costs) incurred by EmOpti in collecting any amounts due hereunder.

6.4 EmOpti reserves the right to increase any fees at any time, provided that no increase of the subscription fee payable by Customer for the Purchased Services shall take effect until the start of the next Subscription Period following EmOpti's notice to Customer of such fee increase, sent no later than sixty (60) days prior to the start of such Subscription Period.

6.5 Customer shall pay any sales, use, value added and other taxes and import duties (other than corporate income or gross receipts taxes payable by EmOpti) due as a result of any amounts paid by Customer to EmOpti under any Schedule; provided, however, that if Customer is exempt from the payment of such taxes, Customer shall provide EmOpti with a copy of all applicable tax exemption certificates and will not be responsible for the payment of such taxes.

7. Warranties.

7.1 Each Party represents and warrants to the other Party that: (a) it has the full power and authority to enter into this Agreement and perform its obligations under this Agreement; and (b) the execution, delivery and performance of this Agreement by it does not violate, conflict with or constitute a default under any agreement or instrument to which it is a party or by which it is bound, or any applicable law, regulation or order of any court or other tribunal, except where such violation, conflict or default would not materially impair such Party's performance of its obligations or the other Party's enjoyment of its rights under this Agreement.

7.2 EmOpti further warrants to Customer that: (a) the Purchased Services will function substantially in accordance with the applicable Documentation; (b) it will use commercially reasonable efforts to prevent the introduction into Customer's information technology systems of viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs that could harm or disrupt the proper

operation of the Customer's systems; (c) the Professional Services shall be performed with reasonable care and skill and in accordance with applicable professional standards, (d) as of the Effective Date of this Agreement and each Schedule, there are no claims brought or threatened against EmOpti or its customers alleging that the Deliverable or Services infringe or misappropriate the intellectual property rights of any third party. In the event of any nonconformance with any of the warranties specified in this Section 7.2, Customer will promptly (and in no event later than thirty (30) days after the non-conforming services were provided) notify EmOpti of such nonconformance and EmOpti will, following receipt of such notice from Customer, use commercially reasonable efforts to make available to Customer a conforming version of the applicable Services. If EmOpti fails to do so within thirty (30) days, and such nonconformance has the effect of materially diminishing the functionality and value of the Purchased Services as a whole, then Customer shall have the right to terminate this Agreement upon notice and recover the subscription fees paid to EmOpti, pursuant to Section 10.6(c).

7.3 EXCEPT AS SET FORTH IN THIS AGREEMENT, IN EXHIBIT D OR IN ANY APPLICABLE SOW, EMOPTI IS PROVIDING THE SERVICES AND DELIVERABLES "AS IS" AND EMOPTI DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND DELIVERABLES OR THEIR PERFORMANCE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN PARTICULAR, EMOPTI DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL MEET CUSTOMER'S EXPECTATIONS OR BE SECURE, ACCURATE, ERROR-FREE, OR OPERATE ON AN UNINTERRUPTED BASIS OR IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE OR SYSTEM. WITHOUT LIMITING THE FOREGOING, EMOPTI WILL NOT BE LIABLE FOR ANY DEFICIENCIES IN PERFORMANCE OF THE SERVICES ATTRIBUTABLE TO INTERNET FUNCTIONALITY, FORCE MAJEURE,

CUSTOMER'S, OR CUSTOMER'S, ANY CLIENT'S OR ANY AUTHORIZED USER'S NETWORK OR ACCESS TO THE INTERNET.

8. Indemnification.

8.1 EmOpti shall indemnify, defend and hold harmless Customer, its Affiliates and Authorized Users, and their respective employees and agents from and against any loss, liability, cost, damage or expense (including reasonable attorneys' fees) in respect of any claim, demand, action, suit or other judicial proceeding asserted, brought or threatened by a third Person (each a "Claim") arising from or related to any allegation that the Services as provided by EmOpti hereunder infringe any third Person's rights in any copyright, trademark or United States or European Union patent, or any trade secret entitled to protection as such under applicable law, except to the extent the Claim (a) relates to Customer Data or other content, information, specifications or materials provided by or on behalf of Customer or its Clients or Authorized Users; (b) relates to modifications or developments made by Customer or its Affiliates or any third Person at their direction to the extent that Services would not have been infringing but for such modification or development; (c) relates to the actual or alleged infringement of inventions, technologies or methods (not specific or unique to EmOpti Services) in widespread unlicensed use by third Persons at the time the Services have been used by Customer; or (d) is otherwise subject to Customer's indemnification obligations under Section 8.3. In the event of any actual Claim of infringement or if EmOpti has reason to believe that such a Claim may be brought, EmOpti may at its option and sole expense either (i) obtain the rights necessary to extinguish or avoid the infringement, or (ii) make any modifications to the relevant Services that are recommended by EmOpti's counsel to avoid infringement of third Person rights, provided that if any such modification materially diminishes the functionality and value of the Services as a whole, Customer may within ninety (90) days following EmOpti's implementation of such modification terminate this Agreement by notice to EmOpti and recover a refund of prepaid fees pursuant to Section 10.6(c). Additionally, if EmOpti is not able to provide the relief in (i) or (ii) in the previous sentence, then Customer may terminate this Agreement by notice to EmOpti and recover a refund of prepaid fees pursuant to Section 10.6(c). This Section 8.1 states Customer's sole remedy and EmOpti's entire liability for any losses and damages of

any nature arising out of or relating to any actual or alleged infringement of any copyright, patent, trade secret or other Intellectual Property Rights of any third Person.

8.2 EmOpti shall indemnify, defend and hold harmless Customer, its Affiliates and Authorized Users, and their respective employees and agents from and against any loss, cost, damage or expense (including reasonable attorneys' fees) in respect of any Claim relating to EmOpti's (i) use of Customer Data in violation of this Agreement or applicable law, or violation of applicable law or third party rights, (ii) breach of its confidentiality obligations and/or security requirements specified under this Agreement, (iii) violation of applicable law, and (iv) gross negligence or willful misconduct..

8.3 Customer shall indemnify, defend and hold harmless EmOpti and its Affiliates and their respective employees and agents from and against any loss, cost, damage or expense (including reasonable attorneys' fees) in respect of any Claim arising from (a) EmOpti's use of Customer Data not in violation of the terms of this Agreement (excluding claims based on EmOpti's breach of its obligations of confidentiality or security under this Agreement) or any other use (not in violation of the terms of this Agreement) of content, information, specifications or materials provided by Customer or its Affiliates, Clients or Authorized Users or (b) the use by Customer or its Affiliates, Clients or Authorized Users of the Services, or any EmOpti IP, in breach of this Agreement or in violation of applicable law or third party rights or (c) any actual or alleged death, disability or personal injury arising in connection with the use of the Services in providing medical or health care services, including any actual or alleged malpractice by Customer, any Client, any Authorized User, or any of their respective employees or agents.

8.4 As a condition to the obligations of the indemnifying party under either of Sections 8.1 or 8.3 above, the indemnified Person shall: (a) promptly notify the indemnifying Party of any Claim for which indemnity will be sought; provided that no delay in providing such notice shall relieve the indemnifying Party of any liability or obligations hereunder except to the extent the indemnifying Party has been prejudiced by such delay; (b) permit the indemnifying Party to assume control of the defense and settlement of such Claim with counsel of its choosing; and (c) provide cooperation reasonably requested by the indemnifying

Party in investigating and defending such Claim, at the indemnifying Party's expense (provided that the indemnified Person shall not be entitled to compensation for time spent providing such cooperation). The indemnified Person shall have the right to participate in (but not control) the defense of any such Claim, at its sole cost and expense, using counsel of its choosing. Any settlement shall provide a complete release of the indemnified party and not admit any fault on the part of the indemnified party.

9. LIMITATIONS OF LIABILITY.

9.1 EXCEPT FOR (I) LIABILITY ARISING FROM (A) WILLFUL MISCONDUCT, (B) AN INTENTIONAL AND MATERIAL BREACH OF EMOPTI'S OBLIGATIONS UNDER SECTIONS 4.1 OR 4.3 (C) A BREACH OF SECTION 11 (CONFIDENTIALITY), (D) A BREACH OF THE BAA, OR (E) A BREACH OF SECTION 12 (PROPRIETARY RIGHTS) AND (II) ANY LOSS, COST, DAMAGE OR EXPENSE SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF DATA, LOSS OF BUSINESS OR PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY SORT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

9.2 EXCEPT FOR (I) LIABILITY ARISING FROM (A) WILLFUL MISCONDUCT, B) AN INTENTIONAL AND MATERIAL BREACH OF EMOPTI'S OBLIGATIONS UNDER SECTIONS 4.1 OR 4.3 (C) A BREACH OF SECTION 11 (CONFIDENTIALITY) , (D) A BREACH OF THE BAA, OR (E) A BREACH OF SECTION 12 (PROPRIETARY RIGHTS) AND (II) ANY LOSS, COST, DAMAGE OR EXPENSE SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 8.1, EMOPTI'S AGGREGATE LIABILITY TO CUSTOMER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO EMOPTI UNDER THIS AGREEMENT DURING THE TWELVE (12)

MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE INCIDENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY OCCURRED.

9.3 THE LIMITATIONS OF LIABILITY AND DAMAGE EXCLUSIONS SET FORTH IN THIS AGREEMENT WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS (OR LACK THEREOF) OF ANY REMEDIES PROVIDED HEREIN. THESE LIMITATIONS AND EXCLUSIONS ARE REFLECTED IN THE PRICING OF THE SERVICES, AND THEY REPRESENT AN AGREED ALLOCATION OF RISK BETWEEN THE PARTIES AND ARE AN ESSENTIAL PART OF THIS AGREEMENT. THE LIMITATIONS OF LIABILITY AND DAMAGES EXCLUSIONS SET FORTH IN SECTION 9.1 (BUT NOT THOSE SET FORTH IN SECTION 9.2) ALSO APPLY TO ANY LIABILITY ARISING UNDER OR IN CONNECTION WITH THE BAA, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED THEREIN.

9.4 CUSTOMER ACKNOWLEDGES AND AGREES THAT THE EMOPTI SERVICES ARE NOT DIAGNOSTICS TOOLS AND THAT EMOPTI IS NOT INTENDING TO, OR ENGAGING IN THE PERFORMANCE OR DELIVERY OF PROVIDING MEDICAL OR HEALTH CARE SERVICES OR ADVICE. ALL DECISIONS REGARDING THE DIAGNOSIS, TREATMENT AND PLAN OF CARE FOR, AND BILLING OF, PATIENTS SHALL AT ALL TIMES BE AND REMAIN THE SOLE RESPONSIBILITY OF CUSTOMER, ITS CLIENTS AND THEIR AUTHORIZED USERS. THE EMOPTI SERVICES SHOULD IN NO CASE BE DEEMED OR TREATED AS A RECOMMENDATION, ENDORSEMENT, GUARANTEE OR WARRANTY OF THE PROFESSIONAL SERVICES OF ANY AUTHORIZED USERS OR OTHER PROVIDERS WHO RENDER HEALTH CARE SERVICES. THE EMOPTI SERVICES ARE NOT INTENDED AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT IN PATIENT DIAGNOSIS OR TREATMENT. EMOPTI DOES NOT WARRANT OR GUARANTEE THAT ANY MEDICAL SUBJECT MATTER OR OTHER INFORMATION THAT MAY BE INCLUDED IN ANY EMOPTI DOCUMENTATION, TEMPLATE, REPORT OR

OTHER OUTPUT GENERATED FROM THE SERVICES OR OTHERWISE MADE AVAILABLE BY EMOPTI IS ACCURATE, COMPLETE, CURRENT, OR FIT FOR ANY PURPOSE WHATSOEVER. BY PROVIDING THE SERVICES AND/OR MAKING ANY SUCH INFORMATION AVAILABLE, EMOPTI IS NOT PROVIDING MEDICAL ADVICE AND NONE OF CUSTOMER, ITS CLIENTS OR THEIR RESPECTIVE AUTHORIZED USERS SHALL RELY ON THE SERVICES OR ANY SUCH INFORMATION AS A MEANS OF DIAGNOSIS OR TREATMENT OF PATIENTS OR AS A SUBSTITUTE FOR MEDICAL ADVICE. FURTHER, EMOPTI SHALL NOT BE RESPONSIBLE FOR ANY MEDICAL SERVICES PROVIDED BY CUSTOMER, ANY CLIENT OR ANY AUTHORIZED USER, AND CUSTOMER, ALL CLIENTS AND ALL AUTHORIZED USERS SHALL MAINTAIN ALL USUAL AND CUSTOMARY MEDICAL LIABILITY AND MALPRACTICE INSURANCE TO COVER THE PROVISION OF HEALTH CARE AND MEDICAL SERVICES, INCLUDING THOSE DELIVERED IN CONNECTION WITH THE SERVICES DELIVERED PURSUANT TO THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT THE SERVICES PURCHASED FROM EMOPTI ARE NOT REIMBURSABLE BY ANY GOVERNMENT OR PRIVATE PAYER, AND CUSTOMER AGREES THAT IT WILL MAKE NO CLAIM FOR REIMBURSEMENT FROM ANY PAYER FOR THE COST OF THE SERVICES UNDER THIS AGREEMENT.

9.5 EACH PARTY SHALL TAKE, AND CAUSE ITS AFFILIATES TO TAKE, ALL REASONABLE STEPS TO MITIGATE ANY DAMAGES UPON BECOMING AWARE OF ANY EVENT OR CIRCUMSTANCE THAT WOULD BE REASONABLY EXPECTED TO, OR DOES, GIVE RISE TO AN INDEMNIFICATION CLAIM OR OTHER DAMAGES CLAIM ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10. Subscription Period, Renewals, Termination and Suspension.

10.1 EmOpti makes the EmOpti Services available on a subscription basis, and Customer is purchasing a subscription to access and use the Purchased Services upon the terms and conditions set

forth in this Agreement, for the Subscription Period specified in an applicable Schedule or in this Agreement. Unless otherwise specified in an applicable Schedule, neither Party may terminate the Purchased Services for convenience prior to the end or scheduled renewal of its Subscription Period.

10.2 Upon expiration of a Subscription Period, Customer's subscription to the Purchased Services and the term of this Agreement shall automatically renew for consecutive one (1) year periods, , unless Customer provides EmOpti notice of termination no later than thirty (30) days prior to the scheduled renewal date that it is electing not to renew this Agreement or EmOpti provides Customer notice of termination no later than thirty (30) days prior to the scheduled renewal date. In the event of non-renewal, Customer's subscription and the term of this Agreement shall end upon the expiration of the then-current Subscription Period. The subscription fee for each renewal subscription will be as provided in the applicable SOW, or if not there provided, then at the rate in effect immediately prior to such renewal.

10.3 Except in cases where this Agreement may provide for a different and exclusive remedy, either Party may terminate this Agreement by notice if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of notice of the breach from the non-defaulting Party. Any such termination shall be without limitation of any other right or remedy available to the terminating Party.

10.4 Upon ten (10) days' written notice to Customer, EmOpti may suspend the Services in whole or in part if Customer fails to make when due any payment required under this Agreement which is not the subject of a good faith dispute. Upon receipt of payment in full of all overdue amounts, provided Customer is not otherwise in breach of its payment obligations under this Agreement, EmOpti shall promptly restore the suspended Services. EmOpti may also suspend the Services in whole or in part if Customer otherwise breaches any term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the breach from EmOpti, until such time as the breach is cured. Notwithstanding the foregoing, EmOpti may immediately suspend the Services, with or without prior notice to Customer, to the extent EmOpti deems necessary or appropriate to avoid or mitigate substantial harm to EmOpti or any other Customer as

a result of any security breach, harmful or malicious code, file, script, agents or programs, or similar risk, in which event EmOpti will use reasonable efforts to provide Customer with prior notice of such suspension to the extent reasonably practical to do so in light of the circumstances. Any suspension hereunder shall be without limitation of any other right or remedy available to EmOpti.

10.5 Either Party may terminate this Agreement immediately upon notice to the other Party if the other Party has a receiver or similar party appointed for all or substantially all of its property, is declared insolvent by a court of competent jurisdiction, ceases to do business in the ordinary course, files a petition in bankruptcy or has a petition filed against it in bankruptcy, becomes the subject of any court or administrative proceeding related to its liquidation or insolvency (whether voluntary or involuntary) that is not dismissed within ninety (90) days, or makes an assignment for the benefit of its creditors.

10.6 Upon the termination or expiration of this Agreement for any reason:

(a) EmOpti will terminate access to the Purchased Services, and all rights and licenses granted by EmOpti pursuant to this Agreement shall terminate.

(b) Customer shall pay all amounts that have accrued and are owed hereunder within ten (10) days following any termination or expiration of this Agreement.

(c) If this Agreement is validly terminated by Customer pursuant to either of Sections 8.1 or 10.3 and Customer is in full compliance with all material terms and conditions of this Agreement, EmOpti shall within ten (10) days following the effective date of such termination refund to Customer all subscription fees previously paid by Customer for the Purchased Services with respect to the then-remaining portion of any prepaid Subscription Period.

(d) If requested by a Party, the other Party shall promptly destroy or return to the requesting Party, as directed, all of the requesting Party's Confidential Information, and other materials of the requesting Party in such other Party's possession or under its control. Notwithstanding the foregoing, each Party shall be entitled to retain any records to the extent it has been advised in writing by

counsel that such retention is required for archival or compliance purposes.

(e) Upon termination of this Agreement for any reason, other than by reason of a breach by Customer, EmOpti shall cooperate with Customer as reasonably necessary to facilitate the orderly transfer of all services, functions, and operations defined by this Agreement provided by EmOpti hereunder to another provider or to Customer as determined by Customer in its sole discretion ("Termination Assistance"). The termination assistance will be provided at EmOpti's then current rate. EmOpti shall not be required to provide any Termination Assistance beyond the 90th day following the effective date of the termination of this Agreement. Other than where Termination Assistance is provided at no charge to Customer, EmOpti shall not be required to provide Termination Assistance in the event that Customer has any payments outstanding under this Agreement at the time of termination or during the delivery of Termination Assistance.

(f) Upon termination of this Agreement for any reason, EmOpti shall provide to Customer, in an electronic format reasonably agreed by the parties, a copy of all of the Customer Data stored on the EmOpti system.

(g) Any provision of this Agreement which, by its nature, would survive termination or expiration of this Agreement shall survive any such termination or expiration.

11. Confidentiality.

11.1 Each Party that receives Confidential Information of the other Party agrees that, unless the disclosing Party gives its prior written authorization, it shall not: (a) use such Confidential Information other than for the purposes of this Agreement; or (b) disclose any such Confidential Information to any third Person except those directors, officers, employees, contractors and agents of the receiving Party who are required to have such Confidential Information in order to carry out the purposes of this Agreement and who have signed a non-disclosure agreement or are otherwise bound by confidentiality obligations in substance similar to the provisions hereof. The receiving Party shall prevent the unauthorized use, disclosure, dissemination or publication of such Confidential Information using at least the same degree of care that the receiving Party

uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

11.2 The obligations of the Parties under Section 11.1 shall not apply to the extent of any disclosure required pursuant to a duly authorized subpoena, court order, or government authority, provided that the receiving Party has provided prompt notice and assistance to the disclosing Party prior to such disclosure, so that such Party may seek a protective order or other appropriate remedy to protect against disclosure.

11.3 Any breach of the confidentiality obligations set forth in this Section 11 would constitute a material breach of this Agreement, which the breaching Party acknowledges would cause irreparable harm to the non-breaching Party, leaving it without an adequate remedy at law. As such, any such breach shall entitle the non-breaching Party to seek injunctive relief in addition to all other remedies, without necessity of posting of a bond or other security in connection therewith. The preceding sentence is not intended, nor shall it be construed, to limit a Party's right to dispute the factual basis underlying any contention that it has committed any breach.

11.4 This Section 11 will remain in effect during the term of this Agreement and for a period of five (5) years following termination or expiration of this Agreement for any reason, except with respect to any Confidential Information of either Party that qualifies for statutory trade secret protection, for which this Section 11 will remain in effect indefinitely and with respect to personally identifiable information or protected health information, for which this Section 11 will remain in effect indefinitely.

12. Proprietary Rights.

12.1 As between the Parties, all Intellectual Property Rights in and to the EmOpti IP are and shall remain the sole property of EmOpti and its Affiliates and their respective licensors, as applicable, and Customer shall acquire no right of ownership or use with respect to any EmOpti IP except for the limited license right specified in Section 3. Without limiting the foregoing, Customer acknowledges that the EmOpti Software and EmOpti Services and the inventions, know-how and methodology embodied therein are proprietary to, and include the valuable trade secrets of, EmOpti and its Affiliates and

licensors, as applicable, and that the EmOpti Software constitutes Confidential Information of EmOpti.

12.2 Customer, Customer's Affiliates, Clients or Authorized Users may from time to time provide EmOpti with suggestions, comments, requests, requirements, recommendations, ideas, information and/or feedback regarding the EmOpti Services and/or EmOpti's related technologies ("Feedback"). Except as may be required under a Schedule, any and all Feedback is and shall be provided entirely voluntarily and without compensation. Notwithstanding anything to the contrary contained in this Agreement or any Schedule, as between the Parties, all Feedback shall be exclusively owned by EmOpti and EmOpti shall be freely entitled to reproduce, prepare derivative works of, disclose to third Persons, display and perform (publicly or otherwise), sell, lease, license, distribute, seek to obtain and obtain patent or other protection related to and otherwise use and exploit any and all such Feedback, at its sole discretion, without obligation or liability of any kind to Customer or to any other Person, and Customer agrees on behalf of itself, its Clients, Affiliates and Authorized Users to provide EmOpti with reasonable assistance upon request to allow and enable any and all such actions.

12.3 The provision of any EmOpti Services for use by or on behalf of any unit or agency of the United States Government (the "Government") are subject to the following: The EmOpti Services and related EmOpti Software and Documentation constitute "commercial computer software" and/or "commercial computer software documentation," respectively, and the Government's rights with respect to the same are, in the case of civilian agency use, and if for the Department of Defense use, limited by the terms of this Agreement, pursuant to FAR 12.212 and/or DFARS §227.7202-1 through §227.7202-4 as applicable. The use of any EmOpti Services, EmOpti Software or Documentation hereunder by the Government constitutes acknowledgment by the Government of EmOpti's proprietary rights therein and thereto. If the Government has a need for rights not granted under this Agreement, it must negotiate with EmOpti to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

13. Employee Non-Solicit. During the term of this Agreement and for twelve (12) months thereafter, neither Party shall, directly or indirectly, solicit for employment any employee of the other Party that is or has been involved in the provision or receipt of the Services, provided that general advertisements (and any discussions based upon responses thereto) shall not be deemed to be a breach of this Section 13.

14. Insurance. EmOpti will at all times maintain insurance in amounts and with coverages, including cyberliability, that is appropriate and consistent with industry standards, and will at Customer's request provide certificate(s) of insurance to Customer evidencing such coverage. If requested by Customer, EmOpti will name Customer as an additional insured on all such insurance policies.

15. Force Majeure. If either Party is unable to perform any obligation (excluding any payment obligation) under this Agreement because of any matter beyond that Party's reasonable control, such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving employees of either Party), acts of local or central government or other competent authorities, problems with telecommunications providers, hostile network attacks or other events beyond a Party's reasonable control (each, a "Force Majeure Event"), that Party will have no liability (including any obligation to issue refunds or credits) to the other for such failure to perform; provided, however, that such Party shall resume performance promptly upon removal of the circumstances constituting the Force Majeure Event. Customer may terminate this Agreement without liability on the part of either party if the Force Majeure event is not fully cured within thirty (30) days of the beginning of the Force Majeure event.. Nothing in this Section shall relieve EmOpti of implementing its BCP in the event of a Force Majeure.

16. Publicity. Customer hereby grants EmOpti the right to issue a press release announcing that Customer has become a customer of EmOpti, and to reproduce and display Customer's name, logo and trademarks on EmOpti's website and in brochures, social media and other marketing materials for the purpose of identifying EmOpti's relationship with Customer. Except as provided in the preceding sentence, all media releases, public announcements and public disclosures by either Party relating to this

Agreement or its subject matter shall require the mutual approval of the Parties.

17. Audit. No more often than once annually, and upon termination of this Agreement, EmOpti may audit Customer's use of the Services upon reasonable advance notice, if EmOpti has reasonable cause to believe that Customer is using or permitting any Services to be used in an unauthorized manner. If any such monitoring or audit reveals that the Services have been used in excess of the applicable usage limitations set forth in any Schedule or in any other unauthorized manner, Customer will, within thirty (30) days of receipt of EmOpti's invoice, pay any additional charges that would apply in respect of such excess or unauthorized use under the pricing terms of this Agreement, and if such additional charges exceed 10% of the fees and charges paid by Customer for the period under audit, Customer shall reimburse EmOpti for the reasonable costs of such Audit. The foregoing is in addition to and not in limitation of any and all other rights and remedies that EmOpti may have under this Agreement or at law in respect of Customer's unauthorized use of the Services.

18. General Provisions.

18.1 This Agreement (together with the Exhibits attached hereto and any addenda hereunder, the terms of which are hereby incorporated herein by reference) constitutes the entire agreement between Parties with regard to the subject matter hereof and supersedes any and all previous communications, whether oral or written, as well as any previous memoranda of understanding and side letters between the Parties with respect to such subject matter. In the event of any conflict, discrepancy or inconsistency between a Schedule, the main body of this Agreement and/or the BAA, the conflict shall be resolved in accordance with the following order of priority (1) the main body of this Agreement, (2) the Schedules, and (3) the BAA.

18.2 No waiver or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party. Any forbearance or delay on the part of either Party in enforcing any of its rights under this Agreement shall not be construed as a waiver of such right to enforce the same for such occurrence or any other occurrence. Neither the course of conduct between Parties nor trade usage shall modify or alter this Agreement.

18.3 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin, without regard to its choice of law principles. Any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be settled by binding arbitration to be held in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association as then in effect (the "Rules"). The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. Nothing contained in this Section 18.3 shall prevent either Party from seeking injunctive relief from any court of competent jurisdiction.

18.4 Except as provided below, neither party shall assign or otherwise transfer this Agreement, or delegate any duty or assign or otherwise transfer any right hereunder, without the prior written consent of the other party. Any attempt to do any of the foregoing without the other party's prior written consent shall be a material breach of this Agreement and any assignment or purported assignment without such consent shall be null and void ab initio. Notwithstanding the foregoing, however, either party may assign or transfer this Agreement to a Person that acquires or succeeds to the ownership and operation of the assets and business of such party's business to which this Agreement relates, whether pursuant to an asset purchase, merger, acquisition or otherwise by operation of law. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.

18.5 EmOpti reserves the right to determine in its sole discretion which of its personnel shall be assigned to perform Services, and to replace or reassign such personnel during the duration of the project. The period of time required to orient and familiarize the replacement personnel with the services associated with this Agreement or to reperform the services of the replaced personnel, will be provided at no charge to Customer. EmOpti may use Affiliates, subcontractors and other third parties in the performance of Services, provided that no such use of Affiliates, subcontractors or other third parties shall relieve EmOpti of its obligations hereunder.

18.6 Unless otherwise specified in this Agreement, any notice required or permitted to be sent under this Agreement shall be sent, in writing, by certified mail (return receipt requested), overnight courier or personal delivery, to EmOpti or to Customer at the respective addresses first set forth above or as changed from time to time by notice. Such notices shall be effective when received.

18.7 If any one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired and shall remain in full force and effect, and the invalid, illegal or unenforceable provision(s) shall be replaced by a valid, legal and enforceable provision or provisions that comes closest to the intent of the Parties underlying the invalid, illegal or unenforceable provision(s).

18.8 The headings and other captions in this Agreement are for convenience only and shall not be used in interpreting, construing, or enforcing any of the terms of this Agreement. The words "including," "include" and "includes," and the phrases "by way of example," "such as" and "for example" when used in this Agreement shall each be deemed to be followed by the words "without limitation."

18.9 This Agreement does not create or evidence a partnership, joint venture or any other fiduciary relationship between the Parties. The Parties are independent, and each has sole authority and control of the manner of, and is responsible for, its performance of this Agreement. Neither Party may create or incur any liability or obligation for or on behalf of the other Party, except as may be expressly set forth in this Agreement. This Agreement is for the sole benefit of the Parties and their respective permitted successors and permitted assigns, and nothing herein, express or implied, is intended to make any Client, Authorized User or other third Person a third party beneficiary under or by reason of this Agreement.

18.10 This Agreement and any documents to be executed hereunder may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement and any documents to be executed hereunder may be executed and delivered by facsimile or other electronic image transmission.

IN WITNESS WHEREOF, the undersigned have executed this Master Services Agreement by their respective duly authorized officers as of the date first above written.

EMOPTI, INC.

By: _____

Name: _____

Title: _____

[CUSTOMER]

By: _____

Name: _____

Title: _____

Appendix A

MSA Schedule of Definitions

“Affiliate” means, with respect to any entity, any other Person that directly or indirectly is controlled by or under common control with such entity. For purposes of this Agreement, a Person shall be deemed to have “control” over an entity if: (a) such Person directly or indirectly, on its own or acting through one or more Persons, owns, controls or has power to vote at least 50% of the issued and outstanding voting stock or other equity interest of such entity; or (b) such Person controls or has the power to control the management or operations of such entity, including by contract.

“Authorized User” means an employee or Contractor of Customer or any of its Affiliates or, to the extent authorized under an applicable Schedule, a Client, in each case who is authorized by Customer to use the Purchased Services for the Permitted Purpose.

“Client” means any client of Customer or any of its Affiliates that is authorized under an applicable Schedule to access or use the Purchased Services for the Permitted Purpose.

“Confidential Information” means any information, including information, technical data or know-how relating to discoveries, ideas, inventions, concepts, software, equipment, designs, drawings, specifications, techniques, processes, systems, models, data, source code, object code, documentation, diagrams, flow charts, research, development, business plans or opportunities, products, projects or products under consideration, procedures, and information related to finances, costs, prices, suppliers, vendors, customers and employees, which is disclosed by the disclosing Party in connection with this Agreement whether before, on or after the Effective Date, directly or indirectly, in writing, orally or by drawings or inspection of equipment or software, to the receiving Party or any of its employees or designated agents. Confidential Information includes the terms of this Agreement. Confidential Information does not include any of the following: (a) information that is or becomes part of the public domain or otherwise available on an unrestricted basis to one or more third Persons without violation of this Agreement by the receiving Party; (b) information that was known to or in the possession of the receiving Party on a non-confidential basis prior to the disclosure thereof to the receiving Party by the disclosing Party, as evidenced by written records; (c) information that was developed independently by or on behalf of the receiving Party, without use of or reference to the Confidential Information; or (d) information that is disclosed to the receiving Party by a third Person without violation of this Agreement by the receiving Party.

“Contractor” means a contractor or consultant engaged by Customer or any of its Affiliates or, to the extent authorized under an applicable Schedule, a Client, to provide services to and for the sole benefit of Customer, any of Customer’s Affiliates or such Client.

“Customer Data” means any data submitted and/or transmitted by or on behalf of Customer, any of its Affiliates or any Client in connection with its or their use of the Purchased Services.

“Customer Designated Representative” means the Customer-designated employee(s) or Contractor(s) identified as such in a Schedule or as updated by Customer from time to time by notice to EmOpti.

“Deliverables” means any tangible work product resulting from the Professional Services that are delivered or required to be delivered by EmOpti to Customer pursuant to an SOW.

“Documentation” means the instruction manuals and user guides for the EmOpti Services as made available by EmOpti from time to time, whether distributed in print, electronic, CD-ROM, video or other format.

“EmOpti IP” means the EmOpti Software, the Deliverables, the Documentation, and all other software (including both source code and object code, as applicable), documentation, designs (including screen and report designs), data, materials, technology and works created, utilized and/or provided by or on behalf of EmOpti in connection with the performance of the Services, and all Intellectual Property Rights related to any of the foregoing, including any Intellectual Property Rights issuing from the provisional patent application filed by EmOpti on or about November 25, 2015.

“EmOpti Services” means EmOpti’s generally commercially available hosted software-as-a-service offerings, the specific features and functionality of which are described in the applicable Documentation.

“EmOpti Software” means all software forming part of or used by EmOpti to deliver EmOpti Services, including any upgrades, improvements, enhancements or derivatives thereof.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and the regulations promulgated thereunder by the U.S. Department of Health and Human Services and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment act of 2009 and the regulations issued thereunder.

“Intellectual Property Rights” means all rights throughout the world in any and all of the following: (a) patents, patent applications, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications for registration thereof; (d) trade secrets, know-how and other proprietary information of a like kind; (e) waivable or assignable rights of publicity, waivable or assignable moral rights; and (f) all other forms of intellectual property, such as data and databases, in each case, to the extent protectable under applicable law.

“Maintenance and Support Services” means the maintenance and support services relative to the Purchased Service to be provided by EmOpti to Customer as described in Section 5 (but excluding Professional Services).

“Party” means a party to this Agreement and “Parties” means, collectively, both parties to this Agreement.

“Permitted Purpose” means the use of the Purchased Services by Customer and, to the extent authorized under an applicable Schedule, Clients, in each case in accordance with this Agreement and the Documentation, solely for the purposes specified in the applicable Schedule and subject to any additional limitations, restrictions, terms and/or conditions as may be specified therein.

“Person” means any individual, corporation, limited liability company, partnership, trust, joint stock company, business trust, unincorporated association, joint venture or other form of business or legal entity.

“Professional Services” means any onsite services, implementation services, training and other professional services, in each case that EmOpti has agreed to provide pursuant to one or more Schedules (but excluding Maintenance and Support Services). If specified in an SOW, “Professional Services” may also include the development of enhancements to EmOpti Services funded in whole or in part by Customer.

“Purchased Services” means the specific EmOpti Services to which Customer has purchased a subscription pursuant to a Schedule.

“Schedule” means a Schedule, Order Form, Statement of Work or other written document executed by the Parties that (a) incorporates by reference the terms and conditions of this Agreement, and (b) describes the Services to be provided, including any additional requirements, specifications or other terms applicable thereto.

“Services” means the Purchased Services, the Maintenance and Support Services and the Professional Services, either collectively or severally, as the context requires.

“SOW” means a Schedule in the form of a Statement of Work for the performance of Professional Services.

“Subscription Period” means each of (i) the initial period for which Customer has contracted to subscribe to the Purchased Services as specified in the applicable Schedule and (ii) any renewal period of Customer’s subscription pursuant to Section 10.2.



Appendix B. End User Agreement for EmOpti Services

This End User Agreement for EmOpti Services (this “Agreement”) is a legally binding agreement between you or, if applicable, the entity you represent (“User” or “you”) and EmOpti, Inc. (“EmOpti”), and governs User’s access to and use of EmOpti’s hosted software-as-a-service offerings (“Services”) as an authorized client of a physicians’ group or other third party (“Provider”) that subscribes to the Services under a separate written agreement between Provider and EmOpti (the “Provider Agreement”). By accessing or using the Services, User agrees to be bound by the terms of this Agreement. If you are entering into this Agreement for an entity, such as the company you work for, you represent to EmOpti that you have the legal authority to bind such entity. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICES.

1. Definitions. In addition to the capitalized terms defined upon first use herein, certain capitalized terms are defined in the **MSA Schedule of Definitions** set forth at the end of this document.

2. Use of Services.

EmOpti is making the Services available to User on the terms and subject to the conditions set forth in this Agreement and in the Provider Agreement.

The Services are hosted software-as-a-service offerings, the specific features and functionality of which are described in their Documentation. User is responsible for all hardware, software and connectivity infrastructure required to connect to the Services from its own systems.

User is solely responsible for the security and proper creation, use and termination of all user IDs, passwords and other security devices used in connection with Services and shall take all reasonable steps to ensure that they are kept confidential and secure, are used properly and are not disclosed to unauthorized Persons. User shall immediately inform EmOpti if there is any reason to believe that a user ID, password, or any other security device has or is likely to become known to any Person not authorized to use it, or is being or is likely to be used in an unauthorized way. EmOpti reserves the right (in its sole discretion) to require User to change any or all of the user IDs, passwords or other security devices used by Authorized Users in connection with the Services, and User shall promptly comply with any such requirement. EmOpti reserves the right to impose additional restrictions and protocols concerning the safety, security and use of the Services, and User shall promptly comply with any such restrictions and protocols of which is has received notice.

User is solely responsible for its relationships with Authorized Users, for their use of the Services,

and for ensuring that they comply with all the terms and conditions of this Agreement, as well as any applicable policies (including those pertaining to safety, privacy and security) of Provider to the extent consistent with the terms of this Agreement. User shall not make any representations, warranties or guarantees to Authorized Users on EmOpti’s behalf. Any violation of the terms and conditions of this Agreement by an Authorized User shall be deemed to be a violation by User of such terms and conditions.

3. Rights and Limitations of Use.

Subject to the terms and conditions of the Provider Agreement (including Provider’s payment obligations thereunder) and this Agreement, User will have a limited, non-exclusive and non-transferable right during the applicable subscription period for which Provider has contracted to subscribe to the Services under the Provider Agreement: (a) to access and use, and permit Authorized Users to access and use, the Services and Documentation solely for the Permitted Purpose; and (b) to the extent EmOpti makes available to User, by way of download or other form of distribution, any software, tools, materials or technology intended for use in connection with the Services, to store, install, execute and use the same internally within User’s organization, solely in connection with User’s authorized use of the Services for the Permitted Purpose.

Except for the rights set forth in Section 3.1, no other rights in or to the Services or any EmOpti IP, express or implied, are granted to User. Without limiting the foregoing, except to the extent expressly authorized by this Agreement, User may not: (a) transfer to any other Person any of its rights to use the Services; (b) sell, rent, lease or share the Services; (c) permit any Person who is not an Authorized User to use or access the Services; (d) use the Services other than for the Permitted Purpose; (e) use the Services to provide outsourcing, service bureau, hosting,

application service provider or online services to third Persons; (f) create any derivative works based upon any Services or EmOpti IP; (g) copy any feature, design or graphic in any Services or EmOpti IP; (h) attempt to circumvent any security device or access or derive the source code or architecture of any Services or EmOpti IP; (i) load or penetration test any Services or otherwise use any Services in any way that is, or could reasonably be expected to be, detrimental to EmOpti's ability to provide services to any other customer; (j) use any Services to access the data of any other customer of EmOpti; (k) alter, remove or conceal any government restricted rights notice or any copyright, trademark, trade name or other proprietary marking or notice that may appear in or on any Services, Documentation or other EmOpti IP; (l) use Services to transmit or store any viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (m) use Services in a manner that violates any applicable law, ordinance, regulation or administrative order; or (n) permit any other Person (including any Authorized User) to do any of the foregoing.

In connection with this Agreement, User will gain access to and detailed knowledge of certain EmOpti IP and other proprietary or confidential information of EmOpti. As a result and in order to protect EmOpti's legitimate and valuable interest in the EmOpti IP and such other information, for as long as User has access to the Services and for a period of [two (2) years] thereafter, User shall not, directly or indirectly, engage in the development of, or engage in any activities intended to facilitate the development of, any solution that is competitive to any of the Services.

4. User Data.

EmOpti maintains administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of User Data. EmOpti shall not access or use User Data except in connection with the performance of Services or as otherwise authorized hereunder.

User acknowledges that EmOpti exercises no control over, and shall have no liability for, the content of the User Data and it is User's sole responsibility to ensure that the provision of User Data complies with all applicable laws and regulations and any additional requirements set forth in this Agreement.

EmOpti agrees to use or disclose any User Data that constitutes "Protected Health Information" (as defined under HIPAA) solely in the manner and for the purposes set forth in this Agreement, except as otherwise required by law. Further, each Party agrees to comply with the terms of any HIPAA Business Associate Agreement that may have been separately entered into between the parties ("BAA").

As between User and EmOpti, all User Data shall remain the sole property of User. EmOpti and its Affiliates and their respective employees and agents shall have the right to reproduce, modify, use, host, transmit and display the same in connection with EmOpti's provision of the Services. EmOpti shall also be permitted to use data generated by User's and Authorized Users' use of the Services as well as data relating to attributes or characteristics of User Data (collectively, "Metadata"), provided that Metadata shall not include User Data that identifies User or any other Person. Without limiting the foregoing, nothing contained in this Agreement or any BAA is intended to limit EmOpti's ability to engage in Data Aggregation (as defined under HIPAA) in compliance with HIPAA.

User shall use commercially reasonable efforts (including by conducting regular virus scans on all equipment that will be interacting with the Services and all media containing User Data provided to the Services) to ensure that the connection to and use of the Services do not include, and that any method of transmitting User Data will not introduce, any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs that could harm or disrupt the proper operation of the Services or any part thereof, with or without the passage of time or the taking of or failure to take any action.

User accepts sole responsibility for: (a) the accuracy, completeness and integrity of the User Data; and (b) the programming, procedures and communication lines established and used by User for purposes of internet-based or remote access to the Services.

5. Technical Support. The Provider Agreement may provide that EmOpti make available to Provider certain technical or other support services related to the Services. EmOpti shall not be required to provide any such services to User or its Authorized Users, and User agrees to rely solely on Provider for any such services.

6. Disclaimer of Warranties.

THE PROVIDER AGREEMENT MAY PROVIDE FOR CERTAIN LIMITED WARRANTIES WITH RESPECT TO THE SERVICES. ANY SUCH WARRANTIES ARE FOR THE SOLE BENEFIT OF PROVIDER AND DO NOT EXTEND TO USER OR ITS AUTHORIZED USERS. USER AGREES TO LOOK SOLELY TO PROVIDER, AND NOT TO EMOPTI, WITH RESPECT TO ANY NON-CONFORMANCE WITH ANY SUCH WARRANTIES. EMOPTI IS PROVIDING THE SERVICES TO USER "AS IS" AND EMOPTI DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR THEIR PERFORMANCE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN PARTICULAR, EMOPTI DOES NOT WARRANT THAT THE SERVICES WILL MEET USER'S EXPECTATIONS OR BE SECURE, ACCURATE, ERROR-FREE, OR OPERATE ON AN UNINTERRUPTED BASIS OR IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE OR SYSTEM. WITHOUT LIMITING THE FOREGOING, EMOPTI WILL NOT BE LIABLE FOR ANY PROBLEMS WITH THE SERVICES ATTRIBUTABLE TO THE INTERNET; FORCE MAJEURE; USER'S OR ANY AUTHORIZED USER'S NETWORK OR ABILITY TO ACCESS THE INTERNET; OR THE ACTS OR OMISSIONS OF USER'S OR ANY AUTHORIZED USER'S PERSONNEL.

7. Indemnification. User shall fully indemnify, defend and hold harmless EmOpti and its Affiliates and their respective employees and agents from and against any loss, cost, damage or expense (including reasonable attorneys' fees) in respect of any claim, demand, action, suit or other judicial proceeding asserted, brought or threatened by a third Person that relates to (a) User Data or any other content, information or materials provided by User or its Authorized Users or (b) the use by User or its Authorized Users of the Services or any EmOpti IP in breach of this Agreement or in violation of applicable law or third party rights or (c) any actual or alleged

death, disability or personal injury arising in connection with the use of the Services in providing medical or health care services, including any actual or alleged malpractice by User or any Authorized User, or any of their respective employees or agents.

8. LIMITATIONS OF LIABILITY.

IN NO EVENT WILL EMOPTI BE LIABLE TO USER OR ITS AUTHORIZED USERS FOR ANY LOSS OF DATA, LOSS OF BUSINESS OR PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY SORT, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, ARISING UNDER OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT.

EMOPTI'S AGGREGATE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL IN NO EVENT EXCEED ONE THOUSAND DOLLARS (\$1,000).

THE LIMITATIONS OF LIABILITY AND DAMAGE EXCLUSIONS SET FORTH IN THIS AGREEMENT WILL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS (OR LACK THEREOF) OF ANY OTHER REMEDIES AND ARE AN ESSENTIAL PART OF THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE LIMITATIONS OF LIABILITY AND DAMAGES EXCLUSIONS SET FORTH IN THIS SECTION 9 ALSO APPLY TO ANY LIABILITY ARISING UNDER OR IN CONNECTION WITH ANY BAA, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED THEREIN.

USER ACKNOWLEDGES AND AGREES THAT THE SERVICES ARE NOT DIAGNOSTICS TOOLS AND THAT EMOPTI IS NOT INTENDING TO, OR ENGAGING IN THE PERFORMANCE OR DELIVERY OF PROVIDING MEDICAL OR HEALTH CARE SERVICES OR ADVICE. ALL DECISIONS REGARDING THE DIAGNOSIS, TREATMENT AND PLAN OF CARE FOR, AND BILLING OF, PATIENTS SHALL AT ALL TIMES BE AND REMAIN THE SOLE RESPONSIBILITY OF USER AND ITS AUTHORIZED USERS. THE

SERVICES SHOULD IN NO CASE BE DEEMED OR TREATED AS A RECOMMENDATION, ENDORSEMENT, GUARANTEE OR WARRANTY OF THE PROFESSIONAL SERVICES OF ANY AUTHORIZED USERS OR OTHER PROVIDERS WHO RENDER HEALTH CARE SERVICES. THE SERVICES ARE NOT INTENDED AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL JUDGMENT IN PATIENT DIAGNOSIS OR TREATMENT. EMOPTI DOES NOT WARRANT OR GUARANTEE THAT ANY MEDICAL SUBJECT MATTER OR OTHER INFORMATION THAT MAY BE INCLUDED IN ANY EMOPTI DOCUMENTATION, TEMPLATE, REPORT OR OTHER OUTPUT GENERATED FROM THE SERVICES OR OTHERWISE MADE AVAILABLE BY EMOPTI IS ACCURATE, COMPLETE, CURRENT, OR FIT FOR ANY PURPOSE WHATSOEVER. BY PROVIDING THE SERVICES AND/OR MAKING ANY SUCH INFORMATION AVAILABLE, EMOPTI IS NOT PROVIDING MEDICAL ADVICE AND NEITHER USER NOR ITS AUTHORIZED USERS SHALL RELY ON THE SERVICES OR ANY SUCH INFORMATION AS A MEANS OF DIAGNOSIS OR TREATMENT OF PATIENTS OR AS A SUBSTITUTE FOR MEDICAL ADVICE. FURTHER, EMOPTI SHALL NOT BE RESPONSIBLE FOR ANY MEDICAL SERVICES PROVIDED BY USER OR ITS AUTHORIZED USERS, AND USER AND ALL AUTHORIZED USERS SHALL MAINTAIN ALL USUAL AND CUSTOMARY MEDICAL LIABILITY AND MALPRACTICE INSURANCE TO COVER THE PROVISION OF HEALTH CARE AND MEDICAL SERVICES, INCLUDING THOSE DELIVERED IN CONNECTION WITH THE SERVICES DELIVERED BY EMOPTI PURSUANT TO THIS AGREEMENT.

9. Termination and Suspension.

Without limitation of any other right or remedy that may be available to EmOpti, EmOpti may suspend access to the Services and/or terminate this Agreement, in whole or in part, with or without notice, if User breaches any provision of this Agreement or upon the termination or expiration of the Provider Agreement for any reason.

9.1 Upon the termination or expiration of this Agreement for any reason: (a) EmOpti will

terminate access to the Services; (b) all rights granted by EmOpti pursuant to this Agreement shall terminate; and (c) any provision of this Agreement which, by its nature, would survive its termination or expiration shall survive any such termination or expiration.

10. Proprietary Rights.

As between the Parties, all Intellectual Property Rights in and to the EmOpti IP are and shall remain the sole property of EmOpti and its Affiliates and their respective licensors, as applicable, and User shall acquire no right of ownership or use with respect to any EmOpti IP except for the limited use rights specified in Section 3. Without limiting the foregoing, User acknowledges that the EmOpti Software and Services and the inventions, know-how and methodology embodied therein are proprietary to, and are the valuable trade secrets of, EmOpti and its Affiliates and licensors, as applicable, and constitute confidential information of EmOpti. User shall prevent the unauthorized use, disclosure, dissemination or publication of such confidential information using at least the same degree of care that User uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

User or Authorized Users may from time to time provide EmOpti with suggestions, comments, requests, requirements, recommendations, ideas, inventions, information and/or feedback regarding the Services and/or EmOpti's related technologies ("Feedback"). Any and all Feedback is and shall be given entirely voluntarily and without compensation. As between the Parties, all Feedback shall be exclusively owned by EmOpti and EmOpti shall be freely entitled to reproduce, prepare derivative works of, disclose to third Persons, display and perform (publicly or otherwise), sell, lease, license, distribute, seek to obtain and obtain patent or other protection related to and otherwise use and exploit any and all such Feedback, at its sole discretion, without obligation or liability of any kind to User or to any other Person, and User agrees on behalf of itself and its Affiliates and Authorized Users to provide EmOpti with reasonable assistance upon request to allow and enable any and all such activities.

The provision of any Services for use by or on behalf of any unit or agency of the United States Government (the "Government") are subject to the following: The Services and related EmOpti Software

and Documentation constitute “commercial computer software” and/or “commercial computer software documentation,” respectively, and the Government’s rights with respect to the same are, in the case of civilian agency use, and if for the Department of Defense use, limited by the terms of this Agreement, pursuant to FAR 12.212 and/or DFARS §227.7202-1 through §227.7202-4 as applicable. The use of any Services, EmOpti Software or Documentation hereunder by the Government constitutes acknowledgment by the Government of EmOpti’s proprietary rights therein and thereto. If the Government has a need for rights not granted under this Agreement, it must negotiate with EmOpti to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

11. Audit. EmOpti may audit User’s use of the Services upon reasonable advance notice, not more than once per calendar year unless EmOpti has reasonable cause to believe that User is using or permitting any Services to be used in an unauthorized manner.

12. General Provisions.

This Agreement constitutes the entire agreement between Parties with regard to the subject matter hereof and supersedes any and all previous communications, whether oral or written, as well as any previous memoranda of understanding and side letters between the Parties with respect to such subject matter. Notwithstanding the foregoing, if User has obtained access to the Services pursuant to a formal written agreement duly executed by User and EmOpti and expressly governing User’s use of the Services, then such formal written agreement shall take precedence and control to the extent of any inconsistencies between the terms of this Agreement and the terms of such formal written agreement.

EmOpti may supplement, modify or replace the terms of this Agreement (each, a “Modification”) from time to time by written notice to User or by otherwise making the Modification available to User (each, a “Modification Notice”). If User objects to any terms of a Modification, User can reject such Modification by discontinuing, within five (5) days following the Modification Notice, any further access to and use of the Services. Any access to or use of the Services by User or its Authorized Users following such five (5) day period shall constitute User’s

acceptance of the Modification. Except as aforesaid, no waiver or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of EmOpti. Any forbearance or delay on EmOpti in enforcing any of its rights under this Agreement shall not be construed as a waiver of such right to enforce the same for such occurrence or any other occurrence. Neither the course of conduct between Parties nor trade usage shall modify or alter this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin, without regard to its choice of law principles. Any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be settled by binding arbitration to be held in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association as then in effect (the “Rules”). The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Judgment may be entered on the arbitrator’s decision in any court of competent jurisdiction. Nothing contained in this Section 18.3 shall prevent either Party from seeking injunctive relief from any court of competent jurisdiction.

User shall not assign or otherwise transfer this Agreement, or delegate any duty or assign or otherwise transfer any right hereunder, including by operation of law, without the prior written consent of EmOpti in each case. Any attempt to do any of the foregoing without EmOpti’s prior written consent shall be a material breach of this Agreement and any assignment or purported assignment without such consent shall be null and void ab initio. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.

If any one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall be unimpaired and shall remain in full force and effect, and the invalid, illegal or unenforceable provision(s) shall be replaced by a valid, legal and enforceable provision or provisions that comes closest to the intent of the Parties underlying the invalid, illegal or unenforceable provision(s).

The headings and other captions in this Agreement are for convenience only and shall not be used in interpreting, construing, or enforcing any of the terms of this Agreement. The words “including,” “include” and “includes,” and the phrases “by way of example,” “such as” and “for example” when used in this Agreement shall each be deemed to be followed by the words “without limitation.”

This Agreement does not create or evidence a partnership, joint venture or any other fiduciary relationship between the Parties. The Parties are independent, and each has sole authority and control

of the manner of, and is responsible for, its performance of this Agreement. This Agreement is for the sole benefit of the Parties and their respective permitted successors and permitted assigns, and nothing herein, express or implied, is intended to make any Authorized User or other third Person a third party beneficiary under or by reason of this Agreement, except as set forth in Section 7. Without limiting the foregoing, nothing contained in this Agreement shall in any way relieve Provider of any of its obligations under the Provider Agreement.



End User Agreement Schedule of Definitions

“Affiliate” means, with respect to any entity, any other Person that directly or indirectly is controlled by or under common control with such entity. For purposes of this Agreement, a Person shall be deemed to have “control” over an entity if: (a) such Person directly or indirectly, on its own or acting through one or more Persons, owns, controls or has power to vote at least 50% of the issued and outstanding voting stock or other equity interest of such entity; or (b) such Person controls or has the power to control the management or operations of such entity, including by contract.

“Authorized User” means an employee or Contractor of User who is authorized by User to use the Purchased Services for the Permitted Purpose.

“Contractor” means a contractor or consultant engaged by User to provide services to and for the sole benefit of User.

“Documentation” means the instruction manuals and user guides for the Services as made available by EmOpti from time to time, whether distributed in print, electronic, CD-ROM, video or other format.

“EmOpti IP” means the EmOpti Software, the Documentation, and all other software (including both source code and object code, as applicable), documentation, designs (including screen and report designs), data, materials, technology and works created, utilized and/or provided by or on behalf of EmOpti in connection with the performance of the Services, and all Intellectual Property Rights related to any of the foregoing, including any Intellectual Property Rights issuing from the provisional patent application filed by EmOpti on or about [date].

“EmOpti Software” means all software forming part of or used by EmOpti to deliver Services, including any upgrades, improvements, enhancements or derivatives thereof.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and the regulations promulgated thereunder by the U.S. Department of Health and Human Services and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment act of 2009 and the regulations issued thereunder.

“Intellectual Property Rights” means all rights throughout the world in any and all of the following: (a) patents, patent applications, patent disclosures and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications for registration thereof; (d) trade secrets, know-how and other proprietary information of a like kind; (e) waivable or assignable rights of publicity, waivable or assignable moral rights; and (f) all other forms of intellectual property, such as data and databases, in each case, to the extent protectable under applicable law.

“Party” means a party to this Agreement and “Parties” means, collectively, both parties to this Agreement.

“Permitted Purpose” means the use of the Purchased Services by User in accordance with this Agreement and the Documentation, solely for the purposes authorized in writing by Provider and subject to any additional limitations and restrictions of which EmOpti or Provider has advised User in writing.

“Person” means any individual, corporation, limited liability company, partnership, trust, joint stock company, business trust, unincorporated association, joint venture or other form of business or legal entity.

“User Data” means any data submitted and/or transmitted by or on behalf of User in connection with its use of the Services.