



PERSIVIA, INC. (“PERSIVIA” OR “WE”) IS WILLING TO PROVIDE CERTAIN SERVICES TO YOU AS THE INDIVIDUAL, THE COMPANY, OR THE LEGAL ENTITY (REFERENCED BELOW AS “YOU” OR “YOUR” OR “CUSTOMER”) THAT ENTERS INTO A WRITTEN ORDER SCHEDULE OR SIMILAR DOCUMENT WITH PERSIVIA THAT REFERENCES THIS AGREEMENT ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT (“AGREEMENT”). READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE PURCHASING ANY SERVICES FROM PERSIVIA. THIS IS A LEGAL AND ENFORCEABLE CONTRACT BETWEEN YOU AND PERSIVIA. BY ENTERING INTO A WRITTEN ORDER SCHEDULE OR SIMILAR DOCUMENT WITH PERSIVIA THAT REFERENCES THE AGREEMENT BELOW, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

FOR THE SAKE OF CLARITY, IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF (AND FOR USE ON BEHALF OF) A COMPANY OR OTHER ENTITY (A "CORPORATE ENTITY"), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH CORPORATE ENTITY TO THE TERMS OF THIS AGREEMENT AND YOU ACKNOWLEDGE THAT THE TERM "YOU" OR "CUSTOMER" REFERENCED BELOW REFERS TO SUCH CORPORATE ENTITY.

MASTER SERVICES AGREEMENT

Persivia and Customer shall herein be referred to each as a “Party” and collectively as the “Parties”. In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

1.1 CCM Services has the meaning ascribed to it on the CCM Services Addendum attached hereto as Exhibit A.

1.2 Customer means the person or entity that enters into an Order Schedule or similar ordering document with Persivia that expressly references this Agreement.

1.3 Customer Data means all Data of Customer made available by Customer to Persivia for use in connection with the Services.

1.4 Data means text, images, documents, materials and all other forms of data or communication.

1.5 Data Aggregation shall have the same meaning as the term “data aggregation” in Code of Federal Regulation Title 45 (45 CFR § 164.501).

1.6 De-Identified Data shall mean any data meeting the specifications set out in Code of Federal Regulation (CFR § 164.514(a) or (b)).

1.7 Documentation means the documentation for the Subscription Service generally supplied by Persivia to assist its Customers in the use of the Subscription Service, in electronic, online or hard copy form.

1.8 Effective Date is the date that the first Order Schedule is entered into between the Parties referencing this Agreement.

1.9 Losses means all claims, actions, proceedings, damages, losses, liabilities and expenses, including reasonable attorney fees.

1.10 Measure means specific clinical quality measures (CQMs) listed on the applicable Order Schedule.

1.11 Order Schedule means each Persivia ordering document signed by duly authorized representatives of both parties which references this Agreement, identifies the specific Services ordered by Customer from Persivia, sets forth the prices for such Services and contains other applicable terms and conditions.

1.12 Patient shall mean an individual patient of a Customer or any of Customer’s Users whose medical information is either entered, received, used, managed, viewed, manipulated, processed, collected or stored by the Subscription Service.

1.13 Persivia Data means all Data made available by Persivia to Customer in connection with Customer’s use of the Services.

1.14 Professional Services means those development, set-up, integration, configuration, consulting and/or training services, if and as specified on an Order Schedule.

1.15 Protected Health Information shall have the same meaning as the term “protected health information” in 45 CFR § 164.501, limited to the information created or received by Persivia from or on behalf of Customer and all protected health information maintained by Customer.

1.16 Research shall have the same meaning as the term “research” in 45 CFR § 164.501

1.17 Services means, as applicable, the Subscription Service, the CCM Services and any Professional Services provided by Persivia pursuant to this Agreement.

1.18 Subscription Service means Persivia's proprietary software platform based services set forth and described on an Order Schedule.

1.19 Users mean individuals who are authorized by Customer to use the Services, and, with respect to the Subscription Service, who have been supplied passwords by Customer (or by Persivia at Customer's request). Users consist of designated employees and independent contractors of Customer.

1.20 Work Product means any work product, deliverables, programs, interfaces, modifications, configurations, reports, analyses or documentation developed by Persivia on behalf of Customer and delivered to Customer in the performance of any Professional Services.

2. SERVICES.

2.1 Services. Persivia shall provide Customer with the specific Services specified on an Order Schedule. Any conflict between the terms and conditions set forth in this Agreement and any Order Schedule shall be resolved in favor of this Agreement unless such Order Schedule expressly references the conflicting provision in this Agreement that it is intended to control and states that it is to control.

2.2 CCM Services. In the event that the Order Schedule states that Customer has purchased Persivia's CCM Services then Customer acknowledges and agrees that the CCM Services are provided in accordance with and are subject to the provisions set forth in this Agreement, the applicable Order Schedule as well as the additional CCM Services Addendum attached hereto as Exhibit A.

2.3 License Grant. Subject to the terms and conditions of this Agreement, and in consideration for the payment of fees set forth on the applicable Order Schedule, Persivia hereby grants to Customer, solely during the term of the applicable Order Schedule, a non-exclusive, non-transferable (except as set forth in Section 10.2) license to access and use the Subscription Service solely for Customer's internal business purposes and solely for the specific Measures (if applicable) and Subscription Service indicated on the applicable Order Schedule. This license is restricted to use by Customer and its Users and does not include the right to use the Subscription Service on behalf of any third party. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Subscription Service. The Customer acknowledges that access and use of the Subscription Service may be licensed to the Customer based on the number of Users, Patients or other applicable metric set forth on the Order Schedule.

3. FEES; PAYMENT TERMS

3.1 Fees. Customer agrees to pay Persivia for the Services and expenses incurred on the basis and at the rates specified in each Order Schedule. Unless otherwise set forth on the Order Schedule, payment shall be due within thirty (30) days after the date of Persivia's invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one and half percent (1 1/2%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. In addition to paying the applicable fees, Customer shall also pay all Customer pre-approved reasonable travel and out-of-

pocket expenses incurred by Persivia in connection with any Services rendered.

3.2 Disputed Charges. If Customer disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the parties, Customer shall pay the amounts due under this Agreement less the disputed amount, and the parties shall diligently proceed to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Customer delivers a written statement to Persivia on or before the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer that are not in dispute have been paid as and when required under this Agreement.

3.3 Taxes. Customer shall be solely and exclusively responsible for the payment of all applicable sales, use and similar taxes arising from or relating to the Services rendered hereunder, except for taxes related to the net income of Persivia and any taxes or obligations imposed upon Persivia.

4. CONFIDENTIALITY AND DATA SECURITY

4.1 Confidential Information. Each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. The receiving party shall hold in confidence, and shall not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who are bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than this Agreement. The receiving party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

4.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an

obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 Injunctive Relief. Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

5. LIMITED WARRANTY

5.1 Subscription Service Warranty. Persivia warrants that during the term of any Order Schedule for the Subscription Service, (i) the Subscription Service will conform, in all material respects, with its Documentation and (ii) it will use commercially reasonable efforts to ensure that it does not introduce any virus, Trojan horse or other malicious code into the Subscription Service environment. Persivia does not warrant that it will be able to correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. Persivia makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, Persivia will, at no additional cost to Customer, provide remedial services necessary to enable the Services to conform to the warranty. Customer will provide Persivia with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranties. Such warranties shall only apply if the Subscription Service has been utilized by Customer in accordance with the Documentation, Order Schedule and this Agreement.

5.2 Services Warranty. Persivia warrants that any Professional Services and CCM Services provided hereunder shall be provided in a competent manner in accordance with any specifications set forth in the Order Schedule in all material respects. If the Professional Services or CCM Services are not performed as warranted then, upon Customer's written request, Persivia shall promptly re-perform, or cause to be re-performed, such Professional Services or CCM Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for thirty (30) days following the completion of the applicable portion of the Professional Services or CCM Services as the case may be. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranties.

5.3 No Other Warranty. PERSIVIA DOES NOT REPRESENT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT CUSTOMER WILL RECEIVE ANY INCENTIVE PAYMENTS OR OTHER BENEFITS AS A RESULT OF THE USE OF THE SERVICES OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 5 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY PERSIVIA. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

5.4 Compliance and Pricing Transparency Statement Persivia represents that the Meaningful Use Solution of the Subscription Service has been certified by an ONCACB in accordance with the applicable certification criteria adopted by the Secretary of the U.S. Department of Health and Human Services. This certification does not represent an endorsement by the U.S. Department of Health and Human Services or guarantee the receipt of incentive payments. The Meaningful Use Solution is an inpatient modular EHR and requires Customer to license and install a compliant implementation of other ONC certified systems, (e.g. Meditech, Cerner and EPIC EHRs) in order to constitute a complete EHR for attesting to meaningful use. Implementation of the Meaningful Use Solution with other ONC certified systems requires one-time costs and ongoing subscription fees.

6. LIMITATION OF LIABILITY

6.1 Consequential Damage Waiver. Neither party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the performance of the Services, or the performance of any other obligations under this Agreement, even if it is aware of the possibility of the occurrence of such damages.

6.2 Limitation of Liability. The total cumulative liability of Persivia to Customer for any and all claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the Services fees paid by Customer to Persivia under the Order Schedule for the Services which form the subject of the claim during the six (6) month period immediately preceding the event giving rise to the claim. The provisions of this Agreement allocate risks between the parties. The pricing set forth in each Order Schedule reflects this allocation of risk and the limitation of liability specified herein.

7. TERM

7.1 Term. This Agreement will commence on the Effective Date as set forth above and will continue in effect until otherwise terminated in accordance with Section 7.2 below. The term of each Order Schedule for the Subscription Service and/or CCM Services shall be set forth in the Order Schedule. Upon the expiration of the initial term of any Order Schedule for the Subscription Service and/or CCM Services or any renewal term, unless either party provides the other with written notice of its election not to renew such Order Schedule at least sixty (60) days prior to such renewal date, the Order Schedule will automatically renew, for additional periods of one (1) year each at the rates specified on the Order Schedule. Persivia reserves the right to change the rates, applicable charges and usage policies and to introduce new charges, for such Order Schedule upon providing Customer written notice thereof at least ninety (90) days prior to the then current renewal date.

7.2 Termination. Notwithstanding the foregoing, either party may terminate this Agreement or any Order Schedule (i) immediately in the event of a material breach of this Agreement or any such Order Schedule by the other party that is not cured within thirty (30) days of written notice thereof from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of an Order Schedule shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Order Schedules. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other party for any reason, but only if at such time there are no outstanding Order Schedules then currently in effect. In addition, in the event that either Customer or Persivia reasonably concludes that any provision of this Agreement is in material violation of any federal, state or local law, rule or regulation, the party making such determination shall promptly notify the other thereof, whereupon appropriate representatives of the parties shall meet and attempt to amend this Agreement to eliminate such violation. If the parties are unable to agree upon a satisfactory amendment to this Agreement that both parties acknowledge and agree will eliminate such violation, either party may thereupon terminate this Agreement by giving written notice of termination to the other. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Schedule.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any applicable Order Schedule, Persivia shall no longer provide the applicable Services to Customer and Customer shall cease and cause its Users to cease using the Services. Customer shall pay Persivia for all fees that had accrued prior to the termination date. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party. Upon termination of this Agreement, each party shall promptly return or destroy all Confidential Information of the other party in its possession. Within thirty (30) days following termination, Customer may retrieve Customer Data in accordance with

established and reasonable system access procedures. After such period, Persivia will have no further obligation to store and/or make available Customer Data and may delete the same.

8. **OWNERSHIP; USE OF CONTENT; HIPAA OBLIGATIONS**

8.1 Customer Data. Subject to Section 8.6, Customer retains ownership of all right, title and interest in and to all Customer Data. During the term of this Agreement, Customer hereby grants to Persivia a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit, and distribute the Customer Data solely as necessary to provide the Services to Customer. Except as provided in this Agreement, Customer shall be solely responsible for providing, updating, uploading and maintaining all Customer Data. As between the parties, the accuracy of Customer Data shall be Customer's sole responsibility.

8.2 Subscription Service and Persivia Data. Customer acknowledges and agrees that as between Persivia and Customer, all right, title and interest in and to the Subscription Service and all derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain Persivia's or its licensors', and Persivia in no way conveys any right or interest in the Subscription Service other than a limited license to use it in accordance herewith. Persivia also retains ownership of all right, title and interest in and to all Persivia Data. During the term of this Agreement, Persivia grants to Customer a limited, worldwide, non-exclusive, non-transferable (except as set forth in Section 10.2), royalty-free right to use, display, transmit, and distribute the Persivia Data solely in connection with Customer's permitted use of the Subscription Service.

8.3 Work Product. Except as otherwise set forth on an Order Schedule, Customer will have a non-exclusive, non-transferable (except as set forth in Section 10.2) license to use any Work Product developed by Persivia in the performance of the Services and delivered to Customer, upon Customer's payment in full of all amounts due hereunder, solely for Customer's internal use in connection with the Subscription Service. Persivia retains ownership of all information, software and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all Work Product compiled or developed by Persivia in the performance of this Agreement.

8.4 Customer Obligations. Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Unauthorized use, resale or commercial exploitation of the Subscription Service in any way is expressly prohibited. Without Persivia's express prior written consent in each instance, Customer shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Subscription Service or access the Subscription Service in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Subscription Service. Except as expressly permitted in this Agreement, Customer shall not copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Subscription Service to any

third-party. Customer shall be liable for any breach of this Agreement by any of its Users. In addition to Persivia's other remedies hereunder, Persivia reserves the right upon notice to Customer to terminate any User's right to access the Subscription Service if such User has violated any of the restrictions contained in this Agreement.

8.5 HIPAA Compliance. The parties agree to be bound by the Business Associate Addendum attached hereto as Exhibit B and incorporated herein by reference (the "BAA").

8.6 Use of Health Information. Notwithstanding anything set forth in the BAA to the contrary, Customer hereby acknowledges that the Subscription Service includes Data Aggregation services. In connection with the provision of such Services, the parties agree that Persivia may combine Protected Health Information provided by Customer with Protected Health Information provided by other clients of Persivia for the purpose of providing Customer with the Services including data analyses that relate to the health care operations of Customer. In this regard, Customer and Persivia acknowledge and agree that: (i) Protected Health Information of Customer used for reporting by Persivia hereunder shall be limited to the minimum necessary, in accordance with the Privacy Rule 45 CFR §164.502(b), for Persivia to provide the Data Aggregation services herein pursuant to the terms of this Agreement, (ii) Protected Health Information used in the conduct of the Data Aggregation services for Customer as described herein may also be included in Data Aggregation analyses provided by Persivia to other clients, provided that such analyses are solely in the form of De-Identified or aggregated data; and (iii) the Protected Health Information extracted by Persivia shall be and remain the property of Customer, but Persivia shall have a non-exclusive, perpetual royalty-free license to use and disclose the De-Identified or aggregated data collected or created from Customer with the provision of Data Aggregation services to other Persivia Customers in accordance with the Privacy Rule, whether such use and disclosure is during or after the termination of this Agreement. Customer also expressly acknowledges and agrees that Persivia may use De-Identified data derived from the Protected Health Information of Customer extracted by Persivia for Research, provided that such Research is conducted in accordance with 45 CFR § 164.512(i). Each party agrees to provide to the other any documentation reasonably required by the requesting party to administer and conduct such Research. Any and all right, title and interest in and to the De-Identified Data created or collected by Persivia shall belong exclusively to Persivia, and Customer shall be deemed to have assigned, transferred, and conveyed to Persivia, irrevocably and in perpetuity, all right, title and interest in De-Identified Data. Customer hereby acknowledges and agrees that Persivia may sell and distribute De-Identified Data created or collected by Persivia to third parties without any further consent of or compensation to Customer.

9. INDEMNIFICATION

9.1 Persivia Indemnification. Subject to Section 9.3 below, Persivia will indemnify, defend and hold Customer harmless from and against any and all Losses incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer alleging that the use of the Services or Work Product as permitted hereunder

infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services or Work Product in violation of this Agreement or applicable law, (b) use of the Services or Work Product after Persivia notifies Customer to discontinue use because of an infringement claim, (c) any claim relating to any third party Data or Customer Data, (d) modifications to the Services or Work Product made other than by Persivia (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services or Work Product with materials which were not provided by Persivia, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Persivia with Customer's custom requirements or specifications if and to the extent such compliance with Customer's custom requirements or specifications resulted in the infringement. If the Services or Work Product are held to infringe, Persivia will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Services or Work Product with non-infringing Services or Work Product; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Order Schedule and refund to the Customer any prepaid unused fees paid to Persivia for the infringing Services or Work Product. The rights and remedies granted Customer under this Section 9.1 state Persivia's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

9.2 Customer Indemnification. Subject to Section 9.3 below, Customer shall indemnify, defend, and hold Persivia harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Persivia (i) alleging that the Customer Data, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, or (ii) arising out of Customer's use or misuse of the Services.

9.3 Indemnification Procedure. The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

10. GENERAL PROVISIONS

10.1 Entire Agreement and Controlling Documents. This Agreement, including all Exhibits hereto and all Order Schedules, contains the entire agreement between the parties with respect to

the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement or the applicable Order Schedule and that are duly signed by the authorized representatives of both parties may amend this Agreement or such Order Schedule. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the order is accepted by Persivia. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof.

10.2 Assignment. This Agreement shall be binding upon and for the benefit of Persivia, Customer and their permitted successors and assigns. Either party may assign this Agreement and all Order Schedules as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in this Agreement, neither party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void.

10.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. Any legal action or proceeding with respect to this Agreement shall be brought in the state or federal courts in Boston, Massachusetts. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts.

10.4 Headings. The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

10.5 Publicity. Customer agrees that Persivia may use Customer's name and may disclose that Customer is a customer of Persivia in Persivia advertising, press, promotion and similar public disclosures upon the prior written consent of Customer (such consent not to be unreasonably withheld or delayed). Customer also hereby grants Persivia a non-exclusive license during the term of this Agreement to list Customer's name and display Customer's logo in the "partner" "customer" or similar section of Persivia's website. Persivia may also publicly issue and distribute a "case study" relating to this Agreement and Persivia's services performed on behalf of Customer, provided that it first obtains Customer's prior written consent, such consent not to be unreasonably withheld or delayed. Customer agrees to act as a "reference account" with respect to Persivia's marketing and promotional initiatives.

10.6 Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

10.7 Notices. Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by U.S. certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the party set forth on the applicable Order Schedule. Either party may change its address by giving written notice of such change to the other party.

10.8 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person.

10.9 Non-Solicitation. During the term of this Agreement and for a period of twelve (12) consecutive months commencing upon the termination or expiration of this Agreement, Customer shall not directly or indirectly solicit or induce, or attempt to solicit or induce, or employ or contract to receive services from, any employee, representative, consultant or other agent then currently employed by Persivia to leave their employ or otherwise interfere with the employment or consulting relationship between any such person and Persivia. In the event Customer breaches the covenants in Section 10.9 hereof, in addition to any other rights and remedies available, Persivia shall have the right and remedy to have the applicable covenants provisions specifically enforced by any court of competent jurisdiction by way of an injunction or other equitable relief, it being agreed that any breach of the covenants set forth in this Section 10.9 would cause irreparable injury to Persivia.

10.10 Modifications to Subscription Service. Persivia may make modifications to the Subscription Service or particular components of the Subscription Service from time to time provided that such modifications do not materially degrade any functionality or features of the Subscription Service

10.11 Waiver and Severability. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

Exhibit A

CCM Services Addendum

Definitions Applicable to this CCM Services Addendum

1. **“Care Plan”** means a comprehensive care plan established and implemented for an Eligible Patient by the Practitioner(s) responsible for that Eligible Patient’s health care and revised and monitored as appropriate for that Eligible Patient’s care.
2. **“Case Manager”** means a person assigned by Persivia to provide CCM Services to an Eligible Patient.
3. **“CCM Alert”** means an alert created by the CCM Software for each Eligible Patient, following determination of the Eligible Patient’s eligibility for CCM Services.
4. **“CCM Consent”** means a form of consent substantially as shown in Appendix 1.
5. **“CCM Services”** means at least 20 minutes of chronic care management services satisfying the requirements set forth in applicable regulations of CMS as in force and effect from time to time, provided to an Eligible Patient during a calendar month.
6. **“CCM Software”** means the module of Persivia’s Care Management CCM software which manages the data relevant to the CCM Services and enables the CCM Services. CCM Software is made available to Customer in connection with the Subscription Service.
7. **“CCM Software Integration”** means that (a) the Customer EHR is capable of transmitting Medical Information to the CCM Software, (b) the CCM Software is capable of generating a CCM Alert based upon its analysis of Medical Information within CCM Software.
8. **“CCM Software Integration Date”** means the date on which the factors comprising CCM Software Integration have been substantially achieved.
9. **“CMS”** means the Centers for Medicare & Medicaid Services within the United States Department of Health and Human Services.
10. **“EHR”** means the subdirectory or subdirectories in Customer’s EHR System that relates to a particular Eligible Patient.
11. **“EHR System”** means Customer’s system for electronic collection and storage of patient health information in a digital format.
12. **“Eligible Patient”** means a patient determined by the CCM Software to be eligible for CCM Services pursuant to criteria established by CMS regulations.
13. **“Medical Information”** means data and information relating to the diagnosis, treatment and management of one or more medical conditions or patients, including medical histories, patient profiles, lab results, diagnosis, treatment plans and performance with respect to treatment plans.
14. **“Non-Personal Medical Data”** shall mean non-personally identifiable data and information.
15. **“Practitioner”** means a billable health care provider of Customer that is responsible for the care of an Eligible Patient and has the legal authority under licensure requirements and other applicable law to get the CCM Consent from such Eligible Patient and to authorize Persivia to provide CCM Services to such Eligible Patient, including without limitation any physician, nurse practitioner, physician assistant or nurse practitioner or certified nurse midwife.
16. **“Validated CCM Consent”** means a CCM Consent form submitted by a Practitioner treating an Eligible Patient as to which Persivia has determined that the patient diagnoses, clinical history, physician signature and date are valid.

1. **Persivia Responsibilities**

1.1 CCM Software Integration. Persivia will work with Customer to implement, integrate and test Persivia’s Care Management software and achieve CCM Software Integration.

1.2 CCM Services. Upon receipt of a Validated CCM Consent after the CCM Software Integration Date for an Eligible Patient, Persivia will commence providing CCM Services to such Eligible Patient.

1.3 Case Managers and Supervision. Case Managers will have the necessary and appropriate skills, education, credentials, knowledge and experience to provide CCM Services and will be properly supervised by Persivia supervisors. Supervisors will have the necessary and appropriate skills, education, credentials, knowledge and experience to supervise Case Managers. Case Managers and supervisors may be employees of Persivia, independent

contractors, or employees of independent contractors in Persivia's sole discretion and may provide the CCM Services from such locations as Persivia may determine in its sole discretion.

1.4 Providing CCM Services. Notwithstanding anything to the contrary in this Agreement or otherwise, nothing except the receipt of a Validated CCM Consent shall obligate Persivia or any affiliate thereof to provide CCM Services to any person, and Persivia shall have no obligation to provide CCM Services after the expiration or termination of this Agreement. Persivia reserves the right, acting reasonably, to refuse to provide or otherwise suspend the provision of CCM Services to any Eligible Patient.

2. Customer Responsibilities

2.1 CCM Software Integration. Commencing promptly after the Effective Date, Customer will provide the necessary IT staff and facilities, and will work with Persivia, to enable the implementation, integration and testing of Persivia's Care Management software and to achieve CCM Software Integration.

2.2 Patient Enrollment. Customer shall use commercially reasonable efforts to persuade Eligible Patients to consent to receive CCM Services and to actually accept CCM Services each month from a Case Manager.

2.3 Employer-Employee Relationship. Notwithstanding any other provision of this Agreement, it is the intent of the parties that the Case Managers shall be employees or independent contractors of Persivia for all purposes and shall not be employees or independent contractors of Customer for any purpose. Accordingly, neither Customer nor Persivia shall act, or fail to act, in any manner that is inconsistent with such employer-employee relationship between Customer and the Case Managers. Customer shall not have any right or power to affect the employer-employee relationship between Persivia and any employed Customer.

2.4 Authority Over Professional Services. Customer and the Practitioners shall retain the ultimate authority and responsibility for the provision of all professional medical services provided to Eligible Patients to the fullest extent required by any applicable law, standards of professional practice or licensing authority. Customer shall cause all Practitioners to at all times perform such duties in accordance with the standards of professional practice applicable to such Practitioners' training and specialization.

2.5 CCM Exclusivity. At all times during the Term of the Order Schedule for CCM Services, Customer will not (1) use any provider of CCM Services (or any provider of services substantially similar thereto) other than Persivia, (2) permit any CCM Alert, CCM Consent or other output of the CCM Software to be disclosed to or processed by any provider of CCM Services (or any provider of services substantially similar thereto) other than Persivia, or (3) provide sales or marketing support to, or otherwise assist or enable, another provider of CCM Services (or any provider of services substantially similar thereto). For the avoidance of doubt, this Section 2.4 is not intended, and shall not be enforced, in such a manner as could prevent individuals from accessing their electronic health information or restrict health care providers or other authorized persons from exchanging basic clinical information necessary for effective patient care, as such terms are defined and used in the 2015 Report to Congress on Health Information Blocking of Office of the National Coordinator for Health IT.

3. Compensation

3.1 Fees. As consideration for providing the CCM Services, Customer shall pay Persivia the fees set forth in the applicable Order Schedule.

3.2 Right to Audit. During the Term and for a period of one (1) year thereafter, Customer shall have the right, upon reasonable request and during normal business hours, to audit all applicable records, reports, and documents necessary to verify the charges processed by Persivia. If, upon performing such audit, it is determined that Customer has underpaid Persivia then Customer shall immediately pay Persivia the amount of the shortfall and if it is determined that Customer has underpaid Persivia by an amount greater than five percent (5%) of the payments due Persivia in the period being audited, Customer will reimburse Persivia for all reasonable expenses and costs of such audit in addition to its obligation to make full payment of the amount owed.

3.3 Billing CMS for CCM Services. Customer shall be solely responsible for billing CMS and collecting for the CCM Services provided by Persivia, and Customer shall be the sole owner of all revenues and payments of any kind related to or received with respect to the CCM Services provided by Persivia to Customer's Eligible Patients. To the extent requested by Customer, Persivia shall cooperate and assist Customer in the prompt billing and collection of all such revenues, such as execution of any assignment, reassignment or other documents requested by Customer, and the resolution of any challenges by CMS. The parties acknowledge and agree that Persivia shall not accept payment from any federal or state reimbursement program for the CCM Services provided to Customer's Eligible Patients.

Appendix 1 to Exhibit A

**Consent Agreement
To Receive Medical Care for Diagnosed Chronic Diseases**

In signing this agreement, you indicate your consent to Dr. _____ providing you with chronic-care management services (referred to as “CCM Services”), as detailed in the following paragraphs.

Your doctor and associated clinicians have diagnosed you with two (2) or more chronic disease processes that are likely to persist for at least twelve (12) months. These conditions could significantly damage your health if left untreated. To protect your future health and to increase your present quality of life, the Provider seeks to offer the following CCM Services with your explicit consent:

- An initial systematic assessment of your health and healthcare needs
- A plan of care that is supervised by a qualified physician
- Regular follow-up assessments with a non-face-to-face encounter
- Any other surveillance that is needed to ensure that you receive timely preventive care
- Regular reviews of your medication regimen to ensure that your medication is usage is appropriate to your health condition and that no other contraindications develop
- Ongoing coordination of care to manage any transitions among facilities, medications, procedures, or changing staff

Provider’s Obligations

The Provider agrees to

- Detail and clarify all CCM Services that are available to you
- Provide a document containing this information (in hard-copy or electronic format)
- Provide you with due documented acknowledgement should you choose to revoke this agreement, together with the date of your revocation

Patient Acknowledgement and Authorization

Your signature below indicates that:

- You consent to this provision of CCM services.
- You agree that your medical information may be shared with the Provider’s staff and delegates as necessary to coordinate your care.
- You acknowledge that only one practitioner can provide CCM Services to you during a calendar month.
- You agree that the cost-sharing contract(s) between you and your insurance carrier(s) may apply to CCM Services that you receive and that you may be required to pay the corresponding portion of their cost.

Patient’s Rights

You have the following rights with respect to CCM Services.

- A copy of your care plan document, which the Provider shall give you
- You can stop CCM Services at any time by revoking this agreement effective at the end of the then-current month. You may revoke this agreement by writing to _____ or by making verbal communication to _____.

On the receipt of your revocation, the Provider will issue a written confirmation of the same and of its effective date.

Patient’s Signature:

Signature of Patient’s Authorized Representative (if applicable):

Print Name:

Print Name:

Date:

Date:

Exhibit B
Business Associate Addendum

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meaning as set forth at 45 CFR Parts 160 and 164. The term "Agreement" refers to the agreement to which this Business Associate Addendum is attached.

2. **Applicability.** This Addendum shall be applicable to Protected Health Information (i) received by Business Associate from Covered Entity pursuant to the Agreement or (ii) created or received by Business Associate on behalf of Covered Entity pursuant to the Agreement.

3. **Scope of Use of Protected Health Information.** Business Associate shall not use or disclose Protected Health Information for any purpose other than:

- 3.1 As permitted or required by the Agreement;
- 3.2 As permitted by this Business Associate Addendum; and
- 3.3 As otherwise required by State and Federal Law.

4. **Permitted Administrative Uses and Disclosures by Business Associate.**

4.1 Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

4.2 Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if either:

- (A) such disclosure is required by State and Federal Law; or
- (B) (i) Business Associate obtains reasonable assurances from the person to whom such information is disclosed that such information will be held confidentially and used or further disclosed only as Required by State and Federal Law or for the purpose for which it was disclosed to such person; and (ii) such person agrees that it shall notify Business Associate of any instance of which such person becomes aware that the confidentiality of such information has been breached.

4.3 Business Associate may provide data aggregation services relating to Covered Entity's Health Care Operations.

5. **Covered Entity's Obligations.**

5.1 Covered Entity shall notify Business Associate of any limitations in Covered Entity's notice of privacy practices required by 45 CFR § 164.520 to the extent that such limitation(s) may affect Business Associate's use or disclosure of Protected Health Information.

5.2 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

5.3 Covered Entity shall notify Business Associate of any restrictions on the use of Protected Health Information to which Covered Entity has agreed in accordance with 45 CFR § 164.522 to the extent that such restrictions may affect Business Associate's use or disclosure of Protected Health Information.

5.4 Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible if such use or disclosure were made by Covered Entity.

6. **Safeguards for the Protection of Protected Health Information.** Business Associate shall use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided by the Agreement and this Business Associate Addendum.

7. **Reporting of Unauthorized Uses or Disclosures.** Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information by Business Associate or its subcontractors of which Business Associate becomes aware that is not provided for or permitted in the Agreement.

8. **Use of Subcontractors.** Business Associate shall ensure that any agents, including a subcontractor, to whom Business Associate provides Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information.

9. **Authorized Access to Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, at the request of Covered Entity, Business Associate shall provide Covered Entity access to such Protected Health Information in a Designated Record Set in the time and manner reasonably designated by Covered Entity in order for Covered Entity to meet the requirements imposed on Covered Entity by 45 CFR § 164.524.

10. **Amendment of Protected Health Information.** To the extent that Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, and in the time and manner reasonably designated by Covered Entity.

11. **Accounting of Disclosures of Protected Health Information.** Business Associate shall make available to Covered Entity the information required in order for Covered Entity to provide an accounting of disclosures in accordance with 45 CFR § 164.528.

12. **Right to Audit.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of Health and Human Services for purposes of determining Covered Entity's compliance with 45 CFR Part 164, Subpart "E".

13. **Future Confidentiality of Protected Health Information.** At termination of the Agreement, Business Associate shall, if feasible, return or destroy all Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associate maintains at such time in any form and shall retain no copies of such Protected Health Information or, if such return or destruction is infeasible, Business Associate shall extend the protection of this Business Associate Addendum to such Protected Health Information and shall limit further uses and disclosures to those purposes that make the return or destruction of such Protected Health Information infeasible. If return or destruction of Protected Health Information is infeasible and Business Associate retains possession of such information, the provisions of this Section 13 shall survive the expiration or termination of this Business Associate Addendum.

14. **Security of Electronic Protected Health Information.** Business Associate shall:

14.1 Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.

14.2 Ensure that any agent, including a subcontractor, to whom the Business Associate provides such Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such information.

14.3 Report to Covered Entity any Security Incident of which Business Associate becomes aware.

14.4 Authorize termination of the Agreement by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Business Associate Addendum; *provided, however*, that such termination shall be in accordance with the provisions of the Agreement relating to termination, including but not limited to any provisions which afford Business Associate the right to cure any defaults or breaches of contract.

15. **Termination of Agreement in Event of Breach.** In the event that Business Associate violates any material term of this Business Associate Addendum, Covered Entity may terminate the Agreement by providing written notice of such termination to Business Associate. Such termination shall be in accordance with the provisions of the Agreement relating to termination, including but not limited to any provisions which afford Business Associate the right to cure any defaults or breaches of contract.

16. **Term.** This Business Associate Addendum shall be effective upon the effective date of the Agreement and shall expire simultaneously with the expiration of the Agreement or, if the Agreement is terminated for any reason prior to its scheduled expiration, this Business Associate Addendum shall be automatically terminated (without the need for any action by either Business Associate or Covered Entity) simultaneously with the termination of the Agreement.

17. **Amendments.** The parties shall negotiate in good faith any amendments to this Business Associate Addendum or a replacement of this Addendum to the extent necessary in order to maintain compliance with State and Federal Law.

18. **Effect on the Agreement.** Except as may be modified herein, all terms of all of the Agreement shall remain in full force and effect.