EVALUATION TERMS OF SERVICE

BY EXECUTING THE EVALUATION ORDER OR ACCESSING OR USING ANY SERVICE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE ANY SERVICE. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.

IF YOU ARE USING ANY SERVICE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND SUCH ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO DO SO. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

AGREEMENT

This InterSystems Evaluation Terms of Service ("**Evaluation Agreement**") is entered into by and between InterSystems Corporation located at 1 Memorial Drive, Cambridge MA 02142 USA ("**InterSystems**") and the entity executing the Evaluation Order with InterSystems ("**Customer**" or "**you**"). This Evaluation Agreement consists of the terms and conditions set forth below and any attachments, addenda or exhibits referenced in this Evaluation Agreement and the Evaluation Order that reference this Evaluation Agreement. This Evaluation Agreement is effective as of the date which is the earlier of: (a) Customer's initial access to any Service through any online provisioning, registration or order process; and (b) Customer's execution of the Evaluation Order (the "**Effective Date**").

TERMS AND CONDITIONS

1. **Definitions.**

   "Affiliate" means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, "control" means the power to direct the management or affairs of an entity and "ownership" means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

   "Contractor" means the independent contractors and consultants permitted by Customer to serve as Users of the Service.

   "Customer Data" means any data or data files of any type that are uploaded by or on behalf of Customer to the Service.

   "Documentation" means InterSystems technical documentation and usage guides for the applicable Service.

   "Evaluation Order" means (a) any online, electronic, or in-person provisioning, registration, or order process, or (b) any InterSystems ordering document executed by Customer and InterSystems which specifies the Service to be evaluated by Customer and the applicable Evaluation Period.

   "Evaluation Period" means the evaluation period specified in the Evaluation Order.

   "HIPAA" means the Health Insurance Portability and Accountability Act, as amended and supplemented.

   "Law" means any local, state, national and/or foreign Law, treaties, and/or regulations applicable to a respective Party, including but not limited to, those related to data privacy, international communications and the transmission of technical or personal information.

   "Service" means the InterSystems offering made generally available and described in an Evaluation Order.

   "User" means the persons designated and granted access to the Service by or on behalf of Customer, including its and its Affiliates' Contractors.

2. **Access to the InterSystems Service**. Customer may access and use the Service during the Evaluation Period, but only for its own benefit on an evaluation basis solely for testing and evaluation of the Service and not for any production use whatsoever and in accordance with the terms and conditions of this Evaluation Agreement. Customer may permit its employees, Contractors and Affiliates to serve as Users provided that any use of the Service by each such Contractor or Affiliate is solely for the benefit of Customer

or such Affiliate. Customer shall be responsible for each User's compliance with this Evaluation Agreement. Customer will ensure that all permitted Users keep their user IDs and passwords for the Service strictly confidential and Customer will remain responsible for any and all actions taken using Customer's account. Customer will be responsible for restricting access by any User who is no longer authorized to access the Service.

3.   **General Restrictions**. Customer will not (and will not permit any third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available any Service to a third party (except as expressly set forth in Section 2 with respect to Contractors and Affiliates); (b) use any Service to provide, or incorporate any Service into, any service for the benefit of a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to any Service, except to the extent expressly required by applicable law (and then only upon advance written notice to InterSystems); or (d) remove or obscure any proprietary or other notices contained in any Service.

4.   **Customer Data.** As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data and any modifications made thereto in the course of the operation of the Service. Subject to the terms of this Evaluation Agreement, Customer hereby grants to InterSystems a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Service to Customer, or to prevent or address service or technical problems under this Evaluation Agreement, or as may be required by law. For this Evaluation Agreement, InterSystems does not provide an archiving service and expressly disclaims all obligations with respect to storage.

5.   **Customer Obligations.** Customer will ensure that its use of each Service and all Customer Data is at all times compliant with this Evaluation Agreement, Customer's privacy policies, and all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants that Customer has sufficient rights in the Customer Data to grant the rights granted to InterSystems in Section 4 and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy or other rights of any third party. In addition, Customer specifically agrees not to submit to the Service any Customer Data that includes any patient, medical, or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations ("**Health Information**") or any other sensitive regulated data that requires InterSystems to implement specific privacy and security safeguards as mandated by Law or InterSystems policy or agreement ("**Regulated Data**"). InterSystems shall have no liability under this Evaluation Agreement for Health Information or Regulated Data, notwithstanding anything to the contrary in this Evaluation Agreement or in HIPAA or any similar foreign, federal or state laws, rules, or regulations. Customer will defend, indemnify, and hold harmless InterSystems from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with any claim arising from or relating to any Customer Data or breach or alleged breach by Customer of this Section.

6.   **Support**. InterSystems will not provide any support for the Service during the Evaluation Period.

7.   7.   **Confidentiality**. The Parties' obligations with respect to Confidential Information shall be governed by the Confidentiality Terms available at https://www.intersystems.com/ConfidentialityTerms, which may be modified by InterSystems from time-to-time; provided that, InterSystems shall not materially alter the Confidentiality Terms without your written consent.

8.   **Intellectual Property Rights.** This is an agreement for access to and use of the Service. Customer acknowledges that it is obtaining only a limited right to the Service and that irrespective of any use of the words "purchase", "sale" or like terms in this Evaluation Agreement no ownership rights are being conveyed to Customer under this Evaluation Agreement. Customer agrees that InterSystems or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Service, all Documentation, and any and all related and underlying technology and

documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated (collectively, "**InterSystems Technology**"). Except for the express limited rights set forth in this Evaluation Agreement, no right, title or interest in any InterSystems Technology is granted to Customer. Further, Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for the Service. Notwithstanding anything to the contrary herein, InterSystems may freely use and incorporate into InterSystems's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any users of the Services relating to InterSystems's products or services ("**Feedback**"). Notwithstanding anything to the contrary in this Evaluation Agreement, InterSystems has the right to collect and use Service Data to develop, improve, support, and operate its products and services during and after the term of this Evaluation Agreement. "**Service Data**," as used in this Section 8, means query logs, and any data (other than Customer Data) relating to the operation, support and/or about Customer's use of the Service. This Section does not give InterSystems the right to identify Customer as the source of any Service Data without written permission from Customer.

9. **Term and Termination.** The Evaluation Period shall end as specified in the Evaluation Order. At the end of the Evaluation Period (a) Customer's access to the Service will expire and (b) each party will return or destroy the other party's Confidential Information. Customer acknowledges that following termination it shall have no further access to any Customer Data input into the Service. Within thirty (30) days following the end of the Evaluation Period, InterSystems will delete the Customer Data. Either party may terminate this Evaluation Agreement (and the Evaluation Period) at any time for any or no reason upon written notice to the other party. Nothing herein obligates either party to enter into any further agreement with the other party. This Section 9 and Sections 5 (Customer Obligations), 7 (Confidentiality), 8 (Intellectual Property Rights), 10 (No Warranty), 11 (Limitation of Liability) and 13 (General) will survive any expiration or termination of this Evaluation Agreement.

10. **No Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THIS EVALUATION AGREEMENT, EACH SERVICE IS PROVIDED "AS IS" AND INTERSYSTEMS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. INTERSYSTEMS DOES NOT WARRANT THAT THE USE OF ANY SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES INTERSYSTEMS WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS. INTERSYSTEMS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS. INTERSYSTEMS DOES NOT MAKE ANY WARRANTIES AND SHALL HAVE NO OBLIGATIONS WITH RESPECT TO THIRD PARTY APPLICATIONS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

11. **Limitation of Liability**. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER INTERSYSTEMS NOR ITS AFFILIATES SHALL BE LIABLE TO YOU OR YOUR AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, INTERSYSTEMS AND ITS AFFILIATES' ENTIRE LIABILITY TO YOU OR YOUR AFFILIATES (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED FIVE HUNDRED DOLLARS ($500.00). THE PARTIES AGREE THAT THE WAIVERS AND LIMITATIONS SPECIFIED IN THIS SECTION 11 WILL SURVIVE AND APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS EVALUATION AGREEMENT IS FOUND TO HAVE FAILED OF ITS

ESSENTIAL PURPOSE.

12. **Export Control**. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use any Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to any Service any information that is controlled under the U.S. International Traffic in Arms Regulations.

13. **General.** This Evaluation Agreement will be governed by the laws of the Commonwealth of Massachusetts and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to the subject matter hereof will be the state and federal courts located in Boston, Massachusetts and both parties hereby submit to the personal jurisdiction of such courts. The parties are independent contractors and no employment, agency, or joint venture is created hereunder. All notices, requests and other communications under this Evaluation Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. All amendments must be in writing and signed by both parties. Waivers must be in writing and no waivers will be implied. This Evaluation Agreement may not be assigned by Customer, and any purported assignment or amendment in violation of the foregoing will be void. InterSystems may transfer or assign this Evaluation Agreement without your consent. If any provision of this Evaluation Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof will be unaffected and remain in full force and effect. This Evaluation Agreement is the final, complete and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written. Elements of the Service are commercial computer software. InterSystems provides the Service, including all related software and, to the extent applicable the InterSystems Technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Evaluation Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with InterSystems 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.

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