

**INTERSYSTEMS CLOUD SUBSCRIPTION AGREEMENT**  
TERMS & CONDITIONS

These Terms and Conditions, together with your Order and the applicable Cloud Specification, constitute the CLOUD SUBSCRIPTION AGREEMENT (the “**Cloud Subscription Agreement**” or “**Agreement**”) by and between InterSystems Corporation, a Massachusetts corporation with its worldwide headquarters at One Memorial Drive, Cambridge, MA 02142 (“**InterSystems**”), and the Cloud Customer identified on the Order (“**Customer**” or “**you**”), relating to your subscription to access and use the Cloud Subscription identified on your Order. InterSystems and Customer are each referred to as a “**Party**” and, collectively, as the “**Parties**.”

1. **DEFINITIONS.** Capitalized terms used herein and not otherwise defined in the Order or Cloud Specification shall have the meanings set forth below.
  - 1.1. “**Acceptable Use Policy**” means the Acceptable Use Policy made available at <https://www.InterSystems.com/ICAUP>.
  - 1.2. “**Authorized Persons**” means those natural persons who are authorized by the Customer to access the Cloud Subscription environment. Authorized Persons may consist of Customer’s employees as well as employees of third party organizations.
  - 1.3. “**Business Associate Terms and Conditions**” or “**BAA**” means those certain Business Associate Terms and Conditions found at <https://www.intersystems.com/ICBAA>, which terms and conditions shall, if applicable in the context of the Parties’ relationship under this Agreement (to be confirmed in the Order), be incorporated into this Agreement by reference, as they may be amended and updated from time to time, provided that no update shall materially diminish InterSystems’ responsibilities unless agreed to by both Parties.
  - 1.4. “**Cloud Subscription**” or “**InterSystems Cloud Subscription**” means the InterSystems cloud subscription offering made generally available and ordered by Customer in the Order.
  - 1.5. “**Customer Data**” means any data or data files of any type that are uploaded by or on behalf of Customer to the Cloud Subscription environment or that may be generated by the Cloud Subscription from such uploaded data or data files.
  - 1.6. “**Customer Configuration**” means the Customer configuration of the Cloud Subscription.
  - 1.7. “**Data Breach**” means, with regard to any Customer Data under the sole control of InterSystems, any unauthorized use of, loss of, access to or disclosure of, Unsecured Customer Data (where “**Unsecured**” shall mean that such data has not been rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology); provided that excluded from the definition of “**Data Breach**” shall be any incidental disclosure of Customer Data by Customer or InterSystems, or any incidental access to Customer Data by Customer or InterSystems, where no reasonable suspicion exists that such disclosure or access involves theft, or is fraudulent, criminal or malicious in nature.
  - 1.8. “**Data Processing Terms and Conditions**” or “**DPA**” means those certain Data Processing Terms and Conditions found at <https://www.intersystems.com/ICDPA>, which terms and conditions shall, if applicable in the context of the Parties’ relationship under this Agreement (to be confirmed in the Order), be incorporated into this Agreement by reference, as they may be amended and updated from time to time, provided that no update shall materially diminish InterSystems’ responsibilities unless agreed to by both Parties.
  - 1.9. “**Documentation**” means InterSystems’ technical documentation and usage guides for the Cloud Subscription made available at <https://docs.intersystems.com> or through the Cloud Subscription environment.
  - 1.10. “**Effective Date**” means the date specified in the Order.
  - 1.11. “**Fees**” means all amounts invoiced and payable for your use of the Cloud Subscription as specified in the Order.
  - 1.12. “**HIPAA**” means the Health Insurance Portability and Accountability Act, as amended and supplemented.

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- 1.13. **"HIPAA Data"** means any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.
- 1.14. **"Intellectual Property Rights"** means any and all common Law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable Laws anywhere in the world, and all moral rights related thereto.
- 1.15. **"Law"** means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective Party.
- 1.16. **"Order"** means the separate ordering document(s), pursuant to which Customer subscribes to the Cloud Subscription, which ordering document(s) have been fully executed by the Parties.
- 1.17. **"Privacy and Security Specification"** means the Privacy and Security Specification document found at [www.intersystems.com/ICPSS](http://www.intersystems.com/ICPSS), as it may be amended and updated from time to time. No update of such Privacy and Security Specification shall materially decrease the overall security of the Cloud Subscription during the Subscription Term unless agreed to by both Parties.
- 1.18. **"Service Level Availability Specification"** means the Service Level Availability Specification found at [www.intersystems.com/ICSLA](http://www.intersystems.com/ICSLA), which may be updated by InterSystems from time to time. No update shall materially diminish InterSystems' responsibilities under such Service Level Availability Specification unless agreed to by both Parties.
- 1.19. **"Specification"** or **"Cloud Specification"** means the document referenced in the Order defining the scope of the Cloud Subscription ordered by the Customer.
- 1.20. **"Subscription Term"** means the term during which the Customer may access and use the Cloud Subscription.
- 1.21. **"Usage Data"** means query logs, and any data (other than Customer Data) relating to the operation, support and/or about Customer's use of the Cloud Subscription.

## 2. USE OF CLOUD SUBSCRIPTION.

- 2.1. **General.** InterSystems will make the Cloud Subscription available to Customer during the Subscription Term solely for use by Authorized Persons in accordance with the terms and conditions of this Agreement. For the avoidance of doubt, the right to access and use the Cloud Subscription shall not be considered a license. Customer is responsible for all Authorized Persons' use of the Cloud Subscription, shall ensure that each Authorized Person complies with all terms applicable to Authorized Persons in the Agreement and shall be liable for the acts and omissions of all Authorized Persons while using the Cloud Subscription.
- 2.2. **Third-Party Use.** Customer may permit staff of third-party organizations to access and use the Cloud Subscription, provided that any such use is solely for the benefit of Customer or as may be otherwise explicitly permitted in the Order.
- 2.3. **Privacy and Security Specifications; Unauthorized Use.** The Parties shall comply with the Privacy and Security Specification. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Cloud Subscription, and shall notify InterSystems promptly if Customer becomes aware of any unauthorized access or use of the Cloud Subscription.
- 2.4. **Environments.** The Cloud Subscription may consist of multiple environments. If an environment is designated as "non-production" in the Order, Customer may only use that environment for system configuration, development, testing or training.
- 2.5. **Support and Availability.** During the Subscription Term, InterSystems will provide Customer the level of support specified in the Cloud Specification, in accordance with the Service Level Availability Specification.

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- 2.6. **Compliance with Laws.** InterSystems will provide access to the Cloud Subscription in accordance with Laws applicable to InterSystems, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data, without regard to Customer's particular use of the Cloud Subscription and subject to Customer's use of the Cloud Subscription in accordance with this Agreement.
- 2.7. **General Restrictions.** Customer will not (and will not permit any Authorized Person or third party to): (a) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Cloud Subscription to a third party (except as set forth in the Documentation for the Cloud Subscription features expressly intended to enable Customer to provide third parties with access to Customer Data) or in a service bureau or outsourcing offering; (b) use the Cloud Subscription to provide, or incorporate any portion of the Cloud Subscription into, any general purpose 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 the Cloud Subscription, except to the extent expressly permitted by applicable Law (and then only upon advance written notice to InterSystems); (d) remove or obscure any proprietary or other notices contained in any Cloud Subscription; or (e) use the Cloud Subscription in violation of the Acceptable Use Policy.
- 2.8. **WARNING: High-Risk Use.** Modern technologies may be used in new and innovative ways, and Customer must consider whether its specific use of these technologies is safe. The Cloud Subscription is not designed or intended to support any use in which a service interruption, defect, error, or other failure of the Cloud Subscription could result in the death or serious bodily injury of any person or in physical or environmental damage (collectively, "**High-Risk Use**"). Accordingly, Customer must design and implement the Cloud Subscription such that, in the event of any interruption, defect, error, or other failure of such service, the safety of people, property, and the environment are not reduced below a level that is reasonable, appropriate, and legal, whether in general or for a specific industry. Customer's High-Risk Use of the Cloud Subscription is at its own risk. Customer agrees to defend, indemnify and hold InterSystems harmless from and against all damages, costs and attorneys' fees in connection with any claims arising from a High-Risk Use associated with the Cloud Subscription, including any claims based in strict liability or that InterSystems was negligent in designing or providing the Cloud Subscription to Customer. The foregoing indemnification obligation is in addition to any defense obligation set forth elsewhere and is not subject to any limitation of, or exclusion from, liability.
- 2.9. **Medical Device Disclaimer (if applicable).** Customer acknowledges that the Cloud Subscription (1) is not designed, intended or made available as a medical device, and (2) is not designed or intended to be a substitute for professional medical advice, diagnosis, treatment, or judgment and should not be used to replace or as a substitute for professional medical advice, diagnosis, treatment, or judgment. If the Cloud Subscription is being deployed by Customer in a medical, health care, diagnosis or similar setting, Customer is solely responsible for displaying and/or obtaining appropriate consents, warnings, disclaimers, and acknowledgements to end users of Customer's implementation and use of the Cloud Subscription.
- 2.10. **Customer's Obligations.** Customer's use of the Cloud Subscription, Customer Configuration, and Customer Data will comply with all Laws applicable to Customer. Customer warrants that Customer has and will have sufficient rights in the Customer Configuration and Customer Data to grant the rights to InterSystems under this Agreement and that the Customer Data will not violate the rights of any third party. Customer is solely responsible for: (1) the accuracy, adequacy, content and legality of Customer Configuration and Customer Data furnished through use of the Cloud Subscription; (2) as applicable, obtaining appropriate consent from end users in connection with their use of the Customer Configuration; and (3) displaying appropriate warnings, disclaimers, and acknowledgements to end users in connection with their use of the Customer Configuration, as applicable.

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**3. FEES AND PAYMENT; TAXES.**

- 3.1. **Invoices & Payment.** All Fees due hereunder (except Fees subject to good faith dispute) shall be due and payable within thirty (30) calendar days of invoice date. Unless otherwise specified in the Order, invoices will be sent monthly. InterSystems may send all Customer invoices electronically (by email or otherwise). Customer shall provide InterSystems with complete and accurate billing contact information including a valid email address.
- 3.2. **Sizing.** The Fees for your usage of the Cloud Subscription are based upon various metrics, such as the resources used to operate and provide the Cloud Subscription, all as specified in the Order. If any of the sizing metrics specified in the Order increases, your fees may increase.
- 3.3. **Non-cancelable & Non-refundable.** Except as specifically set forth to the contrary in this Agreement, all payment obligations are non-cancelable and all payments made are non-refundable.
- 3.4. **Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at InterSystems' discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Law, whichever is lower, from the date such payment was due until the date paid.
- 3.5. **Non-Payment and Suspension of Cloud Subscription.** If Customer's account is more than ninety (90) calendar days past due (except with respect to charges subject to a reasonable and good faith dispute), in addition to any other rights or remedies it may have under the Agreement or by Law, InterSystems reserves the right to suspend Customer's access to the Cloud Subscription upon written notice, without liability to Customer, until such amounts are paid in full.
- 3.6. **Taxes.** All Fees invoiced pursuant to the Agreement do not include any transaction taxes, which may include local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including, but not limited to, value-added taxes ("VAT"), excise, use, goods and services taxes ("GST/HST"), consumption taxes or similar taxes (collectively defined as "Transaction Taxes"). All Fees invoiced pursuant to the Agreement are payable in full and without reduction for Transaction Taxes and/or foreign withholding taxes (collectively defined as "Taxes"). Customer is responsible for paying all Taxes associated with Fees and all other fees due pursuant to the Agreement, excluding U.S. income taxes imposed on InterSystems. If InterSystems has a legal obligation to pay or collect Taxes for which Customer is responsible under the Agreement, the appropriate amount shall be computed based on Customer's address listed in the Order and invoiced to and paid by Customer, unless Customer provides InterSystems with a valid tax exemption certificate authorized by the appropriate taxing authority.

**4. PROPRIETARY RIGHTS.**

- 4.1. **Ownership and Reservation of Rights to InterSystems Intellectual Property.** InterSystems and its licensors own all right, title and interest in and to the Cloud Subscription, all Documentation, any and all related and underlying technology and documentation and all other InterSystems Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, InterSystems reserves all rights, title and interest in and to the Cloud Subscription, including all related Intellectual Property Rights. No rights are granted to Customer or to any Authorized Person hereunder other than as expressly set forth herein. Customer acknowledges that the Cloud Subscription is offered as an online service, not a license, and that Customer has no right to obtain a copy of the underlying computer code for any portion of the Cloud Subscription.
- 4.2. **Rights in 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 Cloud Subscription. Subject to the terms of this Agreement, Customer hereby grants to InterSystems the non-exclusive royalty-free right to process the Customer Data solely to the extent necessary to provide the Cloud Subscription to Customer, to prevent or address service or

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technical problems with the Cloud Subscription, or as may be required by Law.

- 4.3. **Rights in Customer Configuration.** 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 Configuration other than the Cloud Subscription. Customer is responsible for developing, maintaining and testing the Customer Configuration. Subject to the terms of this Agreement, Customer hereby grants to InterSystems the non-exclusive royalty-free right to use the Customer Configuration solely to the extent necessary to provide the Cloud Subscription to Customer, to prevent or address service or technical problems with the Cloud Subscription, or as may be required by Law.
- 4.4. **Customer Input.** Customer may provide suggestions, enhancement requests, recommendations or other feedback relating to the operation or functionality of the Cloud Subscription from time to time during the Subscription Term. InterSystems may, but shall not be required to, incorporate any such Customer input into the Cloud Subscription. Customer shall have no right or interest whatsoever in or to any such Customer input or in any improvements or enhancements made to the Cloud Subscription as a result thereof.
- 4.5. **Usage Data.** Notwithstanding anything to the contrary in this Agreement, InterSystems may collect and use Usage Data solely to develop, improve, support, and operate its products and services. InterSystems may not share any Usage Data that includes Customer's Confidential Information with a third party except (i) in accordance with Section 5 (Confidential Information) of this Agreement, or (ii) to the extent the Usage Data is aggregated and anonymized.
5. **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.
6. **WARRANTIES AND DISCLAIMER.**
- 6.1. **Mutual Warranties.** Each Party warrants that it has the authority to enter into the Agreement and, in connection with its performance of the Agreement, shall comply with all Laws applicable to such Party, including, but not limited to, those applicable to it related to data privacy, international communications and the transmission of technical or personal information.
- 6.2. **InterSystems Warranty.** InterSystems warrants that during the Subscription Term, the Cloud Subscription will operate in substantial conformity with the Cloud Specification.
- 6.3. **Warranty Remedies.** In the event of a breach of InterSystems' warranty set forth in Section 6.2, and to the extent such breach was not caused by acts, omission or circumstances outside of InterSystems' control, InterSystems shall correct the non-conforming portion of the Cloud Subscription at no additional charge to Customer, or in the event InterSystems is unable to correct such deficiencies after good-faith efforts, InterSystems shall refund to Customer any pre-paid unused Fees attributable to the defective portion of the Cloud Subscription from the date InterSystems received such notice. Customer shall use commercially reasonable efforts to notify InterSystems in writing within thirty (30) calendar days of identifying a deficiency, but Customer's failure to notify InterSystems within such thirty (30) day period shall not affect Customer's right to receive warranty remedies unless InterSystems is somehow unable to, or impaired in its ability to, correct the deficiency due to Customer's failure to notify InterSystems within the thirty (30) day period. Notice of breaches of the warranty in Section 6.2 shall be made through InterSystems' then-current error reporting system; notices of any other breaches of this Agreement shall be made in writing to InterSystems in accordance with the Notice provisions of the Agreement. The remedies set forth in this subsection shall be Customer's sole remedy and InterSystems' sole liability for breach of the warranty set forth in Section 6.2.
- 6.4. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERSYSTEMS MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED,

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STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CLOUD SUBSCRIPTION AND/OR RELATED DOCUMENTATION. INTERSYSTEMS DOES NOT WARRANT THAT THE CLOUD SUBSCRIPTION WILL BE ERROR FREE OR UNINTERRUPTED NOR DOES INTERSYSTEMS WARRANT THAT IT WILL REVIEW THE CUSTOMER CONFIGURATION OR CUSTOMER DATA FOR ACCURACY OR RELIABILITY. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER IN CONNECTION WITH ITS USE OF THE CLOUD SUBSCRIPTION.

**7. INDEMNIFICATION.**

- 7.1. **By InterSystems.** InterSystems shall defend, indemnify and hold Customer harmless from and against any loss, damage or costs (including reasonable attorneys' fees) in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the Customer's use of the Cloud Subscription as contemplated hereunder infringes any third party's Intellectual Property Rights; provided, however, that Customer: (a) promptly gives written notice of the Claim to InterSystems; (b) gives InterSystems sole control of the defense and settlement of the Claim; and (c) provides reasonable assistance to InterSystems. InterSystems shall not be required to indemnify Customer to the extent a Claim arises out of or in connection with: (w) modification of the Cloud Subscription by Customer or Authorized Persons in conflict with Customer's obligations or as a result of any prohibited activity as set forth herein; (x) use of the Cloud Subscription in a manner inconsistent with, or not contemplated by, the Agreement; (y) use of the Cloud Subscription in combination with any other product or service specifically prohibited by InterSystems; or (z) any action arising as a result of Customer Data, or the Customer Configuration. If Customer is enjoined from using the Cloud Subscription or InterSystems reasonably believes that Customer will be enjoined, InterSystems shall have the right, at its sole option, to obtain for Customer the right to continue use of the Cloud Subscription or to replace or modify the Cloud Subscription so that it is no longer infringing. If neither of the foregoing options is reasonably available to InterSystems, then use of the Cloud Subscription may be terminated at either Party's option, and InterSystems' sole liability shall be to refund any prepaid Fees for use of the Cloud Subscription that were to be provided after the effective date of termination. This Section sets forth Customer's sole remedy with respect to any claim of intellectual property infringement.
- 7.2. **By Customer.** Customer shall defend, indemnify and hold InterSystems harmless from and against any loss, damage or costs (including reasonable attorneys' fees) in connection with Claims made or brought against InterSystems by a third party arising out of or in connection with (A) an Authorized Person's or any other use of the Cloud Subscription (B) an Authorized Person's negligent, intentional, reckless, illegal or fraudulent acts or omissions, or use of the Cloud Subscription in violation of (1) security, privacy, or data use laws or regulations (including HIPAA) or (2) other related security, privacy or data use obligations legally binding upon an Authorized Person, or (C) any configuration, implementation, or operational activities relating to the Cloud Subscription that are not performed by InterSystems, provided, however, that InterSystems: (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim; and (c) provides reasonable assistance to Customer. Customer shall also indemnify and hold InterSystems harmless from and against any and all losses, liability, damages, or costs that may arise in connection with any misuse of the Cloud Subscription or infringement of InterSystems' Intellectual Property Rights by Customer, any Authorized Person or other third-party.

**8. LIMITATION OF LIABILITY; EXCLUSION OF CERTAIN DAMAGES.**

- 8.1. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO (i) EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 7, (ii) FRAUD; OR (iii) CUSTOMER'S PAYMENT OBLIGATIONS,

8.1.1. EXCEPT AS SET FORTH IN SECTION 8.1.2 BELOW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR

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OTHERWISE, EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE CLOUD SUBSCRIPTION IN CONNECTION WITH WHICH THE CLAIM AROSE (OR, FOR A CLAIM ARISING BEFORE THE FIRST ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID OR PAYABLE FOR THE FIRST TWELVE (12) MONTH PERIOD).

8.1.2. NOTWITHSTANDING THE PROVISIONS IN SECTION 8.1.1 ABOVE, INTERSYSTEMS' AGGREGATE LIABILITY FOR A DATA BREACH, SHALL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER UNDER THE AGREEMENT DURING THE IMMEDIATELY PRECEDING TWENTY-FOUR (24) MONTH PERIOD FOR THE CLOUD SUBSCRIPTION IN CONNECTION WITH WHICH THE CLAIM AROSE (OR, FOR A CLAIM ARISING BEFORE THE SECOND ANNIVERSARY OF THE EFFECTIVE DATE, THE AMOUNT PAID OR PAYABLE FOR THE FIRST TWENTY-FOUR (24) MONTH PERIOD).

8.2. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO AMOUNTS TO BE PAID BY EITHER PARTY PURSUANT TO A COURT AWARD OR SETTLEMENT AS WELL AS THE DEFENSE COSTS UNDER THE INDEMNIFICATION OBLIGATIONS NO MATTER HOW SUCH AMOUNTS OR COSTS MAY BE CHARACTERIZED, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, OR FOR ANY LOST PROFITS, LOSS OF USE, COST OF DATA RECONSTRUCTION, COST OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE CLOUD SUBSCRIPTION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE CLOUD SUBSCRIPTION, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. CUSTOMER WILL NOT ASSERT THAT ITS PAYMENT OBLIGATIONS AS SET FORTH IN AN ORDER ARE EXCLUDED AS INTERSYSTEMS' LOST PROFITS.

9. **TERM; TERMINATION; SUSPENSION AND MODIFICATION.**

- 9.1. **Subscription Term.** Unless otherwise specified in the Order, the Subscription Term for your Cloud Subscription will commence on the Effective Date and continue for as long as the appropriate Fees are timely and properly paid to InterSystems, subject to the early termination provisions set forth herein.
- 9.2. **Termination for Cause.** Either Party may terminate the Subscription Term: (a) upon thirty (30) calendar days prior written notice to the other Party of a material breach by the other Party if such breach remains uncured at the expiration of such notice period or (b) immediately in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. The exercise of either Party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by Law or otherwise.
- 9.3. **Termination for Convenience.** The Customer may terminate the Subscription Term at any time without penalty unless the Order specifies a fixed Subscription Term. In such case, the Customer may only terminate for convenience upon the payment of an early termination fee, which early termination fee will be specified in the Order. InterSystems may terminate the Subscription Term for convenience at any time upon notice to the Customer. If InterSystems terminates for convenience, the effective date of termination will be the later to occur of (a) 30 days following InterSystems' notice to the Customer or (b) at the end of the period for which the Customer has pre-paid the Fee for use of the Cloud Subscription.
- 9.4. **Effect of Termination.** Upon termination of the Subscription Term for any reason, this Agreement shall terminate and Customer shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the Cloud Subscription and any InterSystems Intellectual Property. InterSystems shall have no obligation to make Customer Data available after termination of this Agreement and shall thereafter promptly delete Customer Data. Customer shall immediately delete all copies of Documentation, any Cloud Subscription

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passwords or access codes, and any other InterSystems Confidential Information in its possession. Termination of the Subscription Term for any reason, other than as a result of InterSystems' material breach or bankruptcy or upon the payment of an early termination fee if permitted in the Order, shall not relieve Customer of the obligation to pay any Fees accrued or due and payable to InterSystems prior to the effective date of termination, including Fees relating to the unexpired fixed Subscription Term.

- 9.5. **Surviving Provisions.** The following provisions of the Agreement shall not survive and will have no further force or effect following any termination or expiration of the Agreement: Sections 2, 6, 7.1 and the Order. All other provisions of the Agreement shall survive any termination or expiration of the Agreement.
- 9.6. **Suspension of Service.** In addition to the right to suspend the Cloud Subscription under Section 3.4 above, InterSystems reserves the right to suspend your access to or use of the Cloud Subscription upon written notice, without liability to you, (a) if InterSystems reasonably determines suspension is necessary to avoid material harm to InterSystems or its other customers, including if the Cloud Subscription is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of InterSystems' control, or (b) as required by Law or at the request of government entities.
- 9.7. **Regulatory Requirements.** InterSystems may make commercially reasonable changes to the Cloud Subscription from time to time in order to comply with applicable Laws. In addition, InterSystems may modify or terminate the Cloud Subscription in any country where InterSystems is subject to a Law or other requirement that (1) is not generally applicable to businesses operating in such country, (2) presents a hardship for InterSystems to continue operating the Cloud Subscription without modification, and/or (3) causes InterSystems to believe these terms or its provision of the Cloud Subscription to the Customer may conflict with any such Law or requirement. If InterSystems terminates the Cloud Subscription for regulatory reasons, Customer will receive a credit for any amount paid in advance for the period after termination.

**10. GENERAL PROVISIONS.**

- 10.1. **Relationship of the Parties.** The Parties are independent contractors. The Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries to the Agreement.
- 10.2. **Notices.** All notices under the Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing; or (iii) the next business day after sending by email. Notices to InterSystems shall be addressed to the attention of its Legal Department. Notices to Customer shall be addressed to Customer's signatory of the Order. Each Party may modify its recipient of notices by providing notice pursuant to the Agreement, provided that all notices and communications relating to the technical aspects of the Cloud Subscription shall be communicated through the portal available in the applicable environment.
- 10.3. **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under the Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at Law or in equity.
- 10.4. **Force Majeure.** Neither Party shall be liable for any failure or delay in performance under the Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, cyber-attacks, strikes or other labor problems (other than those involving InterSystems or Customer employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.
- 10.5. **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of Law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably



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withheld). Notwithstanding the foregoing, either Party may assign the Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets so long as the assignee agrees to be bound by all of the terms of the Agreement and all past due Fees are paid in full. Any attempt by a Party to assign its rights or obligations under the Agreement other than as permitted by this section shall be void and of no effect. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

- 10.6. **Governing Law; Waiver of Jury Trial.** The Agreement shall be governed exclusively by the internal Laws of the Commonwealth of Massachusetts, without regard to its conflicts of Laws rules. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement. Any dispute brought hereunder shall be subject to the exclusive venue of a court of competent jurisdiction in Boston, Massachusetts. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Section headings are inserted for convenience only and shall not affect the construction of the agreement.
- 10.7. **Dispute Resolution.** Each Party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below and except for InterSystems' right to suspend access to the Cloud Subscription pursuant to Sections 3.4 or 9.6) it shall provide written notice to the other Party of the specific issue(s) in dispute (and reference the relevant provisions of the contract between the parties which are allegedly being breached). Within thirty (30) days after such notice, knowledgeable executives of the Parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The Parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section shall not apply to claims subject to indemnification under Section 7 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.
- 10.8. **Export.** Each Party shall comply with the export Laws and regulations of the United States and other applicable jurisdictions in providing and using the Cloud Subscription. Without limiting the generality of the foregoing, Customer shall not make the Cloud Subscription or any InterSystems Intellectual Property available to any person or entity that:(i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.
- 10.9. **Federal Government End Use Provisions (if applicable).** InterSystems provides the Cloud Subscription, including related software and technology, for federal government end use solely in accordance with the following: Government technical data and software rights related to the Cloud Subscription include only those rights customarily provided to the public as defined in the 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” right not conveyed under these terms, it must negotiate with InterSystems to determine whether there are acceptable terms for transferring additional rights. A mutually acceptable addendum specifically conveying such rights must be executed by the parties in order to convey such rights beyond those set forth herein.
- 10.10. **Miscellaneous.** These Terms and Conditions, together with the Order and applicable Specification, including all other documents incorporated by reference herein or therein, constitutes the entire agreement between the Parties with respect to your access to and use of the Cloud Subscription. In the event of a conflict,

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the provisions of the following documents shall take precedence in the following order: (1) BAA or DPA, as applicable, (2) the Specification, (3) the Order, (4) any other document incorporated by reference into the Agreement and (5) these Cloud Subscription Agreement Terms and Conditions. The Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of the Agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to Law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by Law, and the remaining provisions of the Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (other than an agreed Order) shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void. Upon execution and delivery by the Parties of an Order for access to the Cloud Subscription, the Parties shall be deemed to have entered into the Cloud Subscription Agreement relating to such Cloud Subscription. The Order may be executed in counterparts, which taken together shall form one binding legal instrument. The Parties hereby consent to the use of electronic signatures in connection with the execution of the Order, and further agree that electronic signatures to the Order shall be legally binding with the same force and effect as manually executed signatures.

**(End of Terms and Conditions)**