

INTERSYSTEMS IMPLEMENTATION / PROFESSIONAL SERVICES
TERMS & CONDITIONS

These terms and conditions, together with the applicable Quote or Order and SOW, constitute the Agreement (the “**Services Agreement**”) by and between the InterSystems entity identified on the Quote or Order (“**InterSystems**”), and the Customer identified on the Quote or Order (“**Customer**” or “**you**”). 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 these terms and conditions, the Quote or Order, the SOW or any applicable Operative Agreement (as defined below) shall have the meanings set forth below.
 - 1.1. “**Business Associate Terms and Conditions**” means those certain Business Associate Terms and Conditions found at <https://www.intersystems.com/PSBAA>, which terms and conditions shall apply if any use of the InterSystems Offering is subject to HIPAA, and shall be incorporated into this Services 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.
 - 1.2. “**Cloud Subscription Agreement**” means, if applicable, that certain Cloud Subscription Agreement pursuant to which you have been or are being granted the right by InterSystems to access and use the Cloud Subscription; the Cloud Subscription Agreement is customarily referenced in the Quote or Order for these Professional Services.
 - 1.3. “**Confidential Information**” means the information, data, know-how, trade secrets, hardware and software designs, pricing and financial information, engineering specifications, software code, marketing plans, product concepts, strategies, policies and procedures, operating standards, patient information, personnel information, proprietary business information and other non-public information related to the business model, activities and operations of one party (the “**Disclosing Party**”), which the other party (the “**Receiving Party**”) learns or receives from the Disclosing Party in connection with the business relationship contemplated by the Services Agreement. The Disclosing Party considers all Confidential Information to be proprietary.
 - 1.4. “**Customer Input**” means suggestions, enhancement requests, recommendations or other feedback provided by Customer, its employees and any third party relating to the operation or functionality of the Licensed Software or Cloud Subscription, as the case may be. Customer Input may include software configurations or training materials that may be developed for you through the reimbursed or unreimbursed efforts of InterSystems’ employees or its agents.
 - 1.5. “**Customer Personnel**” means your employees, agents or other personnel.
 - 1.6. “**Data Processing Terms and Conditions**” or “**DPA**” means those certain Data Processing Terms and Conditions found at <https://www.intersystems.com/ISPSDPA>, which terms and conditions shall apply if any use of the InterSystems Offering is subject to data protection, privacy, or information security law and/or regulation in any jurisdiction 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.
 - 1.7. “**Data Protection Governance Standard**” can be found at <https://www.intersystems.com/GTDPGS>.
 - 1.8. “**Deliverable(s)**” means those products, items or functionalities specified on a SOW that will be developed by or with input from InterSystems or its subcontractors in the course of providing Professional Services, and that will be owned by the Customer. For the avoidance of doubt, Deliverables shall not include any underlying InterSystems proprietary product or any Improvements.
 - 1.9. “**Environment**” shall have the meaning set forth in the Operative Agreement or, if not defined in the Operative Agreement, means the computing environment(s) consisting of the number of instances of the Licensed Software, as well as server(s), data storage, network, and other data center equipment, network bandwidth and Internet connectivity, and operating systems and other software, that, collectively, shall be used by the you to operate the Licensed Software. The Environment may consist of a production and a non-production Area.
 - 1.10. “**Effective Date**” means, in the case of a Quote signed by InterSystems, the date of signature by you, provided that you sign and returns the Quote within the period specified therein, or in the case of an Order, after the Order has been signed by you and accepted by InterSystems.

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- 1.11. **“Fees”** means all amounts invoiced and payable for Professional Services as specified in the relevant Quote or Order.
- 1.12. **“Implementation Services”** means those Professional Services rendered by InterSystems to install, implement and/or configure the InterSystems Offering pursuant to a valid Order and SOW.
- 1.13. **“Improvements”** means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to any Licensed Software or Cloud Subscription.
- 1.14. **“Information Sharing Terms”** means those terms and conditions applicable to the Parties’ sharing of information, available at <https://www.intersystems.com/ISCIST>.
- 1.15. **“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.
- 1.16. **“InterSystems Offering”** means either (a) a license granted by InterSystems to you to use InterSystems software or (b) access to a Cloud Subscription made available by InterSystems.
- 1.17. **“InterSystems Personnel”** means InterSystems employees or subcontractor staff designated by InterSystems to perform Professional Services.
- 1.18. **“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.
- 1.19. **“License Agreement”** means, if applicable, that certain license agreement pursuant to which you have been or is being granted the right to use the Licensed Software; the License Agreement is customarily referenced in the Quote or Order for these Professional Services.
- 1.20. **“Operative Agreement”** means either the License Agreement or the Cloud Subscription Agreement, as the case may be, to which the Professional Services ordered hereunder relate.
- 1.21. **“Order”** means an ordering document, pursuant to which you request Professional Services from InterSystems. An Order for Professional Services may be included with the order for an InterSystems Offering. Typically, an Order for Implementation Services is placed simultaneously with an original order for an InterSystems Offering.
- 1.22. **“Professional Services”** means those services described in the Quote or Order to be provided to you in accordance with the SOW. For the avoidance of doubt, Professional Services includes Implementation Services.
- 1.23. **“Quote”** means a document signed by InterSystems and delivered to you pursuant to which InterSystems offers to provide Professional Services to you upon certain terms. When a Quote is accepted by you, it becomes binding on the Parties. A Quote is typically used when an end user is ordering an evaluation license or other non-production use of the Licensed Software, such as in the case of a proof-of-concept, benchmark or pilot project.
- 1.24. **“Statement of Work”** or **“SOW”** means a document executed in conjunction with the Quote or Order, which document describes the details of the Professional Services to be provided by InterSystems pursuant to such Quote or Order.
- 1.25. **“Term”** has the meaning set forth in Section 10.
- 1.26. **“Users”** shall mean all natural persons who use the Licensed Software as well as Authorized Persons in the case of Cloud Subscriptions.
2. **Professional Services.**
- 2.1. **General.**
- 2.1.1. InterSystems shall deliver Professional Services in accordance with the executed Quote or Order and SOW as well as these Terms and Conditions and the Business Associate Terms and Conditions. Professional Services shall commence on a date mutually agreed by the Parties.
- 2.1.2. InterSystems may engage third-party subcontractors to provide some or all of such Professional Services. All subcontractors shall be subject to all of the restrictions and

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limitations applicable to InterSystems set forth herein and InterSystems shall take full responsibility for the Professional Services as performed by any such subcontractor.

- 2.2. **Implementation Services.** In the case of Implementation Services, the following provisions shall also apply.
- 2.2.1. Where the InterSystems Offering is a license to use InterSystems software, InterSystems shall install and configure the Licensed Software in the Environment in accordance with the relevant Order and SOW. In the case of Cloud Subscriptions, InterSystems shall configure the Environment in accordance with the relevant Order and SOW.
- 2.2.2. InterSystems shall assign an implementation project manager to organize, manage, direct and facilitate the implementation in accordance with the relevant SOW. The implementation project manager shall participate and assist in all of the phases of the implementation by coordinating resources within InterSystems, its subcontractors and providing guidance to you.
- 2.3. **Joint Efforts.** The Parties agree that the tasks set forth in the SOW will involve the mutual cooperation and support of both Parties. The Parties agree to cooperate and perform all duties, tasks, and services required therein in a timely manner.
3. **Your Responsibilities.** You are responsible for all activities identified in the relevant SOW and Order or Quote as applicable to you and, with regard to the Environment, for any operational use of the Environment and, if so specified in the Operative Agreement, any maintenance and operation of the supporting computing environment(s). In addition, you are responsible for the following.
- 3.1. **General.**
- 3.1.1. You agree to make available, at no cost to InterSystems, access to all equipment, management, supervisory and other Customer Personnel and access to your facilities and remote access to your systems as InterSystems may reasonably require to deliver the Professional Services set forth on the Quote or Order in a timely fashion.
- 3.1.2. You shall make available in a timely manner, as set forth in the SOW, staff that are able to assist InterSystems Personnel as necessary to enable InterSystems to meet its obligations under the relevant SOW and you will reassign staff at InterSystems' reasonable request.
- 3.1.3. You shall provide all Customer-specific data needed to deliver the Professional Services in a timely fashion in accordance with the Information Sharing Terms and as otherwise set forth in the SOW.
- 3.1.4. You are responsible for using administrative, physical and technical safeguards at all times to maintain and ensure the confidentiality, privacy and security of all Customer-specific data transmitted to InterSystems in accordance with the standards and requirements of applicable privacy and security Laws and regulations, until such data is received by InterSystems and in conformity with the Information Sharing Terms. You agree to provide InterSystems with access to the Environment consistent with the Data Protection Governance Standard.
- 3.1.5. If InterSystems Personnel are required to go on-site at your premises, you shall provide access for such personnel during normal business hours, after hours or on weekends, as needed.
- 3.2. **Implementation Services.** If InterSystems is providing Implementation Services, the following provisions shall also apply.
- 3.2.1. You shall nominate an implementation project manager who shall be responsible for liaising with and assisting InterSystems in the implementation. The implementation project manager shall attend all project meetings and receive all project correspondence from InterSystems and issue all project correspondence to InterSystems.
- 3.2.2. You shall make available in a timely manner staff that are suitably proficient to test usage of the InterSystems Offering, as implemented for you, and as provided in the SOW.
- 3.2.3. Where you are acquiring a license to use InterSystems software, you have satisfied yourself that the version of the Licensed Software being implemented by InterSystems is suitable for your requirements.
- 3.2.4. You shall provide all Customer-specific data needed to configure the Licensed Software or the Cloud Subscription, as the case may be, and shall make available in a timely manner

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appropriate staff to input that data.

- 3.2.5. You shall take the following actions with respect to the Environment and your use of the Licensed Software or Cloud Subscription, as the case may be:
- 3.2.5.1. You will ensure that all Users comply with your obligations under these Terms and under the Operative Agreement. If you become aware of any violation of any obligation under these Terms or the Operative Agreement caused by a User, you will immediately suspend such User's access and inform InterSystems in writing.
 - 3.2.5.2. You are responsible for ensuring that Customer Personnel have suitable experience knowledge and training to manage and support the InterSystems Offering.
 - 3.2.5.3. You are responsible for providing education and technical assistance to Users relating to the use of the InterSystems Offering.
 - 3.2.5.4. You will ensure that Users do not contact InterSystems for assistance related to the InterSystems Offering. InterSystems product support is provided only to specified Customer Personnel in accordance with the Operative Agreement. InterSystems does not provide product support to Users relating to the use of the InterSystems Offering unless InterSystems has a separate agreement with you.
 - 3.2.5.5. You are responsible for granting and withdrawing access for Users and for managing their security privileges including any access management documentation required for your compliance needs.

4. Fees.

- 4.1. **Invoices & Payment.** All Fees due hereunder (except Fees subject to good faith dispute) shall be due and payable within thirty (30) days of invoice date. Unless otherwise specified in the Quote or Order, invoices will be sent monthly. InterSystems may send all your invoices electronically (by email or otherwise). You shall provide InterSystems with complete and accurate billing contact information including a valid email address.
- 4.2. **Fee Calculations.** If the Fees specified in the Order or Quote are estimates, the actual Fees will be computed by multiplying the actual time spent providing Professional Services by the hourly rate specified in the Order or Quote. Professional Services Fees are billed in 1-hour increments, provided however, that where on-site presence by InterSystems personnel is required, the minimum Fee for that day will be 7.5 hours. If the Professional Services are to be performed at a location further than one hour's travel (one way) from an InterSystems office, an additional fee will be added to the resulting invoice for travel expenses. This is calculated at 1/8 of the daily rate for each hour of travel (to the nearest hour). The hourly rate(s) set forth in the Order or Quote are for Professional Services provided during business hours. Business hours are 8:30-5:00 PM (local time where the services are being performed). Professional Services provided during overtime, afterhours, weekend, or holiday hours shall be billed at InterSystems' standard overtime rates. As the project progresses, if it appears to InterSystems that the estimated time is materially inaccurate, InterSystems will make every effort to so inform you.
- 4.3. **Travel Costs.** Customer agrees to reimburse all travel expenses (flights, accommodation, subsistence, and land transportation) upon presentation of reasonable documentation.
- 4.4. **Non-cancelable & Non-refundable.** Except as specifically set forth to the contrary under Section 8.2, "Warranty Remedies," and in the event of termination by you in accordance with Section 10, "Term and Termination," if InterSystems fails to cure a material breach, all payment obligations under the Quote or Order are non-cancelable and all payments made are non-refundable.
- 4.5. **Overdue Payments.** Any payment not received from you 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.
- 4.6. **Non-Payment and Suspension of Professional Services.** If your account is more than sixty (60) 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 these terms or by Law, InterSystems reserves the right to suspend any Professional Services upon thirty (30) calendar days written notice, without liability to you, until such amounts are paid in full.

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- 4.7. **Taxes.** All Fees invoiced pursuant to this Services 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, excise, use, goods and services taxes, consumption taxes or similar taxes (collectively defined as “**Transaction Taxes**”). All Fees invoiced pursuant to this Services Agreement are payable in full and without reduction for Transaction Taxes and/or foreign withholding taxes (collectively defined as “**Taxes**”). You are responsible for paying all Taxes associated with Fees and all other fees due pursuant to this Services Agreement, excluding U.S. income taxes imposed on InterSystems. If InterSystems has a legal obligation to pay or collect Taxes for which you are responsible under this Services Agreement, the appropriate amount shall be computed based on your address provided in this Services Agreement and invoiced to and paid by you, unless you provide InterSystems with a valid tax exemption certificate authorized by the appropriate taxing authority.
5. **Proprietary Rights.**
- 5.1. **Ownership and Reservation of Rights to InterSystems Intellectual Property.** InterSystems and its licensors own all right, title and interest in and to all Licensed Software as well as all materials, inventions or other items developed in the course of providing the Professional Services, including Customer-specific code or other software developed for you to be used with the Licensed Software or as part of the Cloud Subscription, as well as all implementation protocols and practices. All such items shall not be considered work-for-hire. InterSystems reserves all rights, title and interest in and to all Licensed Software, Customer-specific code and configurations and all other items listed above, including all related Intellectual Property Rights. No rights are granted to you or to any other third party hereunder other than the right to use such Customer-specific code or configurations or other items pursuant to and during the term of the Operative Agreement.
- 5.2. **Customer Input.** You may provide Customer Input to InterSystems from time to time. InterSystems may, but shall not be required to, incorporate any Customer Input into a subsequent version of the Licensed Software or into a Cloud Subscription. You shall have no right or interest whatsoever in or to any Customer Input or in any Improvements made to any Licensed Software or Cloud Subscription other than a right to use any functionality arising from such Customer Input that may be incorporated into the Cloud Subscription or a subsequent version of the Licensed Software, which subsequent version is then licensed by you.
- 5.3. **Deliverable(s).** Notwithstanding the provisions of Section 5.1 above, any Deliverable(s) specified in a SOW shall be considered work-for-hire and shall be owned by the Customer. The Customer hereby grants InterSystems a royalty-free license to use any Deliverables for the purpose of performing Professional Services hereunder. The Customer understands, however, that InterSystems is continuously making improvements and enhancements to its families of proprietary software products as well as performing professional services for other customers. The Customer, therefore, acknowledges and agrees that it shall have no right to or interest in any such Intellectual Property of InterSystems, including any functionality that may be similar to any Deliverable and Customer shall have no right to restrict InterSystems or its subcontractor(s) from developing functionality similar to any Deliverable for any other third party.
6. **Acceptance and Change Control Principles.** The following principals shall apply unless otherwise stipulated in the Quote, Order or SOW.
- 6.1. **Acceptance.**
- 6.1.1. After the Professional Services have been provided to you, you shall have ten (10) business days to review and accept the Professional Services based on the acceptance criteria specified in the SOW, if any. Failure to provide notice in accordance with section (b) below of any concerns over the Professional Services within such 10-day period shall be deemed acceptance of such Professional Services by you.
- 6.1.2. If you determine that the Professional Services did not conform to any acceptance criteria specified in the SOW, you will provide notice to InterSystems describing in reasonable detail such failure. InterSystems shall have ten (10) business days following receipt of such notice to review such notice. If InterSystems determines that the Professional Services conform to any applicable acceptance criteria, InterSystems shall provide you written notice and the Parties agree to meet to discuss appropriate next steps. If InterSystems agrees that the Service

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do not conform, then InterSystems shall re-perform the non-conforming Professional Services. If you fail to accept the re-performed Professional Services, then the Parties will meet to discuss appropriate next steps.

- 6.2. **Change Control Principles.** Each Party may request a “Change Order” to memorialize material changes in the scope, terms, or conditions, including acceptance criteria, of the Professional Services. Neither Party will be entitled to or obligated to perform any modification until the Change Order has been agreed and signed by both Parties. The Parties will negotiate any such Change Order in good faith.
7. **Confidentiality.** The following provisions apply to all Confidential Information. Additional provisions relating to certain information are contained in the BAA and/or the DPA, as applicable, as well as in the Information Sharing Terms and the Data Protection Governance Standard.
- 7.1 **In General.** Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party except as reasonably necessary to perform its obligations or exercise its rights pursuant to the Services Agreement except with the Disclosing Party's prior written permission.
- 7.2 **Protection.** The Receiving Party agrees to protect the Confidential Information of the Disclosing Party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.
- 7.3 **Compelled Disclosure.** A disclosure by the Receiving Party of Confidential Information of the Disclosing Party to the extent required by Law shall not be considered a breach of the Services Agreement, provided the Receiving Party promptly provides the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 7.4 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies are inadequate.
8. **Warranties & Disclaimer.**
- 8.1. **Warranties.** Each Party warrants that it has the authority to enter into this Services Agreement and, in connection with its performance of this Services Agreement, shall comply with all Laws. InterSystems warrants that it will perform any Professional Services ordered by you with reasonable skill and care, in a good and workmanlike manner and in accordance with industry standards.
- 8.2. **Warranty Remedies.** In the event of a breach of the warranty set forth in the second sentence of Section 8.1, InterSystems shall re-perform the non-conforming Professional Services at no additional charge to you, or in the event InterSystems is unable to correct such deficiencies after good-faith efforts, InterSystems shall refund to you any pre-paid unused Fees attributable to the defective Professional Services from the date InterSystems received notice of such breach. The remedies set forth in this subsection shall be your sole remedy and InterSystems' sole liability for breach of such warranty unless the breach of warranty constitutes a material breach of this Services Agreement and you elect to terminate this Services Agreement in accordance with Section 10.
- 8.3. **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, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROFESSIONAL SERVICES. THE LIMITED WARRANTY PROVIDED HEREIN IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THE PROFESSIONAL SERVICES.
9. **Limitation of Liability; Exclusion of Damages.**
- 9.1. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW

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AND EXCEPT WITH RESPECT TO (i) FRAUD, (ii) CONFIDENTIALITY OBLIGATIONS CONTAINED IN SECTION 7 OR (iii) YOUR PAYMENT OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SERVICES AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID OR PAYABLE BY YOU UNDER THIS SERVICES AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD FOR THE PROFESSIONAL SERVICES FROM 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).

- 9.2. **EXCLUSION OF DAMAGES.** EXCEPT WITH RESPECT TO AMOUNTS TO BE PAID BY EITHER PARTY PURSUANT TO A COURT AWARD OR SETTLEMENT, 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 PROFESSIONAL SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE RESULTS OF THE PROFESSIONAL SERVICES, 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. YOU WILL NOT ASSERT THAT ITS PAYMENT OBLIGATIONS AS SET FORTH IN THE QUOTE OR ORDER ARE EXCLUDED AS INTERSYSTEMS' LOST PROFITS.

10. **Term & Termination.**

- 10.1. **Term of Agreement.** The Term of this Services Agreement shall commence on the Effective Date and shall continue until the termination or completion of the Professional Services, unless terminated earlier in accordance with Section 10.2. In addition, this Services Agreement shall automatically terminate upon the termination of the Operative Agreement.
- 10.2. **Termination.** Either Party may terminate this Services Agreement or any Professional Services hereunder: (a) upon thirty (30) 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. If so provided in the Quote or Order, you may have the right to terminate the Professional Services specified in such Quote or Order upon the payment of an early termination fee specified in the Quote or Order.
- 10.3. **Effect of Termination.** Upon any termination of this Services Agreement or any Professional Services hereunder, InterSystems shall, as of the date of such termination, immediately cease the provision of the relevant Professional Services. Termination of this Services Agreement for any reason, other than as a result of InterSystems' material breach or bankruptcy, shall not relieve you 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 all agreed Professional Services.
- 10.4. **Surviving Provisions.** The following provisions of this Services Agreement shall not survive and will have no further force or effect following any termination or expiration of this Services Agreement: Sections 2, 3, 4 and such Order or Quote. All other provisions of this Services Agreement shall survive any termination or expiration of this Services Agreement.

11. **General Provisions.**

- 11.1. **Relationship of the Parties.** The Parties are independent contractors. This Services 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 this Services Agreement.
- 11.2. **Relationship to the Operative Agreement.** While this Services Agreement may be entered into in conjunction with the Operative Agreement, it is intended that the rights, obligations, liabilities and duties of the Parties hereunder be separate and distinct from those of the Operative Agreement. Moreover, it is intended that this Services Agreement terminate upon completion of the

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Professional Services, even though the Operative Agreement is likely to continue in effect thereafter.

- 11.3. **Notices.** All notices under this Services Agreement shall be in writing and shall be made in accordance with the terms of the Operative Agreement. If not specified in the Operative Agreement, then notice hereunder shall be as follows. Notice 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 you shall be addressed to your signatory of the Quote or Order. Each Party may modify its recipient of notices by providing notice pursuant to this Services Agreement.
- 11.4. **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Services 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.
- 11.5. **Force Majeure.** Neither Party shall be liable for any failure or delay in performance under this Services 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, epidemics, pandemics, flood, fire, civil unrest, acts of terror, cyber-attacks, strikes or other labor problems (other than those labor problems involving InterSystems or your 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.
- 11.6. **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. Notwithstanding the foregoing, either Party may assign this Services 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 this Services Agreement and all past due Fees are paid in full. Any attempt by a Party to assign its rights or obligations under this Services Agreement other than as permitted by this section shall be void and of no effect. Subject to the foregoing, this Services Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 11.7. **Governing Law; Waiver of Jury Trial.** This Services 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 this Services Agreement. Any dispute brought hereunder shall be subject to the exclusive venue of a court of competent jurisdiction in Boston, Massachusetts.
- 11.8. **Export.** Each Party shall comply with the export Laws and regulations of the United States and other applicable jurisdictions in providing and using the Licensed Software.
- 11.9. **Federal Government End Use Provisions (if applicable).** InterSystems provides the Professional Services for federal government end use solely in accordance with the following: Government technical data and software rights related to the Professional Services include only those rights customarily provided to the public as defined in this Services 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.
- 11.10. **Miscellaneous.** This Services Agreement, including the Quote or Order and applicable SOW, constitutes the entire agreement between the Parties with respect to the Professional Services being provided by InterSystems to you hereunder. In the event of a conflict, the provisions of the following documents shall take precedence in the following order: (1) the Quote or Order, (2) any

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Statement of Work, and (3) these Terms and Conditions. This Services Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the provision of Professional Services by InterSystems to you, except as follows: if there is any inconsistency between the terms of this Services Agreement and the Operative Agreement, the terms of the Operative Agreement shall prevail, to the extent of such inconsistency. No modification, amendment, or waiver of any provision of this Services 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 this Services 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 this Services Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in your purchase order or in any other order documentation (other than an agreed Quote or Order) shall be incorporated into or form any part of this Services Agreement, and all such terms or conditions shall be null and void. This Services Agreement 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 this Services Agreement, and further agree that electronic signatures to this Services Agreement shall be legally binding with the same force and effect as manually executed signatures.

(End of Document)