

**INTERSYSTEMS PLATFORM AGREEMENT**  
**TERMS & CONDITIONS**

**AGREEMENT**

These InterSystems Platform Terms & Conditions (“**Agreement**”) are entered into by and between InterSystems Corporation and the entity or person placing an order for or accessing any InterSystems Platform Service (“**Customer**” or “**you**”). This Agreement consists of the terms and conditions set forth below and any attachments, addenda or exhibits referenced in the Agreement, and any Orders (as defined below) that reference this Agreement.

This Agreement as effective as of the date specified on Customer’s initial Order (the “**Effective Date**”). This Agreement will govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

**1. DEFINITIONS**

- 1.1. “**Acceptable Use Policy**” means the InterSystems Platform Acceptable Use Policy, made available at <https://www.InterSystems.com/IPAUP>.
- 1.2. “**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.
- 1.3. “**Business Associate Terms and Conditions**” or “**BAA**” means those certain Business Associate Terms and Conditions found at <https://www.intersystems.com/IPBAA>, which terms and conditions are 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. “**Contractor**” means the independent contractors and consultants permitted by Customer to serve as Users of the InterSystems Platform Service.
- 1.5. “**Customer Data**” means any data or data files of any type that are uploaded to or generated by the InterSystems Platform Service by or on behalf of Customer.
- 1.6. “**Customer Profile**” means the description of the Customer Solution that will process Customer Data using the InterSystems Platform Service as set forth in the Order.
- 1.7. “**Customer Solution**” means any source code, object code, or other definitional materials provided by Customer for execution using the InterSystems Platform Service.
- 1.8. “**Data Processing Terms and Conditions**” or “**DPA**” means those certain Data Processing Terms and Conditions found at <https://www.intersystems.com/IPDPA>, which terms and conditions are 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. “**Data Protection Claims**” means any claims arising from a party’s breach of Section 3.32 (HIPAA Data), Section 3.33 (Data Privacy), Section 4 (Security), or Section 6 (Confidentiality), where such breach results in the unauthorized disclosure of Customer Data.
- 1.10. “**Documentation**” means InterSystems’s technical documentation and usage guides for the applicable InterSystems Platform Service made available at <https://docs.InterSystems.com> or through the InterSystems Platform Service.
- 1.11. “**Excluded Claims**” means (a) a party’s breach of its obligations in Section 6 (Confidentiality) (but excluding obligations and/or claims relating to Customer Data); (b) either party’s express obligations under Section 11 (Indemnification); and (c) liability which, by law, cannot be limited.
- 1.12. “**Feedback**” is defined in Section 5.1 (InterSystems Technology).
- 1.13. “**Fees**” means the fees payable by Customer for the applicable InterSystems Platform Service, as set forth in an Order.
- 1.14. “**HIPAA**” means the Health Insurance Portability and Accountability Act, as amended and supplemented.
- 1.15. “**HIPAA Data**” means any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations.

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- 1.16. **“InterSystems Platform Privacy and Security Specification” or “IPPSS”** means the InterSystems Platform Privacy and Security Specification document, found at [www.intersystems.com/IPPSS](http://www.intersystems.com/IPPSS), as it may be amended and updated from time to time. No update of the InterSystems Platform Privacy and Security Specification shall materially decrease the overall security of the InterSystems Platform Service during the Subscription Term unless agreed to by both Parties.
- 1.17. **“InterSystems Platform Service”** means InterSystems platform-as-a-service offering made generally available and ordered by Customer as set forth in an Order.
- 1.18. **“InterSystems Platform Service Specification”** means the document referenced in the Order defining the scope of the selected InterSystems Platform Service(s) from the available services as well as InterSystems’ standard documentation for any InterSystems Technology directly used by the Customer as part of the InterSystems Platform Service.
- 1.19. **“InterSystems Platform Service Level Availability Specification”** means the InterSystems Platform Service Level Availability Specification found at [www.intersystems.com/IPSLA](http://www.intersystems.com/IPSLA), which may be updated by InterSystems from time to time. No update shall materially diminish InterSystems’ responsibilities under the InterSystems Platform Service Level Availability Specification unless agreed to by both Parties.
- 1.20. **“InterSystems Technology”** is defined in Section 5.1 (InterSystems Technology).
- 1.21. **“Order”** means the ordering document executed by both Customer and InterSystems, which specifies the InterSystems Platform Service being provided by InterSystems and that is governed by this Agreement.
- 1.22. **“Subscription Term”** means the set term designated on an Order.
- 1.23. **“Taxes”** means taxes, levies, duties or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of InterSystems.
- 1.24. **“Third Party Applications”** means separate services or applications (and other consulting services related thereto), procured by Customer from a party other than InterSystems that can be used in connection with the InterSystems Platform Service.
- 1.25. **“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 InterSystems Platform Service.
- 1.26. **“User”** means the persons designated and granted access to the InterSystems Platform Service by or on behalf of Customer, including its and its Affiliates’ Contractors.
- 1.27. **“VAT/GST Registration Number”** means the value added tax/GST registration number of the business location(s) where Customer is legally registered and the ordered InterSystems Platform Service(s) are used for business use.

## 2. USE OF INTERSYSTEMS PLATFORM SERVICE

- 2.1. **InterSystems Platform Service Provision and Access.** InterSystems will make the InterSystems Platform Service available to Customer for the Subscription Term solely for use by Customer and its Users in accordance with the terms and conditions of this Agreement, the InterSystems Platform Service Specification, and the Order. Customer may permit its Contractors and Affiliates to serve as Users provided that any use of the InterSystems Platform 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 Agreement.
- 2.2. **Compliance with Applicable Laws.** InterSystems will provide the InterSystems Platform Service in accordance with its obligations under laws and government regulations applicable to InterSystems’s provision of the InterSystems Platform Service to its customers generally, 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 InterSystems Platform Service and subject to Customer’s use of the InterSystems Platform Service in accordance with this Agreement.
- 2.3. **Third Party Applications.** InterSystems may also provide URL links or interconnectivity within the InterSystems Platform Service to facilitate Customer’s use of Third Party Applications, at Customer’s sole discretion. Notwithstanding the foregoing, any procurement or use of Third Party Applications is solely between Customer and the applicable third party and InterSystems will have no liability for such Third Party Applications.
- 2.4. **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 InterSystems Platform Service to a third party (except as set forth in the

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Documentation for InterSystems Platform Service features expressly intended to enable Customer to provide its third parties with access to Customer Data) or in a service bureau or outsourcing offering; (b) use any InterSystems Platform Service to provide, or incorporate any InterSystems Platform Service 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 any InterSystems Platform Service, 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 InterSystems Platform Service; or (e) use the InterSystems Platform Service in violation of the Acceptable Use Policy.

- 2.5. **High-Risk Use. WARNING:** Modern technologies, and especially platform technologies, may be used in new and innovative ways, and Customer must consider whether its specific use of these technologies is safe. The InterSystems Platform Service is not designed or intended to support any use in which a service interruption, defect, error, or other failure of the InterSystems Platform Service 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 Customer Solution as described in the applicable Customer Profile 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 service 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 service, including any claims based in strict liability or that InterSystems was negligent in designing or providing the InterSystems Platform Service 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.
- 2.6. **Medical Device Disclaimer.** Customer acknowledges that the InterSystems Platform Service (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. Customer is solely responsible for displaying and/or obtaining appropriate consents, warnings, disclaimers, and acknowledgements to end users of Customer’s implementation of the InterSystems Platform Service.

### 3. CUSTOMER DATA

- 3.1. **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 InterSystems Platform Service as provided to InterSystems. Subject to the terms of this Agreement, Customer hereby grants to InterSystems and its Affiliates non-exclusive royalty-free right to process the Customer Data solely to the extent necessary to provide the InterSystems Platform Service to Customer, to prevent or address service or technical problems with the InterSystems Platform Service, or as may be required by law.
- 3.2. **Rights in Customer Solution.** 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 Solution. Customer is responsible for developing, maintaining and testing the Customer Solution. Subject to the terms of this Agreement, Customer hereby grants to InterSystems and its Affiliates non-exclusive royalty-free right to use the Customer Solution solely to the extent necessary to provide the InterSystems Platform Service to Customer, to prevent or address service or technical problems with the InterSystems Platform Service, or as may be required by law.
- 3.3. **Use Obligations.**
- 3.3.1. **In General.** Customer’s use of the InterSystems Platform Service, Customer Solution, and Customer Data will comply with applicable laws and government regulations. Customer is solely responsible for the accuracy, content and legality of the Customer Solution and Customer Data. Customer warrants that Customer has and will have sufficient rights in the Customer Solution 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.
- 3.3.2. **HIPAA Data.** With regard to the processing of HIPAA Data by the InterSystems Platform Service, the BAA is incorporated by reference into this Agreement and the Parties are subject to its terms.
- 3.3.3. **Data Privacy.** To the extent that Customer uploads any Personal Information to the InterSystems Platform Service, the parties shall comply with the DPA.
- 3.3.4. **Responsibilities.** Customer is solely responsible for: (1) the accuracy and adequacy of information and Customer Data

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furnished through use of the InterSystems Platform Service; (2) implementing a secure application-to-application authentication method between the Customer Solution, other services running on the InterSystems Platform Services, and any third party services (including Customer's own services); (3) as applicable, obtaining appropriate consent from end users in connection with their use of the Customer Solution; and (4) displaying appropriate warnings, disclaimers, and acknowledgements to end users in connection with their use of the Customer Solution, as applicable.

- 3.4. **Customer Data Sharing.** The InterSystems Platform Service may include the capability for Customer, at its option and in its sole discretion, to share Customer Data with other Customer-designated parties, as further described in the Documentation.
4. **SECURITY.** The parties shall comply with the InterSystems Platform Privacy and Security Specification.
5. **INTELLECTUAL PROPERTY**
- 5.1. **InterSystems Technology.** 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 InterSystems Platform 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 (defined below) that may be incorporated (collectively, "**InterSystems Technology**"). Except for the express limited rights set forth in this Agreement, no right, title, license, or interest in any InterSystems Technology is granted to Customer. Further, Customer acknowledges that the InterSystems Platform Service is offered as an online, hosted service, and that Customer has no right to obtain a copy of the underlying computer code for any InterSystems Platform Service. 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 InterSystems Platform Service relating to InterSystems's products or services ("**Feedback**").
- 5.2. **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 6 (Confidential Information) of this Agreement, or (ii) to the extent the Usage Data is aggregated and anonymized such that Customer and Customer's Users cannot be identified.
6. **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.
7. **FEES AND PAYMENT; TAXES; PAYMENT DISPUTES**
- 7.1. **Fees and Payment.** All Fees and payment terms are as set forth in the applicable Order. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable and Fees are non-refundable. If Customer issues a purchase order upon entering into an Order, then: (i) any such purchase order submitted by Customer is for its internal purposes only, and InterSystems rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add to or conflict in any way with this Agreement or the applicable Order and such additional or conflicting terms will have no effect, (ii) it shall be without limitation to InterSystems's right to collect Fees owing hereunder, and (iii) it shall be for the total Fees owing under the applicable Order.
- 7.2. **Sizing.** Usage of the InterSystems Platform Service is charged on the basis of specific resources or metrics used to operate the InterSystems Platform Service as set forth on an applicable Order in the Customer Profile. If an environment is designated as "non-production" then you may only use that environment for system configuration, development, testing or training. If the resources required to deliver the InterSystems Platform Service materially increase, you will be required to execute a new Order.
- 7.3. **Taxes.** Fees do not include Taxes. Customer is responsible for paying all Taxes associated with its purchases hereunder including without limitation all use or access of the InterSystems Platform Service by its Users. If InterSystems has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, InterSystems will invoice Customer and Customer will pay that amount unless Customer provides InterSystems with a valid tax exemption certificate authorized by the appropriate taxing authority. Taxes will not be deducted from payments to InterSystems, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, InterSystems receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon InterSystems's request, Customer will provide to InterSystems its proof of withholding tax remittance to the respective tax authority. Where applicable, Customer will provide its VAT/GST Registration

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Number(s) on the Order to confirm the business use of the ordered InterSystems Platform Service.

- 7.4. **Payment Disputes.** InterSystems will not exercise its rights under Section 8.2 (Termination for Cause) or Section 8.6(a) (Suspension of Service) with respect to non-payment by Customer if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within thirty (30) days, each party shall have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full.

**8. TERM AND TERMINATION**

- 8.1. **Term.** This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with its terms. The Agreement will terminate upon expiration of the applicable Subscription Term, unless expressly stated otherwise in an Order or in this Agreement.
- 8.2. **Termination for Cause.** Either party may terminate this Agreement (including all related Orders) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay Fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within 60 days. Except where an exclusive remedy is specified, 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.
- 8.3. **Termination for Convenience.** If an early termination monthly fee is included in the Order, Customer may terminate this agreement at any time. The fee, which is due at the effective date of termination, is calculated by multiplying the early termination monthly fee by the number of months between the effective date of termination and the end of the Subscription Term.
- 8.4. **Effect of Termination.** InterSystems shall have no obligation to make Customer Data available after termination of this Agreement and shall thereafter promptly delete Customer Data. Customer will have no further access to Customer Data and shall cease use of and access to the InterSystems Platform Service (including any related InterSystems Technology) and delete all copies of Documentation, any InterSystems Platform Service passwords or access codes, and any other InterSystems Confidential Information in its possession.
- 8.5. **Survival.** The following Sections will survive any expiration or termination of this Agreement: 1 (Definitions), 2.4 (General Restrictions), 5 (Intellectual Property), 6 (Confidentiality), 7.1 (Fees and Payment), 7.2 (Taxes), 8 (Term and Termination), 9.3 (Warranty Disclaimer), 11 (Indemnification), 12 (Limitation of Remedies and Damages), and 13 (General Terms).
- 8.6. **Suspension of Service** In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, InterSystems reserves the right to suspend provision of any InterSystems Platform Service; (a) if Customer is thirty (30) days or more overdue on a payment, (b) if InterSystems deems such suspension necessary as a result of Customer's breach of Sections 2.4 (General Restrictions) or 3.3 (Use Obligations), (c) if InterSystems reasonably determines suspension is necessary to avoid material harm to InterSystems or its other customers, including if the InterSystems Platform Service is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of InterSystems' control, or (d) as required by law or at the request of government entities.

**9. WARRANTY**

- 9.1. **Service Warranty.** InterSystems warrants that each InterSystems Platform Service will operate in substantial conformity with the applicable InterSystems Platform Service Specification. If InterSystems is not able to correct any reported non-conformity with this warranty, either party may terminate the applicable Order and Customer, as its sole remedy, will be entitled to receive a refund of any unused Fees that Customer has pre-paid for the applicable InterSystems Platform Service purchased thereunder. This warranty will not apply if the error or non-conformance was caused by misuse of the InterSystems Platform Service, modifications to the InterSystems Platform Service by Customer or any third-party, or third-party hardware, software, or services used in connection with the InterSystems Platform Service.
- 9.2. **Mutual Warranty.** Each party warrants that it has validly entered into this Agreement and has the legal power to do so.
- 9.3. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH INTERSYSTEMS PLATFORM 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

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DOES NOT WARRANT THAT THE USE OF ANY INTERSYSTEMS PLATFORM SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES INTERSYSTEMS WARRANT THAT IT WILL REVIEW THE CUSTOMER SOLUTION OR CUSTOMER DATA FOR ACCURACY OR RELIABILITY.

10. **SUPPORT AND AVAILABILITY.** During a Subscription Term, InterSystems will provide Customer the level of support specified in the InterSystems Platform Service Specification specified in the applicable Order, in accordance with the InterSystems Platform Service Level Availability Specification.
11. **INDEMNIFICATION**
- 11.1. **Indemnification by InterSystems.** InterSystems will defend Customer against any claim by a third party alleging that any InterSystems Platform Service, when used in accordance with this Agreement, infringes any intellectual property right of such third party and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by InterSystems (including reasonable attorneys' fees) resulting from such claim. If Customer's use of the InterSystems Platform Service results (or in InterSystems's opinion is likely to result) in an infringement claim, InterSystems may either: (a) substitute functionally similar products or services; (b) procure for Customer the right to continue using the InterSystems Platform Service; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement, or the applicable Order and refund to Customer the unused Fees that Customer has pre-paid for the applicable InterSystems Platform Service. The foregoing indemnification obligation of InterSystems will not apply to the extent the applicable claim is attributable to: (1) the modification of the InterSystems Platform Service by any party other than InterSystems or based on Customer's specifications or requirements; (2) the combination of the InterSystems Platform Service with products or processes not provided by InterSystems; (3) any use of the InterSystems Platform Service in non-conformity with this Agreement; or (4) any action arising as a result of Customer Data, Customer Solution, or components not provided by InterSystems. This Section sets forth Customer's sole remedy with respect to any claim of intellectual property infringement.
- 11.2. **Indemnification by Customer.** Customer will defend InterSystems against any claim by a third party arising from or relating to any Customer Data, Customer Solution, or any product or service used in connection with the InterSystems Platform Service and will indemnify and hold harmless InterSystems from and against any damages and costs awarded against InterSystems or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.
- 11.3. **Indemnification Procedures.** In the event of a potential indemnity obligation under this Section 11, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense, and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 11 shall not relieve the indemnifying party of its obligations under this Section 11, however the indemnifying party shall not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnifying party may not settle any claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials) or require any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Any indemnification obligation under this Section 11 will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.
12. **LIMITATION OF REMEDIES AND DAMAGES.** EXCEPT AS TO "EXCLUDED CLAIMS," TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:
- 12.1. NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE;
- 12.2. SUBJECT TO SUBSECTION 12.3 BELOW, EACH PARTY'S AND ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE), SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO INTERSYSTEMS IN THE PRIOR 12 MONTHS UNDER THE APPLICABLE ORDER(S) TO WHICH SUCH LIABILITY RELATES ("GENERAL LIABILITY CAP");

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- 12.3. IN THE CASE OF “DATA PROTECTION CLAIMS,” EACH PARTY’S AND ITS AFFILIATES’ TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE “GENERAL LIABILITY CAP”;
- 12.4. IN NO EVENT SHALL EITHER PARTY (OR ITS RESPECTIVE AFFILIATES) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA PROTECTION CLAIMS CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF A PARTY (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE DATA PROTECTION CLAIMS CAP;
- 12.5. THE PARTIES AGREE THAT THIS SECTION 12 WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE; AND

**13. GENERAL TERMS**

- 13.1. **Assignment.** This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in its entirety in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party’s assets or voting securities to such party’s successor; and InterSystems may assign this Agreement in its entirety to any Affiliate. Each party shall promptly provide notice of any such assignment. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.
- 13.2. **Severability; Interpretation.** 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.
- 13.3. **Dispute Resolution.** Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) 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 11 (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.
- 13.4. **Governing Law; Jurisdiction and Venue; InterSystems Affiliate.** This 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; and 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. While the InterSystems entity contracting with Customer remains fully liable and responsible for all InterSystems obligations under this Agreement, the parties acknowledge that certain obligations under this Agreement may be fulfilled by other InterSystems's Affiliates.
- 13.5. **Changes to and Availability of the Online Services.** InterSystems may make commercially reasonable changes to each InterSystems Platform Service from time to time. InterSystems may modify or terminate an InterSystems Platform Service in any country where InterSystems is subject to a government regulation, obligation or other requirement that (1) is not generally applicable to businesses operating there, (2) presents a hardship for InterSystems to continue operating the InterSystems Platform Service without modification, and/or (3) causes InterSystems to believe these terms or the InterSystems Platform Service may conflict with any such requirement or obligation. If InterSystems terminates an InterSystems Platform Service for regulatory reasons, Customers will receive a credit for any amount paid in advance for the period after termination.
- 13.6. **Notice.** Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth in this Agreement or at such other address as may be given in writing by either party to the other in accordance with this

**INTERSYSTEMS PLATFORM AGREEMENT**  
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Section and will be deemed to have been received by the addressee: (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch; (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail; or (iv) if given by email, immediately upon receipt. Notwithstanding the foregoing, except for notices pertaining to non-payment and except as otherwise expressly permitted in this Agreement or in an Order, notices related to termination of this Agreement or any claims (including without limitation breach, warranty or indemnity) may not be given via email. Email notifications to InterSystems shall be to [legal@intersystems.com](mailto:legal@intersystems.com).

- 13.7. **Amendments; Waivers.** No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement, except as expressly set forth herein. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein, whether signed before or after this Agreement.
- 13.8. **Entire Agreement.** This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. InterSystems may change and update any InterSystems Platform Service (in which case InterSystems may update the applicable Documentation accordingly), subject to the warranty in Section 9.1 (Service Warranty).
- 13.9. **Third Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 13.10. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, public health emergencies (including pandemics and epidemics), acts or orders of government, or acts of terrorism, cyberattack, sabotage, vandalism, or war.
- 13.11. **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent and neither party's employees are eligible for any form or type of benefits, including, but not limited to, health, life or disability insurance, offered by the other party to its employees.
- 13.12. **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 InterSystems Platform Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to any InterSystems Platform Service any information that is controlled under the U.S. International Traffic in Arms Regulations.
- 13.13. **Federal Government End Use Provisions.** InterSystems provides the InterSystems Platform 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 InterSystems Platform Service include only those rights customarily provided to the public as defined in this 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.
- 13.14. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.