



## LICENSE AND SUPPORT TERMS

1. These License and Support Terms are part of the License Agreement between InterSystems Corporation (“InterSystems”) and the end user customer (“you,” the “Customer” or the “End User”) identified in the License Profile associated with these terms (“License Profile”). The License Agreement shall not be binding until your initial License Profile is fully completed and an order form (the “Order Form”) has been fully executed.
2. As of the date specified on the License Profile or, if no date is specified, on the date the License Profile has been executed by you or on your behalf and accepted by InterSystems (the “Effective Date”), InterSystems hereby grants to you a nontransferable and nonexclusive license (the “License”) to use the InterSystems product(s) named in the License Profile (the “Licensed Software”) in the manner described herein and subject to the license scope described in the License Profile and provided that all fees set forth on the Order Form are paid. No License shall be granted upon the physical delivery of any software to you. For the avoidance of doubt, the “Licensed Software” shall not include any open source or third-party software that may be shipped with, installed with or used in conjunction with InterSystems’ proprietary software.
3. If you acquire the License directly from InterSystems or its affiliate, then you will be required to execute the License Profile and Order Form and you are responsible for paying all fees specified therein to InterSystems or such affiliate. If you acquire the License via a third party (a “Partner”), then you will be required to execute the License Profile or otherwise acknowledge your acceptance of these terms. The Partner will execute the Order Form and will be responsible for paying all fees specified therein to InterSystems.
4. From time to time, the size and/or scope of your License may be adjusted, which adjustment will be reflected in an amended and restated License Profile replacing your prior License Profile. The effective date of such amended License Profile will be the date such amended License Profile is delivered to you.
5. Your License is subject to InterSystems’ standard Terms and Conditions in effect from time to time relating to the Licensed Software (“Product Terms”). A link to the relevant Product Terms is set forth in your License Profile. You agree not to use or implement the Licensed Software in any manner that is outside the scope of intended use or otherwise violates any prohibitions or conditions set forth in the Statement of Intended Use attached to the License Profile or otherwise communicated to you by InterSystems.
6. The License Profile specifies whether your License is a paid-up License or is a subscription License. The term (“License Term”) of a paid-up License shall be 30 years from the Effective Date. The License Term of a subscription License begins on the Effective Date and, unless otherwise provided in the License Profile, is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided. The License Term of a paid-up or a subscription License is subject to earlier termination in accordance with section 12 below.
7. The Licensed Software may only be used on servers operated by you or on your behalf. You may not sublicense the Licensed Software or otherwise make it available to third parties except as explicitly provided herein.

8. Software Update and Technical Assistance (“Product Support”) shall be provided in accordance with the Product Terms and pricing in effect on the date such Product Support is invoiced. Unless otherwise provided in the License Profile, Product Support is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided.
9. InterSystems hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with InterSystems’ documentation relating thereto for one year from the Effective Date or the end of the License Term, whichever occurs first, and (ii) all Product Support shall be provided in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with InterSystems’ documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. INTERSYSTEMS SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR PRODUCT SUPPORT. MOREOVER, THE LICENSED SOFTWARE IS NOT A SUBSTITUTE FOR THE SKILL, KNOWLEDGE AND EXPERIENCE OF THE INDIVIDUALS WHO MAY USE THE LICENSED SOFTWARE. Your exclusive remedy for a breach of the above warranties shall be for InterSystems to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Product Support, as applicable. The limited warranties above are not a substitute for Product Support, which in the case of a paid-up License, is available for a separate fee.
10. In the event of a valid claim that any Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with InterSystems’ documentation and instructions, InterSystems shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at InterSystems’ sole discretion.
11. InterSystems’ and any affiliate’s liability to you shall in no event exceed the portion of the fee received by InterSystems or such affiliate during the proceeding 12 months in respect of the specific Licensed Software or Product Support on account of which such liability arose. In no event shall InterSystems or any affiliate be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
12. Either party may terminate the License Agreement with 30 days’ advance written notice upon the other party’s breach if the breach is not cured during that period. Either party may terminate the License Agreement immediately upon written notice to the other party if the other party declares bankruptcy, makes an assignment for the benefit of creditors, or ceases to function as a going concern. In addition, you may terminate the License Agreement upon 30 days advance written notice if InterSystems discontinues support for the platform on which the Licensed Software operates. A subscription License shall terminate automatically on the last day of the final period for which InterSystems has received the proper fee. You, or the Partner, as the case may be, shall be liable for all fees relating to Licensed Software or Product Support provided prior to termination, and Sections 11, 12, 13, 14 and 15 hereof shall survive termination or expiration of the License Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of the License Agreement.
13. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, the parties shall be bound by the Confidentiality Terms attached to the License Profile. You agree to allow

InterSystems or its representatives to audit your use of the Licensed Software upon 5 days' advance notice by InterSystems. You agree to provide access to your premises and otherwise cooperate with InterSystems in such audit.

14. The parties are and shall be independent contractors to one another, and the License Agreement shall not create an agency, partnership or joint venture between the parties. Neither party nor its employees, agents or representatives shall be deemed to be an agent or employee of the other party, and each party acknowledges that it is not authorized to bind or in any way commit the other party to any legal, financial or any other obligation.
15. This License Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA. The English version of the License Agreement shall control unless otherwise required by local law.
16. You agree to comply with all applicable laws, including, but not limited to: U.S. export control or similar laws with respect to the distribution of the Licensed Software, Product Support and technical data; the US Foreign Corrupt Practices Act and any other anti-corruption laws; and applicable data protection laws. Without InterSystems' prior written consent, you may not allow the Licensed Software, Product Support or technical data to be exported to or used in a country or region where a license, permit or special permission is required. InterSystems may, but shall not be required to, apply for such license, permit or permission at your expense.
17. To the extent any provision in this document or in the Product Terms conflicts with any provision in the License Profile or Order Form, the latter shall control. InterSystems shall have the right to transfer or assign the License Agreement without your consent or prior notice to you. You may not assign the License Agreement without InterSystems' prior written consent. Except where InterSystems amends your License Profile to reflect a change in the scope of your License or modifies the Product Terms in accordance with those terms, the License Agreement may only be modified or amended by a writing signed by both parties.



# End User License Profile and Order Form

The undersigned End User is ordering the following License from the InterSystems entity identified below ("InterSystems") to use the Licensed Software identified below along with any Support Services or Implementation Services identified below. The current size, scope and limitations of your License are reflected in this License Profile and Order Form. This License Profile and Order Form will be amended and restated by InterSystems from time to time if the scope of your License changes. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the License Agreement.

**Effective Date:** As of even date with the Call-Off Terms and Conditions.

## End User Customer

Customer Name: XXXXXXXX

Contact Person: XXXXXXXX

Address: XXXXXXXX

City: XXXXXX State / Province: XXXXX

Zip / Post Code: XXXXX Country: *United Kingdom*

Phone: XXXXXXXXX Fax:

## License Agreement

The following Licensed Software is licensed to you pursuant to the License Terms available at [www.InterSystems.com/EULSA](http://www.InterSystems.com/EULSA). Such License Terms together with the Product Terms identified below, and this License Profile shall constitute your license agreement governing your use of the Licensed Software ("License Agreement").

## Licensed Software

The End User hereby orders a License to use the following Licensed Software in the following size.

| Product                                                                                                                                                                                                                                                                                                          | License Size*        |                            |                      | License Metrics  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------|----------------------|------------------|
|                                                                                                                                                                                                                                                                                                                  | Production Instances | Non-Production Instances** | Health License Units |                  |
| <INSERT PRODUCT NAME>                                                                                                                                                                                                                                                                                            | X                    | X                          | X                    | <INSERT METRICS> |
| <p>* As of the effective date of this License Profile and Order</p> <p>** Non-Production Licenses may only be used for system configuration, development, testing and training. They may <b>not</b> be used for mirroring, failover, disaster recovery, sharding, reporting, analytics or any other purpose.</p> |                      |                            |                      |                  |

**Product Terms** – The Product Terms for the Licensed Software can be found at <INSERT LINK OF RELEVANT PRODUCT TERMS>

**Metric Definitions**

The size of your License is determined by the following metrics.

| Metric                                     | Metric Definition   | Current Value* |
|--------------------------------------------|---------------------|----------------|
| Metric #1                                  | Metric 1 definition | XXXX           |
| Metric #2                                  | Metric 2 definition | XXXXXX         |
| * As of the effective date of this Profile |                     |                |

**Fees**

The following fees are due as a result of this order.

| Product                                                                                          | Ordered                    | Current SUTA Fees*                                                               |
|--------------------------------------------------------------------------------------------------|----------------------------|----------------------------------------------------------------------------------|
| Product Name(s)                                                                                  | X HLUs                     | As per Schedule XXXX-Charges and Invoicing, of the Call Off Terms and Conditions |
|                                                                                                  | X Production Instances     |                                                                                  |
|                                                                                                  | X Non-Production Instances |                                                                                  |
| * Annual Software Update and Technical Assistance Fees due for this product following this order |                            |                                                                                  |

SUTA Fees are subject to periodic adjustment in accordance with the Product Terms.

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**License Type**

Insert purchased license type- paid up 30 year, or Subscription

**License Size Adjustment**

The current size of your License is shown above. If your Licensed Software usage increases, you are required to promptly upgrade your License to an appropriate size. Any such upgrade shall be reflected in an amended and restated License Profile stating your new License size.

InterSystems may periodically send you a statement listing the current metric values used to determine the size of your License. Within 30 days, you shall certify that these values are correct or provide updated values if they are not. InterSystems reserves the right to audit your Licensed Software usage from time to time.

## License Scope

Your License enables you to use the Licensed Software internally within your organization to store, exchange and access information. You may use the Licensed Software at or for a facility if (a) such facility is owned by you, (b) such facility is included in the above determination of your license size (i.e., the above metrics cover such facility) and (c) such facility is identified below (each, a "Covered Facility"). You may only use the Licensed Software at your Covered Facilities for storing, exchanging, and accessing data related to healthcare services provided at those Covered Facilities. (If "All" is indicated, then all facilities owned and/or operated by you are covered, as subject to the requirements above.)

### Covered Facilities / Organizations

All

You may also use the Licensed Software to exchange data with or provide data access to other (3rd party) organizations, as long as all data stored, exchanged or accessed relates to the delivery of or payment for patient care at your covered facilities / organizations. The Licensed Software may not be used to provide health information exchange, interoperability or other IT services on a commercial basis or to provide services that are independent of your delivery of or payment for patient care.

In placing this order, you confirm that:

- (a) This License Profile and Order Form, when signed by InterSystems, will be governed by and complies with the conditions of the License Agreement and all Licensed Software and Support Services will be provided in accordance with the License Agreement;
- (b) The metric values and/or license size listed above are accurate as of the Effective Date and you will promptly notify InterSystems of any material increase; and
- (c) You will pay all fees in accordance with the Product Terms and this License Profile and Order Form.

Accepted By

NAME OF TRUST

InterSystems Corporation

Authorized Signatory

Date

Authorized Signatory

Date

Printed Name

Title

Printed Name

Title



## Quality Agreement Addendum to License Profile

The InterSystems product(s), **<PRODUCT NAMES>** (the "Licensed Software") is/are offered here, and you accept them, as "Non-Medical Device" **(if appropriate)** with regard to medical device regulations effective in the European Union. You are authorized to offer and configure the Licensed Software only to the extent such configurations and solutions do not represent the Licensed Software as a medical device under applicable regulations, including 93/42/EEC and 2017/745. You shall be responsible for, and indemnify and hold harmless InterSystems from, any penalty, expense, or injury incurred by InterSystems as a result of your breach of the requirements of this paragraph.

LIMITED TO INTENDED USES: Customer understands and accepts that Regulated Products have limits on their intended use. The Statements of Intended Use for the Regulated Products have been attached to this Quality Agreement, and the Customer shall not attempt to configure, implement, modify, alter, or generally make use of (generally referred to as "Configuration") the Regulated Product for any function not described and allowed by the Statement of Intended Use for the respective Regulated Product. InterSystems makes no warranty that any Regulated Product is safe for use or authorized for import under any other circumstances.

## Intended Use Statement:

**<Include relevant Intended use statements here>**

**NAME OF TRUST**

**Accepted By**

**InterSystems Corporation**

\_\_\_\_\_  
Authorized Signatory Date

\_\_\_\_\_  
Authorized Signatory Date

\_\_\_\_\_  
Printed Name Title

\_\_\_\_\_  
Printed Name Title

**INTERSYSTEMS PROFESSIONAL SERVICES**  
**TERMS & CONDITIONS (License)**

These terms and conditions, together with the applicable Professional Services Order and SOW, constitute the terms and conditions pursuant to which InterSystems shall provide professional services to the Customer identified on the Professional Services Order (“**Customer**” or “**you**”). InterSystems and Customer are each referred to as a “**Party**” and, collectively, as the “**Parties.**”

Whereas, you have entered into a License Agreement, pursuant to which you have been granted a license to use certain InterSystems software and, in conjunction therewith, you have requested that InterSystems perform certain Professional Services.

Whereas, these Professional Services Terms are incorporated by reference into the License Agreement.

Whereas, it is expected that the Professional Services being provided by InterSystems will conclude before the License Agreement terminates or expires.

**1. Definitions.** Capitalized terms used herein are defined elsewhere in the License Agreement; *but if not defined elsewhere in the License Agreement, shall have the meanings set forth below.*

- 1.1. “**Business Associate Terms and Conditions**” or “**BAA**” mean those terms found at <https://www.intersystems.com/BAA-Customer>, 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. “**Customer Data**” any data or data files of any type that are input, uploaded, stored, processed, or transmitted by or on behalf of the Customer, and that InterSystems may access, view, or otherwise handle in connection with the Professional Services performed pursuant to the Professional Services Order and SOW.
- 1.3. “**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. 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.
- 1.4. “**Customer Personnel**” means your employees, agents or other personnel.
- 1.5. “**Customer-Specific Software**” means the custom-built software, if any, specified on a SOW that will be developed by or with input from InterSystems or its subcontractors in the course of providing these Professional Services, and that will be owned by the Customer. For the avoidance of doubt, Customer-Specific Software shall not include any underlying InterSystems proprietary product or any Improvements.
- 1.6. “**Data Compromise**” means any unauthorized use of, loss of, access to or disclosure of any data that has not been rendered inaccessible, unrecoverable, or indecipherable to unauthorized persons.
- 1.7. “**Data Privacy Obligations**” means InterSystems’ specific obligations with respect to protecting Customer Data from a Data Compromise under (a) the BAA or DPA, as applicable, (b) the Data Protection Governance Standards and (c) these Terms and Conditions, provided however, that “Data Privacy Obligations” as used herein shall not include the general prohibition on the use and disclosure of Confidential Information set forth in your License Agreement.
- 1.8. “**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.

- 1.9. **“Data Protection Governance Standard”** can be found at <https://www.intersystems.com/GTDPGS>.
- 1.10. **“Environment”** 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.
- 1.11. **“Implementation Services”** means those Professional Services rendered by InterSystems to install, implement and/or configure the Licensed Software pursuant to a valid Professional Services Order and SOW.
- 1.12. **“Improvements”** means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to any Licensed Software.
- 1.13. **“Professional Services”** means those services described in the Professional Services Order to be provided to you in accordance with the SOW. For the avoidance of doubt, Implementation Services are considered a category of Professional Services.
- 1.14. **“Professional Services Fees”** means all amounts invoiced and payable for Professional Services as specified in the Professional Services Order.
- 1.15. **“Professional Services Liability Cap Amount”** shall mean the Professional Services Fees actually paid under these Professional Services Terms during the immediately preceding 12-month period in connection with which the claim arose or, for a claim arising before the first year anniversary of the Professional Services Effective Date, the amount payable in respect of the first 12-month period.
- 1.16. **“Professional Services Order”** means an ordering document, pursuant to which you request Professional Services from InterSystems. A Professional Services Order may be included with the order for a License to use the Licensed Software.
- 1.17. **“Statement of Work”** or **“SOW”** means a document executed in conjunction with the Professional Services Order, which document describes the details of the Professional Services to be provided by InterSystems pursuant to such Professional Services Order.
- 1.18. **“Users”** shall mean all natural persons who use the Licensed Software.

## 2. Professional Services.

- 2.1.1. 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.
- 2.1.2. InterSystems shall deliver Professional Services in accordance with the Professional Services Order and SOW as well as these Professional Services Terms, the Data Protection Governance Standard and the BAA or DPA, as applicable. Professional Services shall commence on a date mutually agreed by the Parties.
- 2.1.3. InterSystems may engage third-party subcontractors to provide some or all of these Professional Services. All subcontractors shall be subject to all of the restrictions and limitations applicable to InterSystems set forth herein and InterSystems shall take full responsibility for these Professional Services as performed by any such subcontractor.
- 2.1.4. You are responsible for all activities identified in the relevant SOW and Professional Services Order as applicable to you.
- 2.1.5. 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 the Environment and your systems as InterSystems may reasonably require to deliver these Professional Services. You shall provide all Customer Data

needed to deliver these Professional Services in accordance with the SOW.

- 2.1.6. 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 Data transmitted to InterSystems in accordance with the standards and requirements of applicable privacy and security laws and regulations, and in conformity with the Information Sharing Terms until such data is received by InterSystems.
- 2.1.7. If InterSystems personnel or subcontractors 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.
- 2.1.8. If these Professional Services consist of implementing the Licensed Software for you, 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. You shall make available in a timely manner staff that are suitably proficient to test usage of the Licensed Software, as implemented for you, and as provided in the SOW. You have satisfied yourself that the version of the Licensed Software being implemented by InterSystems is suitable for your requirements.
- 2.1.9. You shall take the following actions with respect to the Environment and your use of the Licensed Software:
  - 2.1.9.1. You will ensure that all Users comply with your obligations under the License Agreement, including these Terms and Conditions. If you become aware of any violation of any obligation under the License Agreement caused by a User, you will immediately suspend such User's access and inform InterSystems in writing.
  - 2.1.9.2. You are responsible for ensuring that Customer Personnel have suitable experience knowledge and training to manage and support the Licensed Software.
  - 2.1.9.3. You are responsible for providing education and technical assistance to Users relating to the use of the Licensed Software.
  - 2.1.9.4. You will ensure that Users do not contact InterSystems for assistance related to the Licensed Software. InterSystems product support is provided only to specified Customer Personnel in accordance with the License Agreement.
  - 2.1.9.5. 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.

### 3. Professional Services Fees.

- 3.1. **Invoices & Payment.** All Professional Services Fees shall be invoiced, due and payable in accordance with the terms of the License Agreement, unless otherwise specified in the Professional Services Order.
- 3.2. **Calculations.** If the Professional Services Fees specified in the Professional Services Order are estimates, the actual Professional Services Fees will be computed by multiplying the actual time spent providing Professional Services by the hourly rate specified in the Professional Services Order. 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.
- 3.3. **Travel Costs.** Customer agrees to reimburse all pre-approved travel expenses (flights, accommodation, subsistence, and land transportation) upon presentation of reasonable documentation.
- 3.4. **Payments Non-refundable.** All payments made for work performed are non-refundable.

### 4. Proprietary Rights.

- 4.1. **Ownership and Reservation of Rights.** InterSystems shall own all right, title and interest in and to all materials, inventions or other items developed by or on behalf of InterSystems in the course of providing these Professional Services. No rights are granted to you other than the right to use such items pursuant to the License Agreement. The foregoing shall not apply to any Customer-Specific Software specified as such in the SOW.

- 4.2. **Customer-Specific Software.** Any Customer-Specific Software specified as such in the SOW shall be considered work-for-hire and shall be owned by the Customer. Upon acceptance by Customer, any such Customer-Specific Software shall be considered Licensed Software. The Customer understands 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 software that displays functionality that may be similar to any Customer-Specific Software, and Customer shall have no right to restrict InterSystems or its subcontractor(s) from developing software that displays functionality similar to any Customer-Specific Software for any other third party. The Customer hereby grants InterSystems a royalty-free license to use any Customer-Specific Software for the purpose of performing Professional Services hereunder.
- 4.3. **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. You shall have no right or interest whatsoever in or to any Customer Input or in any Improvements made to any Licensed Software other than a right to use any functionality arising from such Customer Input that may be incorporated into a subsequent version of the Licensed Software, which subsequent version is then licensed by InterSystems to you.
5. **Acceptance and Change Control Principles.** The following principals shall apply unless otherwise stipulated in the Professional Services Order or SOW.
- 5.1. **Acceptance.**
- 5.1.1. 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.
- 5.1.2. 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 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.
- 5.2. **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.
6. **Warranty & Disclaimer.**
- 6.1. **Warranty.** 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.
- 6.2. **Warranty Remedies.** In the event of a breach of this warranty, 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 Professional Services 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 these Professional Services Terms and you elect to terminate these Professional Services Terms.
- 6.3. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERSYSTEMS MAKES NO WARRANTIES OF ANY KIND

WITH RESPECT TO THESE PROFESSIONAL SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LIMITED WARRANTY PROVIDED HEREIN IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THESE PROFESSIONAL SERVICES.

## **7. Term & Termination.**

- 7.1. **Term of Agreement.** These Professional Services Terms shall commence on the date signed by you and accepted by InterSystems and shall continue until the termination or completion of the Professional Services, unless terminated earlier in accordance with Section 7.2. These Professional Services Terms terminate automatically upon completion of the Professional Services, even though the License Agreement may continue in effect thereafter. In addition, these Professional Services Terms shall automatically terminate upon the termination of the License Agreement.
- 7.2. **Termination.** Either Party may terminate these Professional Services Terms 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. In addition, the Customer may terminate these Professional Services Terms or any Professional Services hereunder upon ninety (90) days' prior written notice to InterSystems.
- 7.3. **Effect of Termination.** Termination of these Professional Services Terms for any reason, other than as a result of InterSystems' material breach or bankruptcy, shall not relieve you of the obligation to pay any Professional Services Fees due and payable to InterSystems prior to the effective date of such termination.

## **8. Limitation of Liability.** To the maximum extent permitted by law and except with respect to (i) fraud or (ii) Customer's payment obligations,

- 8.1 Except as set forth in Section 8.2 below, in no event shall either Party's aggregate liability arising out of or related to these Professional Service Terms, whether in contract, tort or otherwise, exceed the Professional Services Liability Cap Amount.
- 8.2 Notwithstanding the provisions in Section 8.1 above, InterSystems' aggregate liability for the breach of its Data Privacy Obligations resulting in the Data Compromise of Customer Data, shall not exceed two times the Professional Services Liability Cap Amount.

## **9. General Provisions.**

**9.1 Force Majeure.** Neither Party shall be liable for any failure or delay in performance under these Professional Services Terms for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including the following: acts of God, acts of government, flood, fire, civil unrest, acts of terror; cyber-attacks, viruses, or other service interruption that could not have been avoided or prevented with commercially reasonable care; or 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.

**9.2 Miscellaneous.** These Professional Services Terms, together with the applicable terms of the License Agreement as well as the Professional Services Order and 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 Professional Services Order, (2) any SOW, (3) these Professional Services Terms and (4) the applicable terms of the License Agreement. These Professional Services Terms

supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the provision of Professional Services by InterSystems to you, other than the terms of the License Agreement. 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 Professional Services Order) shall be incorporated into or form any part of these Professional Services Terms.

(End of Document)