# OUTSYSTEMS MASTER SUBSCRIPTION AGREEMENT

This OutSystems Master Subscription Agreement (this "**Agreement**") is entered into as of the date of download of the Software ("**Effective Date**") by and between "**OutSystems**" and you on behalf of "**Customer"** (each, a "**Party**", and together, the "**Parties**"). This Agreement governs the purchase of Subscriptions for the Software, and by clicking on the appropriate button, or by downloading, installing, accessing and using the Software, you agree to be bound by the terms of this Agreement. If you are entering into this Agreement on behalf of Customer, you represent that you have the authority to bind Customer. Do not download, install, access or use any of the Software if you do not agree to the terms of this Agreement or if you are not authorized to accept the terms of this Agreement on behalf of Customer. If Customer already has an executed master subscription agreement in effect with OutSystems, then that agreement shall prevail over this agreement, and this agreement shall have no force or effect.

## 1 DEFINITIONS

**"Affiliate"** means an entity that controls, is controlled by or shares common control with OutSystems or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock, by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

**"Application"** means the computer application developed by Customer through the use of the Software.

**"Application Object"**, as used in an Order, shall have the meaning set forth at https://success.outsystems.com/Support/Licensing/Application_Objects.

"**Confidential Information**" refers to non-public information that either Party may obtain from the other or have access to by virtue of this Agreement, including, but not limited to, each Party's data and each Party's proprietary software and computer operations, all code, inventions, algorithms, business concepts, workflow, marketing, financial, business and technical information, the terms and pricing under this Agreement, authentication credentials associated with the use of the Software and the Professional Services, Personal Data and all information either clearly identified as confidential or that is of a nature that a reasonable person would understand to be confidential.

**"Customer"** means the Party agreeing to the terms of this Agreement as Customer.

**"Customer Content"** means software (including machine images), online services, features, technology, data, text, audio, video, images or other content supplied by Customer or by third-parties on behalf of Customer in connection with an Application.

**"Deliverables**" means all goods, records, reports, documents, papers, other materials and deliverables (whether in documentary, electronic or other form) produced by, or on behalf of, OutSystems or Customer as part of the Professional Services pursuant to the execution of an Order, provided they are identified as such in the applicable Statement of Work.

"**Documentation**" means the online user guides and help and training manuals, set forth at https://success.outsystems.com/Documentation.

**"Fees"** means the amount to be paid for the Subscription and/or the Professional Services as detailed in the applicable Order.

"**Intellectual Property**" means any patents, patent rights, design rights, copyrights, database rights, trade secrets, know-how, trademarks, trade names, service marks and other intellectual property embodied in the foregoing, and all applications and rights to apply for registration or protection rights pertaining thereto, in existence at the date hereof or created in the future. Rights regarding Intellectual Property shall be referred to as "**Intellectual Property Rights**".

"**New Software Version**" means a major Software release whose primary purpose is to add new functionality or to enhance the performance of the Software, which is identified by an increment in the first number before the dot separator of the Software version. Notwithstanding the foregoing, a New Software Version will not include new software or modules (whether or not branded as OutSystems software) that OutSystems may market and price separately.

**"Order"** means the ordering documents, including online transaction records, issued by OutSystems for purchases under this Agreement, including addenda and amendments to such documents, that are executed or accepted by Customer from time to time. The terms of this Agreement shall be deemed incorporated by reference into each Order. The term "Order" specifically excludes any terms on Customer's purchase order that are additional to, or inconsistent, with the terms of this Agreement or the applicable Order issued by OutSystems.

"**Personal Data**" has the meaning as described in the applicable data protection laws and shall include, without limitation, any data or information (regardless of the medium in which it is contained and whether alone or in combination) that relates to an identified or identifiable natural person.

"**Professional Services**" means the consulting, training, development, implementation or customization of information technology services and/or advice to be provided by OutSystems to the Customer on a time and materials or fixed price basis, as purchased in an Order and as detailed in the applicable Statement of Work. Professional Services do not include the provision of the Support and Updates included in a Subscription.

"**Software**" means the OutSystems software described in the Documentation, the Cloud hosting platform used by OutSystems to provide the Software as a platform as a service, all updates to the Software provided as part of Support and Updates, and the Documentation.

"**Subscription**" means the joint provision of Software licenses and Support and Updates services as detailed in the applicable Order.

"**Subscription Term**" means the Initial Subscription Term and any Renewal Subscription Terms, as defined in Section 2.2.

"**Support and Updates**" means any Software support and updates services provided by OutSystems as detailed at www.outsystems.com/goto/outsystems-support-terms (the "**Support Terms**").

"**Third-Party Action**" means an action, demand, proceeding or lawsuit brought by a third party (including by a governmental entity) against a Party to this Agreement.

**"Users"** as used in an Order, shall have the meaning set forth at https://success.outsystems.com/Documentation/11_x_platform/Developing_an_Application/Secure_the_Application/End_User_management#Users.

## 2 SUBSCRIPTION

**2.1 Order Mechanism.** Each Subscription will be obtained solely by execution or acceptance of an Order. Pursuant to execution of an Order and subject to the terms and conditions of this Agreement and Customer's payment of all applicable Fees, OutSystems will provide the Subscription to Customer as specified in the Order during the Subscription Term. Customer may order multiple Subscriptions by executing additional Orders. Each Order is deemed to be a discrete contract, separate from each other Order, unless expressly stated otherwise in the applicable Order. In the event of a direct conflict between any Order and the terms of this Agreement, the terms of the Order will prevail only with respect to that Order and only if the Order is agreed to by each party. Orders may be entered under this Agreement by and between (a) OutSystems or an Affiliate of OutSystems; and (b) Customer or an Affiliate of Customer. For the avoidance of doubt, in the event Customer accepts an Order by submitting a purchase order, then regardless of whether OutSystems acknowledges, accepts or performs under such purchase order, OutSystems expressly rejects any terms on such purchase order that are additional to, or inconsistent, with the terms of this Agreement or the applicable Order.

**2.2 Subscription Term**. The Subscription ordered by Customer shall commence on the start date specified in the applicable Order and shall continue in effect until the end date specified in the applicable Order (the "Initial Subscription Term"). For Initial Subscription Terms which are committed for multiple years, each individual committed year may be listed as a separate line item in the applicable Order for administrative convenience only. Except as otherwise specified in the applicable Order, the Subscription Term shall automatically renew for additional periods equal to the Initial Subscription Term (each, a "Renewal Subscription Term") at the renewal Fees set forth in the applicable Order, or if no renewal Fees have been agreed in the applicable Order, those set forth in the renewal notice sent to Customer at least 60 (sixty) days prior to the end of the then-current Subscription Term, unless either Party gives the other Party notice of non-renewal at least 30 (thirty) days before the end of the then-current Subscription Term.

**2.3 Upgrades**. If a New Software Version is released during a Subscription Term, and Customer has paid the Fees, the New Software Version will be made available by OutSystems to the Customer.

**2.4 Subscription Sold Through Resellers and Third-Party Commercial Marketplaces.** The Parties agree that Customer may purchase Software through resellers or via a third-party commercial marketplace, the use of which will be governed by this Agreement. Software purchased through a reseller or a third-party commercial marketplace, including multi-year Subscriptions, is not subject to cancellation by Customer. Where Customer purchases Software through a reseller, the reseller will enter into an Order with OutSystems that shows Customer as the "ship to" party and reseller as the "bill to" party. Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to reseller for such Subscription. OutSystems agrees that, subject to receiving payment from the reseller, it shall be directly responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under a relevant Order. Customer acknowledges that OutSystems will not be responsible for the obligations of any reseller to Customer under such separate agreement, for the acts or omissions of reseller, or for any third-party products or services furnished to Customer by any reseller. For the avoidance of doubt, payment and taxes will be addressed in the agreement between reseller and Customer, and Sections 5.1 (Fees) and 5.2 (Payment) of this Agreement are not applicable to Subscriptions sold through resellers or third-party commercial marketplaces.

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## 3 LICENSE

**3.1 License**. Subject to the terms of this Agreement and the applicable Order, OutSystems grants Customer a limited, non-exclusive, non-transferable license, without rights to sublicense, to use the Software during the Subscription Term, for the sole purpose of building Applications for Customer's own business processes, including access by internal users and external users as part of those business processes. If Customer has ordered a copy of the Software for self-managed download and installation, OutSystems also grants Customer, during the Subscription Term **(i)** the right to install the Software on servers it manages, and **(ii)** the right to make one (1) copy of the Software solely for backup purposes. OutSystems further grants Customer the right to make copies of the Documentation solely for Customer's internal business purposes. OutSystems retains all rights not expressly granted to Customer in this Agreement.

**3.2 Usage Limits**. The Software licensed under a Subscription is subject to the volume, scope, and territory of use specified in the applicable Order.

**3.3 Restrictions of Use**. Unless otherwise authorized under this Agreement or with OutSystems' prior written consent, Customer may not (and will not allow any third party to): **(i)** sell, rent, lease, license, sublicense, distribute, pledge, assign or otherwise transfer in whole or in part the Software or the Professional Services or any interest in them to another party; **(ii)** provide, disclose, divulge or make available to, or permit use of the Subscription in whole or in part by, any third party other than those that support Customer with developing Applications; **(iii)** install or use the Software in a manner that circumvents or interferes with the operation of the technological measure that controls the access to the Software; **(iv)** modify, translate, adapt or create derivative works based on the Software; **(v)** remove or modify any Software markings or any notice of OutSystems' proprietary rights; **(vi)** use the Software to provide third party training; **(vii)** disclose results of any Subscription benchmark tests to any third party without OutSystems' prior written consent; or **(viii)** use the Software in any way that violates applicable law or the terms and conditions of this Agreement. In addition, unless Customer and OutSystems have agreed to additional terms to this Agreement in an Order or addendum to this Agreement, Customer may not (and will not allow any third party to), with respect to any Applications deployed under this Subscription: **(ix)** sell, rent, lease, license, sublicense, distribute, offer as a paid or free subscription, or include in a service bureau or outsourcing offering, such Applications; or **(x)** develop, test, host, or run and operate such Applications on behalf of third-parties to this Agreement. Except to the extent expressly permitted by applicable law, Customer may not decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part.

**3.4 Manner of Use.** Subject to the terms of this Agreement and the applicable Order, Customer agrees not to use or permit use of the Software to display, store, process or transmit any Customer Content that may: **(i)** menace or harass any person or cause damage or injury to any person or property; **(ii)** involve the publication of any material that is false, defamatory, harassing or obscene, violate privacy rights or promote bigotry, racism, hatred or harm; **(iii)** constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; **(iv)** constitute infringement of intellectual property or other proprietary rights; or **(vi)** otherwise violate applicable laws, ordinances or regulations. If OutSystems receives information that Customer is in violation of any of the foregoing restrictions, OutSystems will notify Customer, and Customer will promptly take appropriate action to resolve such violation. If Customer does not take the required action in accordance with the above, OutSystems reserves the right, but has no obligation, to take remedial action if Customer violates the foregoing restrictions. OutSystems shall have no liability to Customer in the event that OutSystems takes such action.

**3.5 Customer Content and Applications**. As necessary for OutSystems **(i)** to provide Customer with the Support and Updates; and **(ii)** to operate, manage and improve the Software, Customer grants to OutSystems the right and a license to host, copy, transmit and display Customer Content and Applications in accordance with this Agreement and limited to such purposes only.

## 4 PROFESSIONAL SERVICES

**4.1 Scope**. Upon request and execution of an Order, OutSystems shall provide Professional Services to Customer as detailed in the applicable Statement of Work. Unless otherwise stated in the applicable Statement of Work, all Professional Services will be provided remotely, during normal business hours, under a single time zone selected by the Customer before the commencement of the Professional Services.

**4.2 Expenses.** If a Statement of Work states that Professional Services will be provided on-site, then in addition to any and all Fees in the applicable Order, Customer will reimburse OutSystems for all reasonable costs and expenses related to the provision of the Professional Services, including without limitation travel, lodging, meal and out-of-pocket expenses, and third party online and offline research services directly related to the provision of the Professional Services ("**Expenses**") incurred by OutSystems in connection with the performance of the Professional Services. Expenses shall be invoiced by OutSystems as stated in the Order and paid by Customer in accordance with the terms of the Agreement.

**4.3 Changes**. Any changes or additions to the Professional Services, including scope, Fees and/or Expenses, will only be valid if agreed in writing and executed by both Parties.

**4.4 Cooperation**. Customer will cooperate reasonably and in good faith with OutSystems in the execution of the Professional Services by, without limitation: **(i)** allocating sufficient resources and timely performing any tasks reasonably necessary to enable OutSystems to perform its obligations under each Order; **(ii)** timely delivering any materials and other obligations specifically required under each Order; **(iii)** timely responding to OutSystems' reasonable inquiries related to the Professional Services; **(iv)** actively participating in relevant scheduled meetings; and **(v)** providing information, data and feedback that is complete, accurate and timely in all material respects.

**4.5 Acceptance Criteria**. If a Deliverable is specified in an applicable Statement of Work, that Deliverable will be deemed accepted on delivery, unless acceptance criteria and an acceptance testing process are defined in the applicable Statement of Work.

**4.6 Provision of Professional Services to Third Parties.** OutSystems is in the business of providing products and consulting services to third parties which are or may be substantially similar to the Deliverables being developed for Customer. OutSystems is free to use all of OutSystems' ideas, know-how, approaches, methodologies, concepts, skills, tools, techniques, expressions, and processes, irrespective of whether possessed by OutSystems prior to this Agreement, or acquired, developed, or refined by OutSystems during the execution of the same ("**Residual Knowledge**"). It is not the intent of this Agreement to prevent OutSystems from pursuing its stated business by independently creating such original but similar works for the benefit of third parties provided that OutSystems does not use or disclose Confidential Information, Customer's Content or Personal Data. Such retention of Residual Knowledge shall be considered unintentional.

## 5 FEES AND PAYMENT TERMS

**5.1 Fees.** Customer will pay to OutSystems, without deduction, the Fees set forth in the applicable Order. Fees listed in an Order are exclusive of all applicable sales taxes, value-added tax, duties, or any similar fees imposed by applicable law. Customer will pay or reimburse OutSystems for all applicable taxes, duties, or any similar assessments imposed by applicable law incurred on the Order (except for OutSystems' income taxes) and such taxes, duties, or any similar assessments shall be charged at the appropriate rate by OutSystems in addition to its stated Fees and shall be shown separately on the relevant invoice.

**5.2 Payment.** All Fees are payable to OutSystems and due within the number of days following the date of invoice specified in the applicable Order, except that online purchases shall be due at time of purchase, in the currency specified in the applicable Order. Except as otherwise stated in this Agreement, all Orders are non-cancelable and, upon payment, all payments are non-refundable.

**5.3 Disputes and Overdue Payments.** In the event Customer has a reasonable, good faith basis for disputing the Fees due on the basis of OutSystems' failure to perform its obligations under this Agreement, Customer must notify OutSystems of any such disputed Fees on or before the applicable invoice due date and may only withhold payment of that portion of the Fees for which it has a reasonable, good faith basis for dispute. Undisputed overdue payments shall bear interest at the lesser of 1% per month or the maximum rate allowed under applicable law. Customer acknowledges and accepts that the non-payment of any undisputed Fees within the term defined in the applicable Order constitutes a material breach of this Agreement and that OutSystems shall have the right to: **(i)** upon 30 (thirty) days prior written notice, suspend Customer's right to access or use any portion or all of the Software and/or the Professional Services, and/or the provision of Support and Updates by OutSystems, until all such due and undisputed amounts and respective interests have been paid; and/or **(ii)** exercise its right to terminate this Agreement under Section 8 ("Term and Termination").

## 6 INTELLECTUAL PROPERTY RIGHTS, OWNERSHIP AND TITLE

**6.1 OutSystems' Intellectual Property**. All Intellectual Property Rights in and to the Software and Professional Services are owned by OutSystems. Customer shall not acquire any proprietary right, title or interest in or to any Intellectual Property Rights in the Software or Professional Services. All rights not expressly granted by OutSystems in this Agreement or the applicable Order are reserved.

**6.2 Customer's Intellectual Property**. All Intellectual Property Rights in and to Applications and Customer Content are owned by Customer, and shall, subject to the terms of this Agreement, remain vested in Customer. Unless otherwise expressly provided in this Agreement, OutSystems shall not acquire any proprietary right, title or interest in or to any Intellectual Property Rights in Applications. Subject to the terms and conditions of this Agreement (including the payment of all agreed Fees and Expenses) Customer shall also own all Intellectual Property Rights in the Deliverables.

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**7 CONFIDENTIALITY**

**7.1 Use and Disclosure.** During this Agreement and for a period of 3 (three) years following its termination, each Party shall hold in confidence and not use for any purposes unrelated to this Agreement or disclose to any third party (except the Party's employees, agents or contractors who have a need to know and who are subject to confidentiality obligations at least as restrictive as those in this Agreement) any Confidential Information of the other Party. Each Party agrees to take all reasonable steps to ensure that the Confidential Information is not disclosed or distributed by its employees, contractors, or agents in violation of the terms of this Agreement.

**7.2 Permitted Disclosures.** Either Party may disclose Confidential Information of the other Party: **(i)** in response to a valid order or request by a court or other governmental or regulatory body, **(ii)** as otherwise required by law, or **(iii)** as necessary to establish the rights of either Party under this Agreement. The Party seeking to disclose information will promptly give notice to the other Party and allow the other Party to object or to seek a protective order, to the extent permitted by the applicable law.

**7.3 Non-Confidential Information.** The Parties shall not be obligated under this Section 7 ("Confidentiality") with respect to Confidential Information that: **(i)** is or becomes a part of the public domain through no act or omission of the receiving Party; **(ii)** was in the receiving Party's lawful possession without restriction prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; **(iii)** is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or **(iv)** is independently developed by the receiving Party without access to the Confidential Information.

**7.4 Destruction or Return.** Except as otherwise authorized or required in furtherance of the purposes of this Agreement, promptly upon a request by the disclosing Party, the receiving Party will at its option either destroy and certify destruction in writing or return to the disclosing Party all Confidential Information and all documents or media containing any such Confidential Information and all copies or extracts thereof provided that the receiving Party shall be permitted to retain copies of any computer records and files containing any Confidential Information which have been created pursuant to automatic archiving and back-up procedures, or retain a back-up copy of such Confidential Information as required by law, rule, regulation or internal compliance policies, in which cases such Confidential Information shall continue to be subject to confidentiality obligations even after termination of this Agreement.

**8 TERM AND TERMINATION**

**8.1 Term of Agreement.** Unless earlier terminated pursuant to Sections 8.2 ("Termination for Cause") or 8.3 ("Termination for Insolvency"), this Agreement commences on the Effective Date and continues in force until all Orders executed in accordance with this Agreement have expired or been terminated.

**8.2 Termination for Cause**. Either Party will have the right to terminate this Agreement immediately upon notice at any time if the other Party is in material breach of any warranty, material term, or covenant of this Agreement and fails to cure that breach within 30 (thirty) days after written notice of that breach.

**8.3 Termination for Insolvency**. Either Party may terminate the Agreement immediately if the other Party (i) is dissolved or liquidated or takes any corporate action for such purposes; (ii) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (iii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court or competent jurisdiction to take charge of or sell any material portion of its property or business.

**8.4 Effect of Termination**. **(i) Access**. Upon termination or expiration, all Subscriptions shall be automatically canceled, and Customer shall no longer have access to the Software or to Applications other than as provided in Section 8.4(ii). **(ii) Customer Applications and Customer Content**. Subject to the payment of all Fees due and payable under the Agreement and written notice by Customer to OutSystems, in each case within thirty (30) days following the date of notice of termination, Customer is entitled to (i) detach a copy of a set of its Applications ("**Detachment**") in source code format and (ii) retrieve a download of its Customer Content. Detachment and the retrieval of Customer Content are subject to the conditions and limitations specified in the Documentation. Upon conclusion of the Detachment, the Customer will proceed with the subsequent de-installation and/or destruction of the Software. **(iii) Fees**. If OutSystems terminates this Agreement pursuant to Sections 8.2 ("Termination for Cause") or 8.3 ("Termination for Insolvency"), OutSystems shall invoice Customer all amounts that were accrued for the terminated Subscriptions prior to such termination, which were not previously invoiced, as well as all sums remaining unpaid under this Agreement. Customer will pay such invoices in accordance with the terms of this Agreement. In the event Customer terminates this Agreement pursuant to Sections 8.2 ("Termination for Cause") or 8.3 ("Termination for Insolvency") above, OutSystems shall refund Customer any prepaid Fees covering the remainder of the Subscription Term of any Subscription in effect, from the effective date of termination (amortized on a straight-line basis). In no event will termination relieve Customer of the obligation to pay all Fees due to OutSystems under this Agreement. **(iv) Damages.** Neither Party is liable to the other Party for any damages incurred by the other Party or any third parties as a result of termination in conformity with this Section 8 ("Term and Termination"). **(v) Other Remedies.** Termination or expiration is not an exclusive remedy, and all other remedies will be available whether or not termination occurs.

**9 WARRANTIES**

**9.1 Software and Support Warranties.** OutSystems represents and warrants that **(i)** OutSystems has all necessary rights to grant the licenses provided in this Agreement and the applicable Order; **(ii)** the Software shall operate in material compliance with the Documentation; and **(iii)** Support for the Software will be provided in accordance with the service levels described in the Support Terms. In the event of a breach of the warranties under Section 9.1(i) or 9.1(ii), OutSystems shall, as its sole obligation and entire liability and Customer's exclusive remedy, at OutSystems' sole option and expense, modify or replace the portion of the Software in a manner that is compliant with the applicable warranty, or, in the event OutSystems is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable Order. Upon such termination, OutSystems shall refund Customer all Fees paid for the non-compliant portion of the Software for the remainder of the Subscription Term. Claims under the warranties under Section 9.1(i) or 9.1(ii) must be submitted by Customer in writing within 30 (thirty) days of first becoming aware of non-compliance with the applicable warranty. In the event of a breach of the warranty in Section 9.1(iii), the Service Credits described in the Support Terms shall be OutSystems' sole obligation and entire liability and Customer's exclusive remedy.

**9.2 Professional Services Warranties.**, OutSystems represents that Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. In the event of a breach of the foregoing warranty, OutSystems shall, as its sole obligation and entire liability and Customer's exclusive remedy, at OutSystems' sole option and expense, re-perform the applicable Professional Services in a manner that is compliant with such warranty, or, in the event OutSystems is unable to do so after using commercially reasonable efforts, terminate all or part of the applicable Order. Upon such termination, OutSystems shall refund Customer all Fees paid for the non-compliant Professional Services. Claims under the foregoing warranty must be submitted by Customer in writing within 30 (thirty) days of the performance of such Professional Services.

**9.3 Security Warranty.** OutSystems will implement and maintain administrative, physical and technical safeguards to protect Customer data that are no less rigorous than accepted industry practices as the Information Security and Business Continuity Terms and Conditions described at https://security.outsystems.com/?itemName=legal&source=click.

**9.4 DISCLAIMER OF WARRANTIES**. OUTSYSTEMS DOES NOT WARRANT THAT THE SOFTWARE, SUPPORT, PROFESSIONAL SERVICES, OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE FROM MALICIOUS ATTACKS BY THIRD-PARTIES. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION AND/OR CUSTOMER CONTENT. EXCEPT AS SET FORTH IN SECTION 9 ("WARRANTIES") AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUTSYSTEMS PROVIDES THE SOFTWARE, SUPPORT, PROFESSIONAL SERVICES, AND DELIVERABLES "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING BUT NOT LIMITED TO, EXPRESS, IMPLIED STATUTORY OR OTHER WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. CUSTOMER SHALL HAVE SOLE RESPONSIBILITY FOR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, APPROPRIATENESS AND OWNERSHIP OF ALL CUSTOMER CONTENT AND APPLICATIONS.

**10 INDEMNIFICATION**

**10.1 INDEMNIFICATION BY OUTSYSTEMS.** DURING THE SUBSCRIPTION TERM, OUTSYSTEMS WILL DEFEND, OR AT ITS OPTION SETTLE, AT ITS OWN EXPENSE ANY THIRD-PARTY ACTION AGAINST CUSTOMER, AND PAY ALL DAMAGES (INCLUDING ATTORNEYS' FEES AND COSTS) AWARDED AGAINST CUSTOMER, OR THAT ARE AGREED TO IN A SETTLEMENT, TO THE EXTENT THE THIRD-PARTY ACTION IS BASED UPON A CLAIM THAT THE SOFTWARE OR DELIVERABLES INFRINGE ANY VALID AND ENFORCEABLE COPYRIGHT OR PATENT OF SUCH THIRD PARTY

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(AN "INFRINGEMENT CLAIM"). OUTSYSTEMS WILL PAY THOSE COSTS AND DAMAGES FINALLY AWARDED AGAINST CUSTOMER IN ANY SUCH THIRD-PARTY ACTION THAT ARE SPECIFICALLY ATTRIBUTABLE TO AN INFRINGEMENT CLAIM OR THOSE COSTS AND DAMAGES AGREED TO IN A MONETARY SETTLEMENT OF AN INFRINGEMENT CLAIM. NOTWITHSTANDING THE FOREGOING, OUTSYSTEMS WILL HAVE NO OBLIGATION UNDER THIS SECTION 10.1 OR OTHERWISE WITH RESPECT TO ANY INFRINGEMENT CLAIM BASED UPON (I) ANY APPLICATION, (II) ANY DELIVERABLE TO THE EXTENT BASED ON COMPLIANCE WITH CUSTOMER'S INSTRUCTIONS OR TECHNICAL SPECIFICATIONS, (III) ANY UNAUTHORIZED USE, REPRODUCTION, OR DISTRIBUTION OF THE SOFTWARE OR DELIVERABLES BY CUSTOMER OR ANY OF ITS SUB-DISTRIBUTORS OR END USERS, (IV) ANY USE OF THE SOFTWARE OR DELIVERABLES IN COMBINATION WITH OTHER PRODUCTS, EQUIPMENT, SOFTWARE, OR DATA NOT SUPPLIED BY OUTSYSTEMS, (V) ANY USE FOR A PURPOSE OR IN A MANNER FOR WHICH THE SOFTWARE OR DELIVERABLES WERE NOT DESIGNED, (VI) IN CASE OF ANY USE, REPRODUCTION, OR DISTRIBUTION OF ANY RELEASE OF THE SOFTWARE OTHER THAN THE MOST CURRENT RELEASE MADE AVAILABLE TO CUSTOMER, OR (VII) ANY MODIFICATION OF THE SOFTWARE OR DELIVERABLES BY ANY PERSON OTHER THAN OUTSYSTEMS OR ITS AUTHORIZED AGENTS OR CONTRACTORS. IF THE SOFTWARE OR ANY OF THE DELIVERABLES BECOMES, OR IN OUTSYSTEMS' OPINION IS LIKELY TO BECOME, THE SUBJECT OF A CLAIM COVERED BY THIS SECTION 10.1, OUTSYSTEMS MAY, AT ITS OPTION AND EXPENSE, EITHER (I) PROCURE FOR CUSTOMER THE RIGHT TO CONTINUE EXERCISING THE RIGHTS LICENSED TO CUSTOMER IN THIS AGREEMENT, (II) REPLACE OR MODIFY THE SOFTWARE OR DELIVERABLES SO THAT IT BECOMES NON-INFRINGING AND REMAINS FUNCTIONALLY EQUIVALENT, OR (III) TERMINATE THE SUBSCRIPTION BY WRITTEN NOTICE TO CUSTOMER AND REFUND TO CUSTOMER ANY PREPAID PAYMENTS COVERING THE REMAINING SUBSCRIPTION TERM. SECTION 10.1 STATES OUTSYSTEMS' ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES IN RESPECT TO ANY ACTUAL OR ALLEGED CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

**10.2 INDEMNIFICATION BY CUSTOMER.** CUSTOMER WILL DEFEND, OR AT ITS OPTION SETTLE, AT ITS OWN EXPENSE ANY THIRD-PARTY ACTION AGAINST OUTSYSTEMS, AND PAY ALL DAMAGES (INCLUDING ATTORNEYS' FEES AND COSTS) AWARDED AGAINST OUTSYSTEMS, OR THAT ARE AGREED TO IN SETTLEMENT, TO THE EXTENT THAT THE THIRD-PARTY ACTION ALLEGES THAT CUSTOMER CONTENT OR APPLICATIONS INFRINGE ANY VALID AND ENFORCEABLE COPYRIGHT OR PATENT OF A THIRD PARTY.

**10.3 CONDITIONS.** THE FOREGOING OBLIGATIONS ARE CONDITIONED ON THE INDEMNIFIED PARTY (I) NOTIFYING THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF SUCH THIRD-PARTY ACTION, (II) GIVING THE INDEMNIFYING PARTY SOLE CONTROL OF THE DEFENSE THEREOF AND ANY RELATED SETTLEMENT NEGOTIATIONS, AND (III) AT THE INDEMNIFYING PARTY'S REASONABLE REQUEST AND EXPENSE, ASSISTING IN SUCH DEFENSE.

## 11 LIMITATION OF LIABILITY

**11.1 MUTUAL EXCLUSION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, GOODWILL OR MARKET CAPITALIZATION, OR COST OF PROCUREMENT OF REPLACEMENT GOODS OR SERVICES) ARISING FROM THIS AGREEMENT, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

**11.2 OUTSYSTEMS EXCLUSION OF LIABILITY.** OUTSYSTEMS WILL NOT BE LIABLE FOR: **(i)** CUSTOMER'S INABILITY TO USE THE SUBSCRIPTION OR DELIVERABLES AS A RESULT OF ANY VALID TERMINATION OR SUSPENSION OF THE SUBSCRIPTION OR PROFESSIONAL SERVICES PURSUANT TO THE TERMS OF THIS AGREEMENT; OR **(ii)** ANY UNAUTHORIZED ACCESS TO, DAMAGE OR ALTERATION TO, DELETION OR DESTRUCTION OF, OR FAILURE TO STORE OR BACKUP, CUSTOMER CONTENT DUE TO CUSTOMER'S NEGLIGENCE AND OR MISCONDUCT.

**11.3 TOTAL AGGREGATE LIABILITY.**

**GENERAL.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT (AND EXCLUDING PROFESSIONAL SERVICES, ADDRESSED IN THE SECTION BELOW), EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT AND THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER SHALL BE LIMITED TO DIRECT DAMAGES CAUSED BY THE PARTY'S NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE AMOUNTS DUE OR PAID TO OUTSYSTEMS UNDER THIS AGREEMENT DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

**PROFESSIONAL SERVICES.** OUTSYSTEMS' TOTAL AGGREGATE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY OUTSYSTEMS' SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED THE AMOUNTS PAID TO OUTSYSTEMS FOR THE PROFESSIONAL SERVICES RENDERED UNDER THE APPLICABLE ORDER.

THE PROVISIONS OF THIS SECTION 11.3 ALLOCATE RISKS UNDER THIS AGREEMENT BETWEEN CUSTOMER AND OUTSYSTEMS. OUTSYSTEMS' FEES FOR THE SUBSCRIPTION AND/OR PROFESSIONAL SERVICES REFLECT THIS ALLOCATION OF RISKS AND LIMITATION OF LIABILITY.

**11.4 EXCLUSIONS.** THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 11.3 WILL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS OR DIRECT DAMAGES DUE AS A RESULT OF EITHER PARTY'S FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

## 12 GENERAL PROVISIONS

**12.1 Entire Agreement.** This Agreement, including all addenda (if any) and all Orders, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to, supplement or modification of this Agreement will be binding unless in writing and signed by duly authorized representatives of both Parties. In the case of conflicts, discrepancies, errors or omissions among the Agreement, any, addenda, and any Order(s), the documents and amendments to them shall take precedence and govern in the following order: (a) Order; (b) Agreement; and (c) addenda (if any). The Customer acknowledges and agrees that it has had the opportunity to review all the documents contained in a URL prior to executing this Agreement, which it can print for its internal records.

**12.2 Headings.** The caption and the headings to clauses, sections, parts, paragraphs, and Orders are inserted for convenience only and shall be ignored in interpreting this Agreement.

**12.3 Contracting OutSystems Company, Governing Law and Jurisdiction.** The webpage available at www.outsystems.com/legal/governing-law-jurisdiction sets forth, based on where Customer is domiciled: (a) the OutSystems entity with which Customer is contracting under this Agreement and to which Customer should direct notices pursuant to Section 12.9 of this Agreement; (b) the governing law applicable to this Agreement, including any lawsuit or disputes arising out of or in connection with it, without giving effect to any choice or conflict of law provision or rule; and (c) which courts can adjudicate any such lawsuit. The Parties agree that neither the Uniform Computer Information Transaction Act nor the United Nations Convention for the International Sale of Goods will apply to this Agreement.

**12.4 Compliance with Laws.** The Parties agrees that, in connection with the performance of this Agreement, each Party shall comply with all laws applicable to such Party's respective performance under this Agreement, including without limitation all applicable anti-corruption laws, anti-money laundering laws, antitrust laws, economic sanctions laws, export control laws, data protection and data privacy laws, and modern slavery and human trafficking laws.

**12.5 Export Laws.** Customer agrees that Customer's use of the Software (including related Documentation), and Professional Services will comply with all applicable export control and trade sanctions laws, rules and regulations, including the regulations promulgated by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (collectively, "Export Laws"). Customer represents and warrants that Customer is not **(i)** located or resident in a country or territory that is subject to comprehensive U.S. trade sanctions or other significant trade restrictions (including, without limitation, Cuba, Iran, North Korea, Syria, and the Crimea region, Donetsk People's Republic region, and Luhansk People's Republic region of Ukraine) (collectively, the "Sanctioned Countries"); or **(ii)** identified on any U.S. government restricted party lists (including without limitation the Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, administered by OFAC, and the Denied Party List, Entity List and Unverified List, administered by BIS) (collectively, the "Restricted Party Lists"). Customer further certifies that Customer will not, directly or indirectly, export, re-export, transfer or otherwise use the Software (nor any direct product thereof) and/or the Professional Services in violation of the Export Laws, or with any purpose prohibited by the same Export Laws, in any Sanctioned Country, to any person or entity on a Restricted Party List, or for any nuclear, chemical, missile or biological weapons related end uses. Customer acknowledges that the Software and/or Professional Services, or any feature or part

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# OUTSYSTEMS MASTER SUBSCRIPTION AGREEMENT

thereof, may not be available for use in all jurisdictions and that Customer is responsible for complying with applicable Export Laws wherever Customer uses the Software and/or Professional Services. Notwithstanding Section 8.2 above, OutSystems shall have the right to terminate this Agreement, without notice and without liability, for any perceived or actual breach of this clause.

**12.6 Usage Data.** The Parties agree that OutSystems and its Affiliates may collect and use technical data related to the use of the Software, its performance, configuration and environment ("**Usage Data**") for statistical purposes, to improve the Software, and for compliance verification. The confidentiality obligation set forth in Section 7 ("Confidentiality") shall apply to the collection and use of such data.

**12.7 Personal Data.** In the event OutSystems has access to Personal Data through the execution of this Agreement, it shall act as Customer's data processor for the processing thereof, and shall process any Personal Data at all times in full compliance with the applicable data protection laws. The Parties agree that such processing shall be carried out in accordance with the data processing agreement as defined at http://www.outsystems.com/legal/master-subscription-agreement/data-processing-agreement, incorporated by reference into this Agreement, which the parties hereto agree to be binding upon them and that, within its scope, shall prevail over the Agreement.

**12.8 Suggestions, Ideas and Feedback**. Customer and its Affiliates, and their respective employees, contractors and other agents, may, in their sole discretion, choose to provide suggestions, ideas and/or feedback (collectively, "Feedback") to OutSystems with respect to the Subscription. OutSystems may use the Feedback perpetually and irrevocably for the purpose of improving its products and services, without compensation or accounting to Customer, provided that the Feedback **(i)** does not contain Personal Data, **(ii)** does not constitute the Confidential Information of Customer, and **(iii)** does not identify Customer as the source of the Feedback. Any Feedback is provided by Customer "as is" without warranty of any kind.

**12.9 Notices.** Any notice, consent, approval, or other communication intended to have legal effect to be given under this Agreement ("Notices") must be in writing and will be delivered (as elected by the Party giving such notice): **(i)** if provided to OutSystems, by email to legal@outsystems.com, or if provided to Customer to the email address of the Customer provided in the Order under the "ship to" address; **(ii)** by registered mail; or **(iii)** by overnight courier with proof of signature upon delivery. Unless otherwise provided in this Agreement, all Notices will be deemed effective on the date of receipt (or if delivery is refused, the date of such refusal) if delivered by registered mail and at 9.00 am of the next business day after the date of the transmission for email. Notices under this Agreement will be sent to the contact and addresses set forth in the signature sections of this Agreement and/or in the applicable Order. Either Party may change the address to which Notices shall be sent by giving Notice to the other Party in the manner provided in this Section 12.9. Notices shall be written in the English language.

**12.10 Relationship of Parties.** The Parties are independent contractors, not agents, employees or joint ventures of one another, and do not have any authority to bind the other Party by contract or otherwise, to any obligation. Neither Party will represent to the contrary, either expressly, implicitly, by appearance or otherwise.

**12.11 Assignment.** This Agreement is not assignable or transferable by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld. Any attempt by either Party to assign or transfer this Agreement without such consent shall be void. Notwithstanding the foregoing, OutSystems may freely assign or transfer this Agreement to any company that is an Affiliate or as a result of a merger or a sale of all or a substantial part of its assets or share capital. In the case of any permitted assignment or transfer of or under this Agreement, this Agreement and any existing Orders shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assignees of the Parties to this Agreement.

**12.12 No Solicitation.** During the term of this Agreement and for a period of 6 (six) months thereafter, neither Party shall, either directly or indirectly, solicit the employment of or hire any of the employees of the other Party, excluding the hiring of personnel in response to a general solicitation of employment directed to the public. This promise shall be construed as an agreement independent of, yet ancillary to, any other provision of this Agreement.

**12.13 Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement (including all Orders and addenda, if applicable), or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement or of the provision will continue in full force and effect, except to the extent such invalid provision or part of provision relates to essential aspects of the Agreement. The parties agree that such provision or portion thereof shall be substituted by a provision with an equivalent legal and economic effect.

**12.14 Force Majeure**. No Party shall be liable for, or considered to be in breach of this Agreement on account of, any failure or delay in performance of any of its obligations under this Agreement (except for the payment of money) if such failure or delay is due to acts of God, fires, flood, storm, explosions, earthquakes, acts of war or terrorism, riots, insurrection, pandemic, intervention of any government or authority or any other reason where the failure to perform is beyond the reasonable control of and not caused by the negligence or intentional acts or omissions of the non-performing Party.

**12.15 Verification**.

**12.15.1 Self-Managed Subscription Verifications.** For on-premises Software Subscriptions, OutSystems may request an on-site compliance verification no more than once per calendar year. For an on-site compliance verification, Customer shall allow OutSystems to perform such verification in relation to the use of the license under the Agreement. OutSystems shall give Customer a reasonable prior written notice of any on-site compliance verification to be conducted under this provision, which shall not be less than 30 (thirty) days. If a verification or Usage Data reveals that Customer has exceeded the scope of its license(s) grant, OutSystems shall have the right to invoice Customer using the current list price then in effect for such license, counting from the date of the first unauthorized or unlicensed use up to the end of the then current subscription term and/or the date of last usage if used after termination or expiration of the license(s).

**12.15.2 OutSystems Hosted Subscription Verifications.** For OutSystems hosted Subscriptions, if Customer exceeds its usage under the applicable Order(s) at any time during the Subscription Term or continues to use the Software after expiration of the Subscription, OutSystems may invoice Customer the applicable fees at the then-current list price in effect for such additional usage.

**12.16 Waivers of Rights.** 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 writing signed by a duly authorized representative on behalf of the Party claimed to have waived. No provision of any purchase order or other form employed or provided by Customer will supersede the terms and conditions of this Agreement and/or Order(s) executed with Customer, and any such document relating to this Agreement and/or Order(s) shall be for administrative purposes only and shall have no legal effect.

**12.17 Attribution.** Customer agrees that OutSystems may use Customer's name and logo and indicate that Customer is a client of OutSystems on its website, in any public filings and through its marketing materials, including but not limited to press releases, case studies, white papers and webinars. Any such attribution will be consistent with Customer's style guidelines or requirements as communicated to OutSystems from time to time.

**12.18 Survival.** Clauses and/or Sections 3.3 ("Restrictions of Use"), 6 ("Intellectual Property Rights, Ownership and Title"), 7 ("Confidentiality"), 8.4 ("Effect of Termination"), 8.5 ("Post-Termination Assistance"), 9.4 ("Disclaimer of Warranties"), 10 ("Indemnification), 11 (Limitation of Liability"), and 12 ("General Provisions") of this Agreement shall survive termination, without prejudice to other obligations that, pursuant to the applicable law or to this Agreement, shall also remain in force after termination date.

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