

# ICERTIS SAAS SUBSCRIPTION AND SERVICES AGREEMENT

THESE SERVICE TERMS ARE INCORPORATED BY REFERENCE INTO THE ORDER FORM AND/OR STATEMENT OF WORK EXECUTED BY THE COMPANY IDENTIFIED AS THE “SUBSCRIBER” THEREIN (“SUBSCRIBER” or “YOU”) AND ICERTIS, INC. (“ICERTIS”), PURSUANT TO WHICH THE SUBSCRIBER RECEIVED THE RIGHT TO USE SAAS AND/OR PROFESSIONAL SERVICES SUBJECT TO THESE SERVICE TERMS. BY SIGNING SUCH SOW OR ORDER FORM (AS APPLICABLE) YOU AGREE TO BE BOUND BY THESE SERVICE TERMS. THESE SERVICE TERMS WILL, AND YOUR WRITTEN CONSENT TO THEM WILL, FORM A MASTER AGREEMENT BETWEEN YOU AND ICERTIS AND GOVERN YOUR CURRENT AND ALL FUTURE ORDER FORMS AND/OR SOWS AND MAY NOT BE AMENDED WITHOUT THE WRITTEN CONSENT OF BOTH PARTIES. THESE SERVICE TERMS, THE ORDER FORM(S) OR SOW(S) TOGETHER FORM A BINDING AND EXECUTED WRITTEN AGREEMENT BETWEEN SUBSCRIBER AND ICERTIS, EFFECTIVE AS OF THE EFFECTIVE DATE OF THE ORDER FORM AND/OR THE SOW (THIS “AGREEMENT”).

## 1. DEFINITIONS

1.1 **“Affiliate”** means any entity that, directly or indirectly, controls, is controlled by or is under common control with such entity (but only for so long as such control exists), where **“control”** means the ownership of more than 50% of the outstanding shares or securities representing the right to vote in the election of directors or other managing authority of such entity.

1.2 **“Authorized Users”** means individuals who are employees or contractors of Subscriber or its Affiliates and who will use the SaaS in order to perform their obligations to Subscriber or its Affiliates.

1.3 **“Confidential Information”** means non-public business information, know-how, and trade secrets in any form, including information regarding a party’s product plans and any other information a reasonable person should understand to be confidential, which is disclosed by or on behalf of either party or its Affiliates (**“Disclosing Party”**) to the other party or its Affiliates (**“Receiving Party”**). Confidential Information includes this Agreement and its terms, and the SaaS and Documentation, and all software and infrastructure used to provide the SaaS. “Confidential Information” excludes information that (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (b) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (c) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party, as shown by the Receiving Party’s files and records; (d) is obtained by the Receiving Party from a third party without a breach of the third party’s obligations of confidentiality; or (e) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the Receiving Party’s possession.

1.4 **“Documentation”** means operation manuals and other user manuals relating to the SaaS made available by Icertis to Subscriber.

1.5 **“Order Form”** means an Order Form executed by Icertis and Subscriber.

1.6 **“Professional Services”** means any consulting, implementation, configuration, and other professional services described in an Statement of Work (**“SOW”**) that are performed by Icertis for Subscriber related to the SaaS.

1.7 **“SaaS”** means the cloud-based software identified on an Order Form as made available by Icertis to Subscriber hereunder in a hosted, software-as-a-service format, and including all Fixes and Upgrades to the SaaS that Icertis makes available for general release at no additional charge to its subscribers.

1.8 **“Subscriber Data”** means all data, information and other content submitted by Subscriber for processing by the SaaS, and the output of the processing of such data, information and content by the SaaS.

1.9 **“Support Services”** means the technical support services for the SaaS available at [www.icertis.com/foundation](http://www.icertis.com/foundation) (the **“Site”**) in the form of such document as it exists on the Effective Date of this Agreement (i.e. the terms will not be subject to unilateral change over time).

## 2. THE SERVICES

2.1 **Order Forms & Statements of Work.** Subscriber may order one or more subscriptions to use the SaaS pursuant to an Order Form, and engage Icertis for certain Professional Services by the execution of a SOW. Once executed by both parties, each Order Form and SOW will be a unique agreement that incorporates the terms of this Agreement and otherwise stands alone. If there is a conflict between the terms of this Agreement and the terms of a SOW or Order Form, the terms of the Order Form or SOW will prevail. The parties agree that Subscriber’s Affiliates may, as a contracting party, execute an Order Form or SOW under this Agreement, in which event such Affiliate will be bound by the terms of this Agreement as if such Affiliate was a Subscriber.

2.2 **Use of the SaaS.** Subject to the terms and conditions of this Agreement, Icertis grants to Subscriber a limited, nontransferable (except in connection with the transfer of this Agreement pursuant to Section 11.6), nonexclusive license, without the right to sublicense, to the SaaS for the term defined in the Order Form, solely for Subscriber’s internal business use by Authorized Users. Subscriber’s use rights, including the number of Authorized Users permitted to use the SaaS Services, are subject to any limitations on number or type that may be set forth in the Order Form. Icertis will use reasonable efforts to improve and enhance its offerings overall, and will from time-to-time provide upgrades and updates to Subscriber of the SaaS as and when made generally available.

2.3 **Use of the Documentation.** Subject to the terms and conditions of this Agreement, Icertis grants to Subscriber a limited, nontransferable (except in connection with the transfer of this Agreement pursuant to Section 11.6), nonexclusive license, without right of sublicense, for the term defined in the Order Form to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with Subscriber’s use of the SaaS in accordance with this Agreement.

2.4 **Restrictions.** Authorized User accounts cannot be used by more than one individual. Subscriber is responsible for the accuracy, quality and legality of the Subscriber Data, as well as for determining access privileges and rights for Authorized Users. Except as otherwise explicitly provided in this Agreement, Subscriber will not, and will not permit or authorize third parties to: (a) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the SaaS or Documentation, unless expressly permitted by applicable law; (b) rent, lease, or sublicense the SaaS or Documentation or otherwise provide unauthorized access thereto; (c) circumvent or disable any technological or security features or measures in the SaaS, or (d) use the SaaS: (i) to violate the rights of others; (ii) to try to gain unauthorized access to or disrupt any service, device, data, account or network; (iii) to spam or distribute malware; (iv) in a way that could harm the SaaS or impair anyone else’s use of it. Subscriber will only use the SaaS and Documentation in compliance with all applicable laws and regulations.

## 3. COMPENSATION

3.1 **Fees.** Other than amounts disputed in good faith, Subscriber will pay the fees and any other amounts owing under this Agreement and all applicable Order Forms and SOWs, plus any applicable taxes (the **“Fees”**).

3.2 **Travel.** Subject to the terms of an applicable Order Form or SOW, Subscriber will reimburse reasonable travel and related expenses incurred by Icertis in connection with onsite visits, including direct out of pocket expenses and economy class air fares. Icertis will give Subscriber prior written notice of any travel expenses not specified in an Order Form or SOW.

3.3 **Payment.** Unless otherwise specified in an Order Form or SOW, Subscriber will pay all amounts hereunder within thirty (30) days of the date of the applicable invoice. If Subscriber disputes any invoiced amount, Subscriber will notify Icertis in detail in writing as to the nature of the disputed charges and the reason for Subscriber’s disagreement prior to the due date of the payment, but Subscriber will pay all charges on the applicable invoice by their due date to the extent not disputed in good faith. Any undisputed amount not paid when

due will be subject to finance charges equal to one and one-half percent (1.5%) per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. If the right to use the SaaS is not limited by the number of Authorized Users, Subscriber will notify Icertis of any inorganic growth which is likely to or does result in a more than de-minimus increase in Authorized Users; upon which the parties will revisit the Fee for such actual or likely increase in good faith and may adjust as a result.

3.4 Taxes. Other than net income and gross receipt taxes imposed on Icertis, Subscriber will bear all taxes, duties, and other governmental charges (collectively, “**taxes**”) resulting from this Agreement. Subscriber will pay any additional taxes as are necessary to ensure that the net amounts received by Icertis after all such taxes are paid are equal to the amounts that Icertis would have been entitled to in accordance with this Agreement as if the taxes did not exist.

#### 4. TERM AND TERMINATION

4.1 Term. This Agreement will commence on the Effective Date and will continue until the earlier of this Agreement being terminated in accordance with the terms of this Agreement, or until there are no longer any then-effective SOWs or Order Forms. For the avoidance of doubt, the termination of this Agreement shall also result in the immediate termination of any then-outstanding SOW or Order Forms and the Services thereunder. Each Order Form and SOW will commence on the specified effective date and will terminate on the end date specified therein, unless earlier terminated in accordance with the terms of this Agreement.

4.2 Notice of Material Breach. If either party commits a material breach of this Agreement or of any of its obligations under any Order Form or SOW, the other party may give the breaching party written notice of the breach (including a statement of the facts relating to the breach, the applicable provisions of this Agreement or the applicable Order Form or SOW, and the action required to cure the breach) and its intent to terminate this Agreement or the applicable Order Form or SOW pursuant to this Section 4.2.

4.3 Notice of Suspension. Without limitation, any failure by Subscriber to timely pay to Icertis any undisputed amounts when due will constitute a material breach of this Agreement, and Icertis may, without limitation of any of Icertis’ other rights and remedies available, suspend performance of any or all SaaS, Professional Services and Support Services under any Order Form or SOW then in progress during any time that Subscriber is in default of such amounts owed to Icertis following ten (10) days of notice of suspension.

4.4 Notice of Termination. If a party fails to cure any material breach specified in any notice under Section 4.2 within thirty (30) days after the date of the receipt of the written notice (or a later date as may be specified in the notice), then the non-breaching party may terminate this Agreement or the applicable Order Form or SOW with respect to which the breach or default occurred by giving the breaching party written notice of termination.

4.5 Effects of Termination. Upon the expiration or termination of this Agreement, Icertis will provide a reasonable amount of information, cooperation and assistance to Subscriber if and as Subscriber may reasonably request such assistance at Icertis’s then-current list rates. Upon written request, Icertis will return Subscriber Data (in its then-current format and condition) at no additional fee. If not so requested by Subscriber within five (5) days of the effective date of termination, Icertis may destroy Subscriber Data. If an Order Form or SOW is terminated for any reason, any and all payment liabilities accrued prior to the effective date of the termination will survive. If this Agreement is terminated by Subscriber for an uncured material breach by Icertis, Icertis will refund any amounts prepaid by the Subscriber for Services to be provided following the effective date of such termination.

4.6 Survival. The parties’ respective rights and obligations under Sections 1,3, 4, 5, 7, 10.1 - 10.3 and 11 of this Agreement, and any and all liabilities accrued prior to the effective date of termination of this Agreement, will survive the termination of this Agreement.

#### 5. PROPRIETARY RIGHTS

5.1 Services and Documentation. Notwithstanding any other provision in this Agreement, as between Subscriber and Icertis, Icertis exclusively owns all right, title and interest in and to the SaaS and Documentation and all portions thereof, as well as all improvements, enhancements, modifications, configurations, and derivative works thereto, together with all intellectual property rights therein, including all copyrights, patent and trade secret rights. Icertis reserves all rights to the SaaS and Documentation not expressly granted to Subscriber under this Agreement.

5.2 Subscriber Data. Icertis acknowledges that, as between Icertis and Subscriber, Subscriber owns all intellectual property and other proprietary rights in and to the Subscriber Data. Subject to the rights granted by Subscriber under this Agreement, Icertis acquires no right, title or interest from Subscriber or Subscriber's licensors under this Agreement in or to Subscriber Data. Subscriber hereby grants to Icertis a worldwide, nonexclusive, fully-paid up and non-transferable (except in connection with the transfer of this Agreement pursuant to Section 11.6) license to use the Subscriber Data to perform its obligations hereunder, including the obligation to improve and enhance its offerings overall as set forth in Section 2.2. Icertis may direct an Icertis computer algorithm to "read" Subscriber Data to generally inform machine learning capabilities in the Icertis solution, and may also use Subscriber Data to generate industry relevant analysis. In any such use, Subscriber Data will never be shared with third parties and Subscriber will remain anonymous and never be publicly associated with any such efforts.

5.3 Feedback. Icertis welcomes any feedback that Subscriber may provide Icertis concerning improvements to the SaaS ("**Feedback**"). For clarification, Feedback excludes Subscriber Data and Subscriber's proprietary information. By providing Feedback to Icertis, Subscriber hereby grants Icertis a worldwide, fully paid-up, perpetual, irrevocable and transferable license to use the Feedback (including by incorporation of such feedback into the SaaS).

## 6. DATA SECURITY; SERVICE AVAILABILITY; SUPPORT SERVICES

6.1 Security. Icertis has implemented and will maintain reasonable administrative, physical and technical security measures consistent with current prevailing security practices in the United States software-as-a-service industry and intended to protect against the loss, misuse, unauthorized access, alteration or disclosure of Subscriber Data. Such measures will include compliance with Icertis' Security Framework available at the Site in the form of such document as it exists on the Effective Date of this Agreement (i.e. the terms will not be subject to unilateral change over time). Icertis will comply with all applicable law concerning privacy, data transfer and security. If and to the extent applicable, Icertis will comply with the Data Protection Addendum available at the Site in the form of such document as it exists on the Effective Date of this Agreement (i.e. the terms will not be subject to unilateral change over time). Subscriber must immediately notify Icertis of any suspected security breach at [itsecure@icertis.com](mailto:itsecure@icertis.com), followed by contacting Subscriber's customer relationship manager.

6.2 Malicious Code. Icertis will use measures consistent with prevailing practices in the United States software-as-a-service industry to screen the SaaS for the purpose of avoiding the introduction of any Malicious Code into Subscriber Data or Subscriber's computer hardware and software systems or software. For the purposes of this Agreement, "**Malicious Code**" means software designed to (a) permit unauthorized access to and/or copying of Subscriber's data, hardware or software; or (b) damage, delete, delay, disable, erase, interfere with, modify, shut-down or otherwise harm Subscriber's data, hardware or software, including, but not limited to, components that are commonly referred to as "back doors," "bots", "drop dead devices", "malware", "time bombs," "Trojan Horses," "viruses", and "worms". In the event Icertis introduces Malicious Code into Subscriber Data or Subscriber's computer hardware or software systems or software, Icertis will reasonably assist Subscriber in removing such virus and/or Malicious Code at no additional charge.

6.3 Service Availability. Icertis incorporates database and system maintenance operations and processes designed to address data consistency, indexing, and integrity requirements and to help improve system performance. Icertis also uses an industry-leading hosting infrastructure to provide the SaaS and has implemented and will maintain commercially reasonable business resumption and contingency plans intended to avoid unplanned SaaS

interruptions. In the event of an unplanned SaaS interruption, Subscriber may contact Icertis for Support Services. Icertis will comply with the Service Level Standards available at the Site in the form of such document as it exists on the Effective Date of this Agreement (i.e. the terms will not be subject to unilateral change over time).

6.4 Support Services. Icertis will provide Subscriber with Support Services, as set forth in the Customer Support Policy available at the Site, with respect to the SaaS so long as Subscriber is current in payment of the Fees. Icertis will only be obligated to support the then-current commercially available version of the SaaS and the immediately prior major release (the “**Supported Versions**”). Warranty and SLA commitments herein will not apply to the extent a nonconformity is due to use of a version other than a Supported Version.

## 7. CONFIDENTIALITY

7.1 Mutual Confidentiality. The Receiving Party agrees to take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, but not less than reasonable care, to prevent the unauthorized duplication or use of the Disclosing Party’s Confidential Information and the disclosure of the Disclosing Party’s Confidential Information to third parties without the Disclosing Party’s prior written consent. The Receiving Party may disclose the Disclosing Party’s Confidential Information to the Receiving Party’s employees or agents who reasonably need to have access to such information to perform the Receiving Party’s obligations under this Agreement, and who will treat such Confidential Information under the terms of this Agreement. Icertis may disclose this Agreement (but not any of Subscriber’s other Confidential Information) to actual and potential investors and funding sources who agree to hold it in confidence.

7.2 Exceptions. The Receiving Party may disclose the Disclosing Party’s Confidential Information as required by applicable law or regulation or as may be required to comply with a court order compelling such disclosure; provided that, unless legally prohibited from doing so, the Receiving Party gives the Disclosing Party prompt written notice of the requirement prior to the disclosure and reasonable assistance in limiting disclosure or obtaining an order protecting the information from public disclosures.

7.3 Publicity. Subscriber agrees that upon request by Icertis, provided that Icertis not disclose any of Subscriber’s Confidential Information (a) Icertis may create and publish a case study regarding the nature of Subscriber’s use of the SaaS and Subscriber will reasonably assist in the creation of the case study; (b) Subscriber will make one or more representatives reasonably available to participate in reference inquiries from Icertis’ potential customers and partners; (c) Icertis may identify Subscriber by name and logo as a customer in Icertis’ published customer lists, and (d) Icertis may issue a press release announcing Subscriber as a customer.

## 8. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party’s execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

8.2 Icertis Representations and Warranties. Icertis represents and warrants to Subscriber that:

(a) Icertis has sufficient right, title and interest in the SaaS to license the SaaS to Subscriber in accordance with this Agreement, and that entering into and carrying out the terms and conditions of this Agreement will not violate or constitute a breach of any agreement binding upon Icertis;

(b) Subscriber’s use of the SaaS in accordance with this Agreement will not infringe, misappropriate or otherwise violate any third party intellectual property or other proprietary rights;

(c) the Support Services and Professional Services will be performed in a professional and workmanlike manner and will be of a grade, nature, and quality that meets prevailing standards in the software-as-a-service industry; and

(d) at all times during the applicable subscription term the SaaS, as operating in a production environment, will materially conform to the Documentation.

8.3 Icertis Warranty Remedies. If Icertis receives a written notice and description of a breach of the warranty for SaaS in Section 8.2(d) during the applicable subscription term, or receives a written notice and description of a breach of the warranty for Professional Services in Section 8.2(c) within sixty (60) days after performance of the non-conforming Professional Services, then Icertis will endeavor to correct such non-conformity at no additional charge. At any time, Subscriber may terminate this Agreement, the applicable Order Form and/or its related SOW (in whole or in part) in conformity with Section 4.2 for a material breach of this warranty. Any efforts to cure the material non-conformity will be performed at no additional cost to Subscriber. Upon any such termination, Icertis will promptly provide a refund to Subscriber of amounts prepaid for Services to be provided following the effective date of such termination.

8.4 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 8, ICERTIS MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. INDEMNITY

9.1 Indemnity. Icertis will defend and indemnify Subscriber, its employees and Affiliates (collectively, the “**Indemnitees**”) from and against any and all claims, proceedings, or suits brought by a third party against an Indemnitee (a “**Claim**”) and all related settlements or court-awarded liabilities that arise out of or are based on a Claim, (i) that Subscriber’s use of the SaaS in accordance with this Agreement infringes, misappropriates or violates such third party’s intellectual property rights, (ii) made by any subcontractor or independent contractor of Icertis or by any personnel of Icertis, in each case in connection with or arising from such person’s or entity’s role as subcontractor, contractor or personnel of Icertis, including (as an example) alleging that any Indemnitee should be deemed the “employer” or “joint employer” of any of Icertis’ personnel, or (iii) resulting from any grossly negligent act or omission by Icertis or its personnel that results in personal injury or death, or damage to tangible personal property. Icertis’ obligations under subsection (i) shall not extend to Claims where the actual or allegedly offending SaaS would not so infringe, misappropriate or violate such third party’s intellectual property or other rights if other, non-offending data, reports, statistics or other information were used in place of the Subscriber Data.

9.2 Indemnification Procedures. If an Indemnitee seeks indemnification under this Agreement, the Indemnitee will: (i) give prompt notice to Icertis concerning the existence of the indemnifiable event; (ii) grant authority to Icertis to defend or settle any related action or claim; and, (iii) provide such information, cooperation and assistance to Icertis as may be reasonably necessary for Icertis to defend or settle the claim or action. An Indemnitee’s failure to give prompt notice shall not constitute a waiver of the Indemnitee’s right to indemnification and shall affect Icertis’ indemnification obligations only to the extent that Icertis’ rights are materially prejudiced by such failure or delay. Notwithstanding anything to the contrary set forth herein, (i) an Indemnitee may participate, at its own expense, in any defense and settlement directly or through counsel of its choice, and (ii) Icertis will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnitee or increase the obligations assumed by the Indemnitee under this Agreement, without the prior written consent of the Indemnitee.

## 10. LIMITATIONS OF LIABILITY; INSURANCE

10.1 Disclaimer of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL, UNDER ANY

CIRCUMSTANCES, BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL OR DAMAGE TO REPUTATION ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, WHETHER CAUSED BY BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, EVEN IF THE LIABLE PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

10.2 Cap on Liability. WITH THE EXCEPTION OF FEES DUE UNDER THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID AND PAYABLE BY SUBSCRIBER TO ICERTIS UNDER THIS AGREEMENT WITHIN THE PRECEDING 12 MONTH PERIOD (DETERMINED AS OF THE DATE OF THE EVENT GIVING RISE TO THE CLAIM).

10.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY ICERTIS TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 10.3 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

10.4 Liability Insurance. Icertis agrees to obtain from an insurance carrier with a minimum AM Best rating of A-, and maintain during the term of this Agreement and for one (1) year thereafter: (a) comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) technology errors and omissions insurance, including cyber liability coverage, in an amount not less than \$5,000,000 in the aggregate; (c) automobile liability insurance in an amount not less than \$1,000,000 per occurrence; (d) umbrella liability insurance in an amount not less than \$5,000,000; (e) employer's liability insurance in an amount not less than \$1,000,000 per occurrence; and (f) worker's compensation insurance coverage sufficient to meet the statutory requirements of every state in which Icertis personnel are performing SaaS, Support Services or Professional Services on behalf of Subscriber. Icertis will provide Subscriber with a certificate of insurance upon request.

## 11. MISCELLANEOUS

11.1 Independent Contractor & Subcontractors. It is the express intention of the parties that Icertis performs all of the services as an independent contractor. Without limiting the generality of the foregoing, Icertis is not authorized to bind Subscriber to any liability or obligation or to represent that Icertis has any such authority. Icertis may use a subcontractor or other third party in carrying out its obligations under this Agreement; however, Icertis remains responsible for all of its obligations under this Agreement and for any breach of this Agreement by any such subcontractor or other third party.

11.2 Governing Law; Venue. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of Washington, U.S.A, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The parties agree that any action arising out of or in connection with this Agreement will be heard in the federal, state, or local courts in King County, Washington, U.S.A., and each party hereby irrevocably consents to the exclusive jurisdiction and venue of these courts.

11.3 Notices. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be: (a) delivered in person or (b) sent by overnight air courier with some form of tracking mechanism, in each case properly posted and fully prepaid to the appropriate address. The initial address for

notices for each party is set forth on the signature page to this Agreement, but either party may change its address for notices by notice to the other party given in accordance with this Section 11.3. Notices will be deemed given at the time of actual delivery in person or one day after delivery to an overnight air courier service.

11.4 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (other than payment of Fees) as a result of any cause or condition beyond such party's reasonable control (e.g. earthquake, flood, severe storms, fire, explosion, civil or military authority, power blackout, strike, embargo, labor disputes), so long as such party uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

11.5 Waiver & Severability. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the party's right to take subsequent action. If any term, condition, or provision in this Agreement is found to be invalid, unlawful, or unenforceable to any extent, the parties will endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on an amendment, the invalid term, condition, or provision will be severed from the remaining terms, conditions, and provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

11.6 Assignment. Neither party will assign or otherwise transfer this Agreement, or such party's rights and obligations hereunder, either voluntarily, by operation of law or otherwise, absent the other party's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, either party may, upon fifteen (15) days' prior written notice to the other party, assign all of its rights and delegate all of its duties under this Agreement to: (a) the surviving entity in a merger, sale, consolidation, or combination; or (b) an entity that acquires all or substantially all of the assigning party's assets related to this Agreement.

11.7 Export Compliance. As required by the laws of the United States and other relevant countries, Subscriber represents that it: (a) understands that the SaaS may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("**EAR**") or export controls of other relevant countries; (b) is not located (including the Authorized Users or its Affiliates) in a prohibited destination country under the EAR or U.S. or other relevant country sanctions regulations; (c) will not export, re-export, or transfer or allow the use of the SaaS to any prohibited destination or persons or entities on the U.S. Bureau of Industry and Security Denied Parties List or Entity List, or the U.S. Office of Foreign Assets Control list of Specially Designated Nationals and Blocked Persons, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (d) will not use (including the Authorized Users or its Affiliates) or transfer the SaaS in connection with any nuclear, chemical or biological weapons, missile technology, or military end-uses where prohibited by an applicable arms embargo, unless authorized by the relevant government agency by regulation or specific license; and (e) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the SaaS) and agrees that Subscriber will be solely responsible for compliance with any such import, use, or export restrictions. Icertis will provide reasonable assistance to Subscriber in determining compliance with Section 11.7.

11.8 Integration. This Agreement and all exhibits and addenda, as well as all Order Forms and SOWs, contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions, or conditions of any purchase order, acknowledgement, or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties, or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of a receiving party to object to these terms, provisions, or conditions. This Agreement may not be amended, except by a writing signed by both parties.