

Thank you for your purchase of Arctera Business Critical Services (“**BCS**”). The terms “You”, “Your” or “Customer” refer to the BCS recipient/contract owner and the term “Arctera” refers to Arctera US LLC and/or its affiliates. This document (“**Certificate**”) is a legal agreement by and between You and Arctera. This Certificate applies to the BCS identified on the front of this Certificate.

If You do not have an executed agreement for BCS, then BCS is performed pursuant to this Agreement. This “**Agreement**” means, collectively and in the following order of precedence, (i) this Certificate (including all pages hereof), (ii) the applicable BCS service description, as published at <https://www.arctera.io/license-agreements> or successor address (“**Service Description**”), (iii) the underlying Essential Support agreement (“**Support Agreement**”); and (iv) any relevant terms in the license agreement between Arctera and Customer (“**License Agreement**”). Capitalized terms not otherwise defined in this Certificate shall have the meaning given elsewhere in the Agreement.

CERTIFICATE TERMS

- 1. PREREQUISITES.** Customer must hold a valid License Agreement for the underlying Eligible Software (as defined in the Service Description) and have and maintain a current support agreement for Essential Support for the Eligible Software. Arctera is not obligated to provide any credits, refunds or extensions of BCS when BCS is suspended for Customer’s failure to maintain Essential Support.
- 2. BCS.** Arctera will provide BCS as described in the applicable Service Description for the specific BCS offering(s) Customer has purchased. Arctera will provide such BCS only in support of Customer’s internal business purposes.
- 3. PAYMENT.** Customer agrees to pay the applicable BCS fees. In the absence of a mutually executed agreement specifying payment terms, the payment terms of the Arctera quote related to Customer’s BCS shall apply. If Customer is purchasing BCS through a Arctera-authorized distributor/reseller, the fees and payment terms applicable to BCS shall be as separately agreed between Customer and such distributor/reseller.
- 4. TERMINATION.** This Agreement may be terminated at any time by either party: (i) upon written notice if the other party breaches any material term of this Agreement, and such breach remains uncorrected for thirty (30) days following written notice; or (ii) immediately, if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or similar action for the benefit of creditors as a consequence of debt, or if the other party otherwise ceases or threatens to cease business. No refund will be due for any termination of this Agreement, irrespective of the reason for such termination.
- 5. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS ITS ESSENTIAL PURPOSE, IN NO

EVENT SHALL ARCTERA OR ITS SUPPLIERS BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE TO CUSTOMER OR ANY PERSON OR ENTITY FOR: I) ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND; OR II) COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS OR SERVICES, LOST BUSINESS PROFITS OR REVENUE OR LOST OR CORRUPTED DATA, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF GOODWILL OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; EVEN IF ADVISED OF THE POSSIBILITY AND WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THE AGREEMENT OR USE OF THE BCS OR THE PERFORMANCE, DEFECTIVE PERFORMANCE, NON- PERFORMANCE OR DELAYED PERFORMANCE BY ARCTERA OF ANY OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THIS AGREEMENT. IN NO CASE SHALL ARCTERA'S LIABILITY EXCEED THE FEES PAID BY CUSTOMER IN THE PREVIOUS TWELVE MONTHS FOR THE BCS GIVING RISE TO THE CLAIM. NOTHING IN THE AGREEMENT SHALL EXCLUDE OR LIMIT ARCTERA'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW.

6. PRIVACY AND DATA PROTECTION. Customer recognizes that Arctera will require Customer to supply certain personal data (such as business contact names, business telephone numbers, business e-mail addresses), and Customer acknowledges that Arctera is a global organization, and such personal data may be accessible on a global basis to provide BCS to Customer. By providing such personal data, Customer ensures that, to the extent required by applicable laws, it has informed relevant individuals of, and has obtained all necessary consents and authorizations for, Arctera's use, transfer and processing of their personal data on a global basis for the purposes described above. Where Customer's processing of the personal data provided to Arctera under this Certificate is subject to the General Data Protection Regulation (EU) 2016/679, or other applicable laws that relate to the processing of personal data and privacy, Arctera shall process such personal data in accordance with the Data Processing Terms and Conditions at <https://www.arctera.io/privacy>. All questions and requests on privacy matters may be addressed to Arctera US LLC – Privacy Program Office at Arctera's headquarters location published at [arctera.io](https://www.arctera.io) or by e-mail at privacy@arctera.io.

7. PERFORMANCE BY THIRD PARTIES. Arctera has the right to subcontract the performance of BCS to third parties, provided Arctera remains responsible for the contractual obligations of the Agreement.

8. ASSIGNMENT. Customer may not assign the rights granted hereunder or the Agreement, in whole or in part and whether by operation of contract, law or otherwise, without Arctera's prior written consent, except to the extent expressly permitted under the License Agreement. Such consent will not be unreasonably withheld or delayed. Customer shall have no right to sell, resell or use the benefits of BCS to or for any third party.

9. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between Arctera and Customer pertaining to BCS and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication between the parties regarding such subject matter. This Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned.