

# Appliance Support Certificate

2024



This document ("**Certificate**") is a legal agreement between the end user ("**Customer**") and Arctera US LLC and/or its affiliates ("**Arctera**"). This Certificate and the rights granted herein apply solely to the Arctera appliance ("**Appliance**") and/or services identified on the front of this Certificate (or if not on the front of this Certificate then in the entitlement details page of your Licensing Portal account). The Appliance includes certain hardware ("**Hardware**") and certain software installed on the Hardware ("**Software**").

If this Certificate applies to a consolidated order where there are multiple entitlement owners listed on the front of the Certificate, then the end user entity receiving this Certificate must provide this Certificate, including these Support terms, to each of the entitlement owners listed on the front of the Certificate.

IF CUSTOMER DOES NOT AGREE TO THESE TERMS THEN ARCTERA WILL NOT PROVIDE CUSTOMER WITH APPLIANCE SUPPORT. CUSTOMER'S RECEIPT OF APPLIANCE SUPPORT INDICATES ITS AGREEMENT TO THESE TERMS.

**Appliance Support Offering:** Arctera will provide Customer with the support services for the Appliance set forth in the Appliance Support description ("**Appliance Support Description**") located at <https://www.arctera.io/license-agreements> or successor address ("**Appliance Support**"), as of the start date for the purchased Appliance Support, within the country in which Customer is located as indicated by Customer's address set forth on the front of this Certificate. Arctera will provide Appliance Support to Customer subject to the terms and conditions set forth in this Certificate and applicable Arctera Support Policies.

**Customer Disk Retention Option:** If Customer has purchased the customer disk retention option (also referred to as non-returnable disk offering) ("**CDRO**"), then, in the event of a disk drive failure in the Appliance, Customer will have the option to keep failed disk drives once those disk drives have been replaced and will not be required to return failed disk drives to Arctera. If Customer elects to keep failed disk drives that have been removed from the Appliance, Customer shall be responsible for the proper disposal or storage of such failed disk drives.

**Additional Components:** If Customer obtains additional Hardware or Software to expand the capacity of the Appliance, support services for such additional components shall be subject to the terms and conditions set forth in this Certificate.

**Support Policies:** Capitalized terms not otherwise defined in this Certificate shall have the meaning given in applicable Arctera technical support policies ("**Arctera Support Policies**"). Arctera Support Policies may be revised and updated by Arctera from time to time without notice to Customer. Copies of the policies are at <https://www.arctera.io/support-fundamentals> or <https://www.arctera.io/license-agreements>, or their successor addresses. Appliance Support may be modified or discontinued for certain versions of the Software or Appliance prior to the end dates for the purchased Appliance Support.

**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 Appliance Support 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](mailto:privacy@arctera.io).

**Support Warranty.** Arctera warrants for a period of thirty (30) days from the date of performance of Appliance Support under this Certificate, that such Appliance Support will be performed in a manner consistent with generally accepted industry standards. If Customer reports to Arctera any non-conformance of Appliance Support with this warranty within thirty (30) days of performance, Arctera will, at its discretion, either correct any nonconforming Appliance Support services or refund the relevant fees paid for the nonconforming services for such Appliance Support. This warranty is separate from Arctera's warranty regarding the Software or Appliance. **CUSTOMER AGREES THAT THE REMEDIES, EXPRESS OBLIGATIONS AND WARRANTIES HEREIN ARE EXCLUSIVE AND IN LIEU OF AND TO THE EXCLUSION (TO THE FULLEST EXTENT PERMITTED BY LAW) OF ANY OTHER REMEDY, WARRANTY, CONDITION, TERM, UNDERTAKING OR REPRESENTATION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, RELATING TO ANYTHING SUPPLIED OR APPLIANCE SUPPORT PROVIDED UNDER OR IN CONNECTION WITH THIS CERTIFICATE INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY, CONDITION, TERM, UNDERTAKING OR REPRESENTATION AS TO THE CONDITION, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE APPLIANCE SUPPORT.**

**LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL ARCTERA BE LIABLE TO CUSTOMER FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THE PROVISION OF SUPPORT, EVEN IF ARCTERA, ITS RESELLERS, SUPPLIERS OR ITS

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AGENTS HAS BEEN TOLD SUCH DAMAGES MIGHT OCCUR. IN NO CASE SHALL ARCTERA'S LIABILITY EXCEED THE FEES PAID BY CUSTOMER IN THE PREVIOUS TWELVE MONTHS FOR THE APPLIANCE SUPPORT GIVING RISE TO THE CLAIM. NOTHING IN THIS CERTIFICATE SHALL EXCLUDE OR LIMIT ARCTERA'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW.

**Subcontractors:** Arctera reserves the right and Customer consents to Arctera's use of subcontractors to provide Appliance Support.

**Integration:** This Certificate and the applicable Appliance Support Description constitutes the entire agreement between the parties pertaining to the subject matter hereof, and, except as otherwise agreed upon in writing by the parties, supersedes any and all prior written or oral agreement with respect to such subject matter.

**Governing Law; Severability; Waiver.** If Customer is located in North America or Latin America, this Certificate will be governed by the laws of the State of California, United States of America. If Customer is located in China, this Certificate will be governed by the laws of the Peoples Republic of China. Otherwise, this Certificate will be governed by the laws of England. Such governing laws are exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this Certificate is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and remaining provisions of this Certificate shall remain in full force and effect. A waiver of any breach or default under this Certificate shall not constitute a waiver of any other subsequent breach or default.