

These Arctera SaaS Terms (“**SaaS Terms**”) are part of the Agreement between Customer and Arctera. For the purposes of these SaaS Terms, “**Arctera**” means Arctera US LLC and/or its affiliates, and the term “**Customer**” refers to the entitlement/contract owner named in the Order. The “**Agreement**” consists of, collectively, the relevant Service Description, these SaaS Terms, and the applicable Order, in that order of precedence, as such terms are defined below. The Agreement provides the terms and conditions under which Customer acquires and uses, and Arctera provides to Customer, a software-as-a-service (“**SaaS**”), sometimes called hosted, service (“**Service**”). Under such a Service, Customer will submit information to be processed or stored through that Service (“**Customer Data**”). Customer and Arctera agree as follows:

## 1. DELIVERY OF SERVICE

**1.1 Ordering.** Customer shall place an order (“**Order**”) for a Service subscription either directly with Arctera, through an authorized Arctera channel partner, or through another authorized ordering system, such as an online marketplace. Such Order may take the form of an executed order form, addendum, exhibit, or statement of work, or in the absence of such a document, Customer’s order submitted against a valid quote and accepted by Arctera as documented in a machine-generated certificate issued in confirmation of such Order (“**Order Form**”). In the event of a conflict, an executed Order Form, executed Agreement, and Service Description (as defined below) shall govern in that order of precedence.

**1.2 Provisioning.** Customer is responsible for submitting complete and accurate provisioning information at the time of Order for Arctera to be able to provision and make the Service available to Customer in accordance with the Customer’s preferred settings. In this provisioning information, Customer may select the data center where Customer Data will be hosted, subject to the availability of a particular data center for that Service. Customer shall ensure the information submitted at provisioning aligns with any instructions provided under an Order or this Agreement.

**1.3 Usage Grant.** Following provisioning, and subject to Customer’s compliance with this Agreement, Arctera authorizes Customer to use the Service solely for its internal, lawful business purposes (i) for the subscription’s duration specified in the Order (“**Subscription Term**”), including any renewal periods; (ii) in accordance with the Service meter, sometimes called a use level, such as “per front-end terabyte” or “per user”; and (iii) up to the quantities Customer has purchased, all as specified in the Order. Customer’s Subscription Term begins immediately upon Arctera making the Service available to Customer. Configuration and use of the Service are entirely in Customer’s control. Customer may allow its consultants, outsourcers, and Affiliates to use the Service, provided Customer ensures such entities adhere to the terms of this Agreement, and Customer assumes full responsibility for their actions. A Customer’s Affiliate may also separately place an Order for a Service under these terms and conditions to have its own separate Service instance. An “Affiliate” means any present or future entity that, directly or indirectly Controls, or is Controlled by, or is under common Control with either party, where “Control” means power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract, or otherwise.

**1.4 Service Description.** Specific details around the Service Customer has purchased, including how Arctera will deliver such Service to Customer, can be found in the applicable service description for such Service (“**Service**”).

**Description**”), a current copy of which can be found at <https://www.arctera.io/license-agreements>, or successor address, and is incorporated by reference.

**1.5 Additional Usage.** Customer’s purchased quantity of Service in its initial Order is considered its commitment to at least that amount of quantity (“**Minimum Commit**”) during a Subscription Term. If Customer later needs additional quantities, Customer may place a new Order for such additional quantities at any time and the adjusted total quantity will become Customer’s new Minimum Commit. If Customer exceeds its Minimum Commit or other usage limits as specified in this Agreement or the Service Description, Arctera shall invoice for such excess usage (“**Overage**”) and Customer shall promptly pay Arctera or its authorized channel partner for such Overage.

**1.6 Reduced Usage.** Customer may reduce existing quantities of Service at the end of the then-current term. Any reduction in quantity is subject to adjusted pricing and prior discounts will not be available.

**1.7 Service Components.** A Service may require certain enabling software, hardware peripheral, and associated documentation (“**Service Component**”) separately provided by Arctera as an incidental part of a Service. Customer’s right to use such Service Component continues for the duration of the Subscription Term, including any renewal periods. Customer must uninstall and cease use of any Service Components, and Arctera may also disable such Service Components, when Customer’s right to use the associated Service terminates or expires.

**1.8 Support.** Arctera shall provide global technical assistance and support to Customer for the Service during the Subscription Term, including any renewal periods, as further described in the Service Description. Support shall include any applicable Service Components.

**1.9 Compliance with Law.** Arctera shall provide the Service in accordance with all laws and regulations applicable to Arctera’s provision of the Service to its customers generally, without regard to Customer’s particular use of the Services. Subject to the Data Security and Privacy section below and to the extent permissible under applicable law or regulation, Arctera does not determine whether Customer Data includes any information subject to any specific law or regulation. Customer is responsible for (i) determining whether the Service is satisfactory for processing and storing the type of Customer Data Customer will submit, (ii) determining whether the Service will meet Customer’s legal and regulatory requirements, and (iii) using the Service in a manner consistent with those requirements.

The parties shall comply with all applicable anti-bribery and corruption, and anti-money laundering laws, rules, regulations or equivalent of the United Kingdom, the United States, and all locations out of which that party operates or does business, including the UK Bribery Act 2010 and the Foreign Corrupt Practices Act of 1977 of the United States.

**1.10 Warranty.** Arctera shall provide the Service with reasonable care, skill, and diligence, in a good and workmanlike manner, and substantially in accordance with the Service Description.

CUSTOMER AGREES THAT THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS WHETHER EXPRESS OR IMPLIED CONCERNING THE SERVICE, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONTINUED INTEROPERABILITY WITH THIRD-PARTY TOOLS OR SERVICES, OR NON-INFRINGEMENT OF

INTELLECTUAL PROPERTY RIGHTS. ARCTERA DOES NOT WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

## 2. PAYMENT DETAILS

**2.1 Invoicing and Fees.** Customer shall pay the fees ("**Fees**") specified in an Order or any other invoices issued for the Service, such as Overages or renewal invoices, as applicable. Fees will be calculated from the date the Service is first made available to Customer; however, Arctera reserves the right to begin charging Fees if, due to Customer's negligent act, omission, or failure to provide required information within a reasonable time, Arctera is unable to make the Service available. If Customer placed the Order through an authorized Arctera channel or marketplace partner, Customer shall pay such Fees as separately agreed to between Customer and that partner. If Customer placed the Order directly with Arctera, such Fees shall be paid to Arctera. If Arctera or Customer requires a purchase order document to process an Order or invoice, then such purchase order must have sufficient detail to allow Arctera to accept and accurately fulfill Customer's Order. Customer shall pay Arctera such invoiced amounts within thirty (30) days of the invoice date ("**Due Date**"). If Customer in good faith disputes Fees in any invoice, Customer is required to notify Arctera in writing of any such dispute with all relevant details at [ordermanagement@arctera.io](mailto:ordermanagement@arctera.io) within ten (10) days of invoice date and agrees to work diligently with Arctera to resolve the dispute. Any undisputed Fees that remain unpaid as of the Due Date of the corresponding invoice shall be subject to a late charge until paid in full equal to the greater of: (i) three quarters of a percent (.75%) per month; or (ii) the highest rate permissible by law on the unpaid balance. All Fees paid or payable for the Service are non-cancellable and non-refundable.

**2.2 Taxes.** Customer is responsible for all taxes, customs duties, import fees or other similar charges, and all other mandatory payments imposed by government entities with respect to the Service or other items provided under this Agreement, excluding tax imposed on Arctera's net income and withholding taxes (subject to the condition of providing withholding tax payment receipts, as set forth below). Arctera will bill applicable taxes as a separate item on Customer's invoice and will not include them in the Fees. If a transaction is exempt from tax, Customer will provide Arctera with a valid exemption certificate or other evidence of such exemption in a form acceptable to Arctera. If Customer is required by law to withhold any tax from the payment, Customer will provide to Arctera original or certified copies of all tax payment receipts or other evidence of payment of taxes by Customer with respect to transactions under this Agreement, no more than thirty (30) days after the invoice Due Date. If Customer fails to provide Arctera with such tax payment receipts, then Customer will reimburse Arctera for any fines, penalties, taxes, and other governmental agency charges resulting from such failure.

**2.3 Renewal.** Upon expiration of a Service's Subscription Term and unless either party has opted out or otherwise cancelled, the Service will automatically renew for one-year terms. Customer may opt out of automatic renewals or direct its authorized Arctera channel partner to opt out on Customer's behalf at the time of Order, but please note that Customer is responsible for submitting a timely renewal order or Customer's Service subscription will expire. Customer may cancel its Service subscription at any time; however, such cancellation shall only take effect upon the end of the then-current term, and Customer remains responsible for any invoices due for the remainder of such term. Customer must provide notice of cancellation to [returnsandcancellations@arctera.io](mailto:returnsandcancellations@arctera.io) in accordance with the Service Description at least ninety (90) days prior to the next renewal date. Automatic renewal may not be available

in some circumstances, such as promotional incentives, substantial discounting, or certain online marketplace transactions. Arctera may update its pricing for a Service by publishing, quoting, or invoicing Customer at the updated pricing at least one hundred twenty (120) days prior to Customer's next renewal period or as otherwise described in the Order Form. Any such pricing updates shall not apply to Fees until the next renewal period.

## 3. TRIAL SERVICE

**3.1 Evaluation of Service.** Customer may request to evaluate a Service or Service feature on a trial or pre-production pilot basis and Arctera may make such Service or Service feature available to Customer for a limited duration at no additional Fee ("**Trial Service**"). Unless otherwise expressly provided by Arctera in writing, Customer shall use only non-production or evaluation data, and shall not use, submit, or transfer any data at all if Arctera demonstration data is already provided. A Trial Service excludes service level agreements, auto-renewal, or data center selection and may specify a maximum number of users or amount of data, as well as any other limitations set forth during the sign-up or provisioning process. Arctera reserves the right to shorten or extend the Trial Service evaluation period, or to add or remove Trial Service limitations at any time, in its sole discretion. Following expiration of the Trial Service, Arctera shall irretrievably delete all data in a Trial Service without notice to Customer.

**3.2 Trial Service Warranty, Indemnity, and Limitation of Liability.** Notwithstanding anything else in this Agreement, solely with respect to a Trial Service:

CUSTOMER AGREES THAT ARCTERA SHALL PROVIDE THE TRIAL SERVICE ON AN "AS-IS" BASIS WITHOUT WARRANTY OF ANY KIND, AND THAT ARCTERA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO THE TRIAL SERVICES. REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, ARCTERA'S OR ITS SUPPLIERS' TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO ONE THOUSAND US DOLLARS (\$1,000) FOR THE TRIAL SERVICE GIVING RISE TO THE LIABILITY.

## 4. TERMINATION

**4.1 Termination Reasons.** This Agreement or an individual Order 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 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.

**4.2 Effect of Termination.** Upon termination of an individual Order, this Agreement as to all other Orders will continue in full force and effect. Upon termination of this Agreement in whole, all outstanding Orders will be terminated immediately. Immediately following expiration or termination of a Service, Customer loses all access to the Service and its Customer Data, and the Service will no longer be provided. Termination of this Agreement will be without prejudice to any rights or liabilities accrued as of the date of termination. Arctera will be entitled to invoice and be paid for all Services provided up to the effective date of termination, and all invoices become immediately then due and payable. Any term of the Agreement, which is intended to survive expiration or termination will survive, including, without limitation, confidentiality, restrictions on use of intellectual property, indemnities, limitations on liability and disclaimers of warranties and damages, governing law, and Customer's payment obligations accrued prior to termination.

**4.3 Deletion of Customer Data.** Unless otherwise prohibited by law or court order, or Arctera is otherwise extracting Customer Data on behalf of Customer, all Customer Data will be irretrievably deleted after thirty (30) days of the effective date of the expiration, cancellation, or termination event. If Customer needs a copy of its Customer Data, Customer should request a quote for such Customer Data extraction prior to termination. Arctera reserves the right to refuse an extraction request until Customer's account no longer has outstanding, undisputed Fees.

## 5. CONFIDENTIALITY

**5.1 Definition and Use of Confidential Information.** “**Confidential Information**” means the non-public information that is exchanged between the parties, provided that such information is: (1) identified as confidential at the time of disclosure by the disclosing party (“**Discloser**”), or (2) disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information (“**Recipient**”). A Recipient may use the Confidential Information that it receives from the Discloser solely for the purpose of performing activities contemplated under this Agreement. A Recipient will protect the Discloser's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to its Affiliates, agents, and subcontractors with a need to know to fulfill the purpose of this Agreement, who have signed a nondisclosure agreement at least as protective of the Discloser's rights as this Agreement.

**5.2 Exclusions and Remedies.** This provision imposes no obligation upon a Recipient with respect to Confidential Information which: (i) is or becomes public knowledge other than by breach of this Agreement; (ii) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (iii) is rightfully received by the Recipient without any duty of confidentiality; (iv) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (v) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser's Confidential Information as required by law or court order provided: (1) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure, unless otherwise prohibited from doing so by law or court order; and (2) discloses only as much of the Confidential Information as is required. Each party will retain all right, title, and interest to such party's Confidential Information. The parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions.

## 6. INDEMNIFICATION

**6.1 Indemnification by Arctera.** Arctera will defend and indemnify and hold Customer harmless from any claim asserting that the Service infringes any intellectual property right of a third party and will pay any and all damages awarded by a court and actually paid by Customer or agreed to in settlement by Arctera and attributable to such claim. Arctera's obligations under this provision are subject to Customer (i) notifying Arctera of the claim in writing as soon as Customer learns of it; (ii) providing Arctera all reasonable assistance and information to enable Arctera

to perform its duties under this section; (iii) allowing Arctera sole control of the defense and all related settlement negotiations; and (iv) not having compromised or settled such claim. Notwithstanding the foregoing, Customer may participate at Customer's expense in the defense of any such claim with its own counsel, provided Arctera retains sole control of the claim. Customer has the right to approve any settlement that affirmatively places on Customer an obligation that has a material adverse effect on Customer other than the obligations to cease using the affected Service or to pay sums indemnified hereunder. Such approval will not be unreasonably withheld.

If the Service is found to infringe, or if Arctera determines in its sole opinion that the Service is likely to be found to infringe, then Arctera will either (i) obtain for Customer the right to continue to use the Service; (ii) modify the Service (including any applicable Service Component) so as to make it non-infringing, or replace it with a non-infringing equivalent substantially comparable in functionality (and in the case of a Service Component, Customer will stop using any infringing version of such Service Component); or, if Arctera determines in its sole opinion that (i) and (ii) are not commercially reasonable, Arctera may (iii) terminate Customer's rights and Arctera's obligations under this Agreement with respect to such Service, and in such case shall refund to Customer the Fees paid for the relevant Service. Notwithstanding the above, Arctera will not be liable for any infringement claim to the extent that it is based upon (1) modification of the Service other than by Arctera; (2) combination, use, or operation of the Service with products not specifically authorized by Arctera to be combined with the Service; (3) use of the Service other than in accordance with this Agreement; or (4) Customer's continued use of infringing Service after Arctera, for no additional charge, supplies or offers to supply modified or replacement non-infringing Service.

THIS SECTION "INDEMNIFICATION BY ARCTERA" STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND ARCTERA'S SOLE AND EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

**6.2 Indemnification by Customer.** Customer agrees, at Arctera's request to defend, and to indemnify Arctera against and hold Arctera harmless from any and all claims, actions, losses, costs, and expenses Arctera may incur as a result of: (i) any unlawful use by Customer of the Service, or (ii) any third-party claim in relation to Customer Data.

## 7. DATA SECURITY AND PRIVACY

**7.1 Data Security.** Arctera and Customer agree to comply with the Data Processing Terms and Conditions ("DPA") set forth at <https://www.arctera.io/privacy>, or successor address, and is incorporated by reference. Arctera applies appropriate administrative, technical, and physical safeguards ("**Security Standards**") for the Service in accordance with the DPA.

Customer is solely responsible for (i) implementing and maintaining privacy protections and security measures for the components and infrastructure that Customer provides or controls with respect to the Service; (ii) maintaining, and the associated costs of, its own infrastructure necessary to use the Service, such as any internet or network connections (iii) managing its user accounts, policies, schedules, and configurable parameters applied to Customer Data in the Service; (iv) the acts and omissions of its Service users and all activity that occurs under those Service credentials, and Customer's Service users are responsible for maintaining the confidentiality of their Service credentials; (v) always using the most current version of the Service and any Service Components, unless otherwise

agreed in writing; and (vi) the security of Customer Data if Customer disables or opts out of any Service security feature.

**7.2 Data Processor.** Arctera operates as a data processor with no control over the type, substance, or format of Customer Data, and Customer is the data controller. Customer is responsible to (i) ensure that processing and disclosure of such information to Arctera complies with applicable laws; (ii) inform users that their information will be processed by Arctera in regions other than the region in which they are situated; (iii) inform users of how their information will be used, and to assure that Customer has all appropriate consents required for such transfer and use; and (iv) satisfy itself that the Security Standards are appropriate and provide a level of security appropriate to the risk with respect to its Customer Data. Please note that use of the Service may be subject to data protection laws or regulations in certain jurisdictions. Customer is responsible for ensuring that Customer's use of the Service is in accordance with such laws or regulations. Arctera will process Personal Data provided to Arctera under this Agreement in accordance with the DPA.

## 8. LIMITATION OF LIABILITY

**8.1** IN NO EVENT, REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, SHALL EITHER PARTY BE LIABLE WHETHER IN CONTRACT, TORT OR OTHERWISE, TO THE OTHER PARTY OR ANY OTHER PERSON FOR: (I) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF REVENUES OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT) OR LOSS OF GOODWILL; OR (II) ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND; EVEN IF ADVISED OF THE POSSIBILITY OR A PARTY'S REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS AGREEMENT SHALL LIMIT EITHER PARTY'S LIABILITY FOR ANY DAMAGE THAT CANNOT BE EXCLUDED BY LAW.

**8.2** NO LIMITATION SHALL APPLY TO LIABILITY ARISING OUT OF (I) ARCTERA'S INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS UNDER SECTION 6.1, (II) CUSTOMER'S INDEMNITY OBLIGATIONS UNDER SECTION 6.2, OR (III) CUSTOMER'S PAYMENT OBLIGATIONS FOR FEES DUE IF UNPAID. OTHERWISE, REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY FOR THE SERVICE AROSE.

## 9. PROPRIETARY RIGHTS

**9.1 Intellectual Property Rights.** The intellectual property rights in the Service are and will remain Arctera's property or that of its licensors.

**9.2 Customer Data Rights.** As between Arctera and Customer, Customer Data shall at all times remain the property of Customer.

**9.3 Feedback.** Customer may from time to time provide comments, suggestions, or enhancement requests ("Feedback") to Arctera related to the Service. By providing such Feedback, Customer grants to Arctera, under Customer's intellectual property rights, a worldwide, perpetual, royalty-free, irrevocable, and non-exclusive license, with the right to sublicense to Arctera's licensees and customers, to use, make or have made, disclose, or

distribute the Feedback in its products and services or any other manner Arctera chooses, without reference or obligation to Customer.

**9.4 Benchmarking.** Prior written consent is required from Arctera before Customer (i) performs any benchmarking or other test connected with the Service; or (ii) discloses the results of any benchmarking or other test to any third party.

**9.5 U.S. Government Rights.** This Section applies only to U.S. Government entities. The Service and any related enabling software are deemed to be commercial computer software as defined in FAR 12.212. Any use, modification, reproduction release, performance, display or disclosure of the Service or any related enabling software by the U.S. Government shall be solely in accordance with the terms of this Agreement, and all other provisions of this Agreement shall apply to the U.S. Government, except (i) as modified by any addendum agreed to in writing by Arctera and the U.S. Government and (ii) any provisions contrary to federal law shall be read out of this Agreement without impacting the validity and enforceability of its other provisions.

## 10. GENERAL

**10.1 Subcontractors.** Arctera has the right to subcontract the performance of the Service to third parties, as further detailed in the DPA, provided Arctera remains responsible for the contractual obligations in this Agreement.

**10.2 Notices.** Except as otherwise specified in this Agreement, and except for notices of termination or an indemnification claim, all notices related to this Agreement will be in writing and will be effective upon (a) the delivery date if delivered by courier; (b) the fifth business day after first-class mailing with the proper address; or (c) the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the Service system administrator(s) designated by Customer. Notices of termination or an indemnity claim shall clearly be identifiable as a legal notice and sent to the receiving party's current business contact with a copy to the general counsel/legal department of the receiving party's address as listed in the Agreement, or as updated by either party in writing.

**10.3 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 written consent. Such consent will not be unreasonably withheld or delayed.

**10.4 Force Majeure.** Each party will be excused from performance, other than payment obligations, for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, due to unforeseen circumstances or to causes beyond such party's reasonable control including but not limited to war, strike, riot, crime, acts of God, or shortages of resources.

**10.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the following laws, without giving effect to conflict of law principles: the laws of the State of California if Customer is located in the Americas; the laws of England and Wales, if Customer is located in the United Kingdom, Europe, Middle East, or Africa; the substantive laws of England, if Customer is located in India; the substantive laws of New South Wales, Australia, if Customer is located in Australia, New Zealand, or the Pacific islands (excluding overseas territories of the USA or France); the substantive laws of Japan, if Customer is located in Japan; the substantive laws of Peoples Republic of China, if Customer is located in China, excluding Hong Kong, Macau, and Taiwan; or the substantive

laws of the Republic of Singapore, if Customer is located in anywhere else in Asia Pacific. Such application of law excludes any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law.

**10.6 Export.** Customer acknowledges and agrees that the Service and any related download or technology may be subject to applicable import/export controls and trade sanction laws, regulations, rules, and licenses, and that Customer is hereby notified of, and will comply with, the information published by Arctera on <https://www.arctera.io/trade-compliance>, or successor website.

**10.7 Waiver.** A party's failure to exercise any right under this Agreement shall not be considered a waiver of that party's right.

**10.8 No Third-Party Beneficiaries.** No person other than a party to the Agreement will be entitled to enforce any term of it except as expressly provided herein.

**10.9 Agreement.** If any provision of the Agreement is found partly or wholly illegal or unenforceable, such provision will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions will remain in full force and effect. The Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any previous or contemporaneous agreement, proposal, commitment, representation, or other communication whether oral or written between the parties regarding such subject matter. Customer agrees that its purchase is based on current features and functionality and not contingent on the delivery of any future features or functionality or features. The Agreement prevails over any conflicting or additional terms of any purchase order, ordering document, acknowledgment, confirmation, or other document issued by Customer, even if signed and returned. This Agreement may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties. The signatories hereto represent that they are duly authorized to sign this Agreement on behalf of their respective companies.