

Arctera agrees to provide the services (“**Services**”) specified in the applicable quote form, scope sheet, work order, work authorization form, services order form, certificate, service description, statement of work and/or other services documents (“**SOW**”) that references these consulting services terms, subject to these terms and conditions (“**Consulting Services Terms**”). Services may also include deliverables (“**Deliverables**”) as set forth in the applicable SOW. The “**Agreement**” shall mean these Consulting Services Terms and the SOW. In the event of any conflict, inconsistency or ambiguity between the Consulting Services Terms and the SOW, the SOW shall prevail, unless otherwise stated herein. Terms not otherwise defined in the Consulting Services Terms shall have the meanings set forth in the SOW.

- 1. Period of Performance and Term.** The period of performance for the Service shall commence and end upon mutually agreed upon dates. Unless otherwise agreed in writing by Arctera, all Services expire unless used and delivered in the twelve (12) months following the effective date of the SOW. Upon expiration or early termination, no credit or refund of prepaid Fees for unused Services shall be due. The Agreement may be terminated early at any time by either party: (i) upon written notice if the other party breaches any material term of the 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. Arctera will have no liability to Customer under any terminated SOW. Subject to any termination conditions and payments specified in the SOW, upon termination, Arctera will be entitled to be paid for all work performed, including Fees and expenses, up to the effective date of termination.
- 2. Fees, Payment and Taxes.** Customer will pay the fees (“**Fees**”) for the Services including, if applicable, reasonable travel and living expenses incurred while performing the Services; to: (i) if Customer is purchasing Services through an Arctera-authorized reseller, the Fees and payment terms shall be as separately agreed between Customer and such reseller or (ii) Arctera. If Customer pays Arctera directly, the following payment terms shall apply. Customer will pay Arctera invoiced amounts within thirty (30) days of the invoice date (“**Due Date**”). If any sum payable to Arctera is not paid by the Due Date, Arctera reserves the right, without prejudice to any other remedy, to (i) charge interest on such overdue sum on a day to day basis from the Due Date until paid in full the lesser of one percent (1%) per month or the maximum rate permitted by applicable law; and/or (ii) suspend the provision of the Services upon five (5) days prior notice until paid in full. All Fees paid or payable for Services are non-cancellable and non-refundable. Customer’s PO must have sufficient detail to allow Arctera to accept and accurately fulfill Customer’s order. 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 Services 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. If Customer fails to provide Arctera with such tax payment receipts, if applicable, then Customer will reimburse Arctera for any fines, penalties, taxes and other governmental agency charges resulting from such failure.

3. **Acceptance.** A Service or Deliverable is deemed accepted within five (5) business days of delivery, or completion of a milestone, unless Customer provides a written notice of and reason for rejection of the Service or Deliverable. Acceptance is based on delivery in accordance with the scope of the Service detailed in the SOW. If Customer provides such notice and reason for rejection under this section, Arctera will work with Customer to plan and perform any reasonable corrective Service and/or resubmit the Deliverable that is the subject of such rejection notice, using a change order. If Arctera cannot provide the agreed upon corrected Service or Deliverable within the time set forth in the change order, Customer and Arctera agree that no further remediation is required and Arctera shall not invoice Customer for such rejected Service or Deliverable, but Customer is not released from payment for any other Service and/or Deliverable. This is the sole and exclusive remedy for any rejected Service or Deliverable.
4. **Customer Responsibilities.** In addition to any other Customer responsibilities and requirements specified in the SOW, the following is a non-exhaustive list of Customer responsibilities necessary for the successful completion of the Service. If Customer does not provide or perform its responsibilities, Arctera's performance of the Service may be delayed, impaired or prevented. **(a) Project Resources.** Customer shall assign a "Project Manager" to assist Arctera in coordinating Customer resources in a timely manner and to act as the focal point for resolution of project related issues. Customer's Project Manager shall also have the necessary technical and business knowledge and authority to make decisions concerning the Service. In addition, Customer shall assign an appropriate number of suitable skilled personnel to assist and cooperate with Arctera consistent with the Service. Customer will also identify a "Project Executive" who has the authority to make decisions for Customer regarding change orders, budget, scope, resources and other project related issues if they cannot be resolved by Customer's Project Manager. **(b) Facilities.** Customer shall provide Arctera with all necessary cooperation, information and support that may reasonably be required by Arctera for the performance of the Service including, without limitation, access to suitably configured computers, software products and applicable passwords, at such times as Arctera requests. In addition, Customer shall provide Arctera personnel with access to all buildings, phone systems, internet access, server rooms, and workstations, and shall provide all necessary passes for access to such areas if work is required by Customer outside of Normal Work Hours. Customer shall also provide access to a suitable conference room facility for meetings, interviews, and facilitated sessions during any on-site components of the engagement. **(c) Information.** Customer shall ensure that Arctera has access to the following at all times: (i) materials and resources related to Customer's business and technical environment; (ii) software design documentation, current design diagrams, and other information required to deliver the Service; (iii) access to all operating systems and network and computing environments necessary to complete the Service. Where applicable, such access shall include various user accounts for relevant applications, as needed, to perform for example, a penetration assessment, including, a list of relevant IP addresses, URLs and user authentication. **(d) Backup.** Arctera strongly recommends that Customer back up all critical infrastructure in Customer's environment before Service commencement. Arctera does not accept responsibility or liability for any loss of data incurred by Customer during the delivery of Services. **(e) Licenses.** Customer shall ensure that prior to the commencement of the Service by Arctera and continuing throughout the

provision of the Service, that: (i) all the necessary Arctera software products have been correctly licensed for all appropriate platforms (and all required versions) and the same are made available, in a timely manner, to Arctera; (ii) the operating systems of all appropriate servers and computers shall be at a level supported by the Arctera software products to be used; (iii) the storage configuration is a formally qualified configuration for the Arctera software products to be used; (iv) the technical environment, including the application and database environments, shall be kept under change control and that the physical environment is stable and provides a viable environment for the Arctera consultants to undertake the Service; and (v) third parties such as Internet Service Providers have been made aware of any applicable testing that might be carried out by Arctera. Payment for, license, use and operation of all software and hardware products are the sole responsibility of Customer. Customer acknowledges and agrees that no Arctera software nor hardware products shall be provided or otherwise licensed by Arctera pursuant to this Agreement.

5. **Staffing. (a) Suitable Resources.** Arctera reserves the right to assign any suitable skilled resource(s) available during the mutually agreed upon dates of Service. Arctera is not obligated to provide a specific Arctera resource or third-party resource under this Agreement. While on Customer's premises, Arctera personnel will follow all reasonable instructions provided to Arctera prior to the performance of the Services. **(b) Right to Subcontract.** Arctera has the right to subcontract the performance of the Services to third parties provided that Arctera remains responsible for the contractual obligations under this Agreement. **(c) Independent Contractor.** Arctera is an independent contractor and shall not be deemed an employee or agent of Customer. **(d) Working Hours.** All Services shall be performed during Normal Work Hours. **"Normal Work Hours"** means the hours between 7 a.m. and 7 p.m. local time. Normal Work Hours do not include weekends, public holidays (observed in the country in which Services are performed), or hours between 7 p.m. and 7 a.m. local time. A **"Normal Work Day"** is a standard, consecutive nine (9) hour work day, including a one (1) hour meal break. If Services are provided at a daily rate, Arctera reserves the right to invoice per hour for actual hours performed that cumulatively equal less than one Normal Work Day. The hourly billing rate shall be calculated by dividing the daily rate by eight (8) Normal Work Hours. For Services performed outside Normal Work Hours or in addition to a Normal Work Day, Arctera reserves the right, at its option, to charge at (or reduce the available quantity of Services by) overtime rates. Unless otherwise determined by applicable law, overtime rates are one-and-a-half times (1.5x) the hourly rate. **(e) Non-Solicitation.** During the provision of Services and for one (1) year thereafter, neither party shall actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of either party associated with the performance of Services without the prior written consent of the other party. This provision shall not restrict in any way the right of either party to solicit generally in the media for required personnel, and shall not restrict employees, contractors, or representatives of either party from pursuing on their own initiative employment opportunities from or with either party. The parties agree that violation of this provision will subject the violating party to liquidated damages consisting of an amount equal to six (6) month's salary for each employed, solicited, or retained person.
6. **Confidentiality. "Confidential Information"** means the non-public information that is exchanged between the parties, provided that such information is: (a) identified as confidential at the time of disclosure by the disclosing party (**"Discloser"**), or (b) 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 performing activities

contemplated under this Agreement. For a period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient will not disclose the Confidential Information to any third party and will protect it 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 similar Confidential Information. The Recipient may disclose the Confidential Information to its affiliates, agents and independent contractors with a need to know to fulfill the purpose of the Agreement, who have signed a nondisclosure agreement at least as protective of the Discloser's rights as this Agreement. This provision imposes no obligation upon a Recipient with respect to Confidential Information which: (a) is or becomes public knowledge through no fault of the Recipient; (b) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (c) is rightfully received by the Recipient without any duty of confidentiality; (d) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (e) 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: (i) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure; and (ii) discloses only as much of the Confidential Information as is required. Upon request from the Discloser, the Recipient will return all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same. Each party will retain all right, title and interest in that 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 hereof.

7. **Rights in Deliverables. (a) Pre-Existing Work.** Any pre-existing proprietary or Confidential Information of Arctera or its licensors used to perform the Services, or included in any Deliverable, including but not limited to software, appliances, methodologies, code, templates, tools, policies, records, working papers, know-how, data or other intellectual property, written or otherwise, including Arctera Derivative Works (as defined below) shall remain the exclusive property of Arctera and its licensors (collectively, "**Arctera Information**"). To the extent that Arctera incorporates any Arctera Information into the Deliverable(s), Arctera hereby grants to Customer a non-exclusive, non-transferable license to use such Arctera Information at no additional charge solely for Customer's internal business purposes, in accordance with the limitations set forth in the Agreement. Any Customer pre-existing information, including but not limited to any Customer's proprietary and Confidential Information provided to Arctera by Customer shall remain the exclusive property of Customer or its licensors ("**Customer Information**"). Arctera Information and Customer Information shall be deemed Confidential Information. **(b) Ownership Rights.** Any inventions, designs, intellectual property or other derivative works of Arctera Information, shall vest in and be the exclusive property of Arctera ("**Arctera Derivative Work**"). Any inventions, designs, intellectual property or other derivative works of Customer Information shall vest in and be the exclusive property of Customer ("**Customer Derivative Work**"). Subject to Arctera's rights in Arctera Information and Arctera Derivative Work, all Deliverables created specifically for and provided to Customer by Arctera under the Agreement shall, upon final payment, become the property of Customer for Customer's internal business purposes. **(c) Retention.** Customer acknowledges that Arctera provides similar services to other customers and that nothing in the Agreement shall be construed to prevent Arctera from carrying on such

business. Customer acknowledges that Arctera may at its sole discretion develop, use, market, distribute and license software or documentation that is substantially similar to the Deliverables. Notwithstanding the preceding sentence, Arctera agrees that it will not market or distribute any Deliverables that include the Confidential Information of Customer. **(d) License Grant.** In consideration of Customer's payment of applicable Fees, Arctera grants Customer a limited, non-exclusive, non-transferable license, to access and use, in accordance with the Agreement and solely for Customer's internal business purposes, Arctera Information, to the extent such information is necessary to utilize the Services or incorporated into any Deliverable. **(e) License Restrictions.** Customer will not act to infringe the intellectual property rights of Arctera or its licensors, including Arctera Information. Other than as expressly permitted under this Agreement or applicable law, Customer will not copy, sublicense, sell, rent, lease or otherwise distribute Arctera Information, or permit either direct or indirect use of Arctera Information by any third party. Customer will not modify, reverse engineer, disassemble, decompile, or create derivative works of Arctera Information, or otherwise attempt to build a competitive product or service using Arctera Information. Notwithstanding the foregoing, the license grant set forth above may be further limited as set forth in any applicable SOW. **(f) Government Rights.** The data resulting from analysis tasks performed under this Agreement are deemed to be Commercial Items as defined in FAR Part 12 and its successor regulations, subject to restricted rights as defined in DFARS 252.227-7015, "Technical Data – Commercial Items", and any successor regulations. Any use, modification, reproduction release, performance, display or disclosure of such data by a U.S. Government agency shall be solely in accordance with the terms of the Agreement.

8. **Warranty.** Arctera will provide the Service in a good and workmanlike manner and in accordance with generally accepted industry standards. **CUSTOMER AGREES THAT THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES WHETHER EXPRESS OR IMPLIED CONCERNING THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ARCTERA DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.**
9. **Indemnification. (a)** Arctera shall defend and indemnify and hold Customer harmless from any claim asserting that the Services or Deliverables infringe any intellectual property right of any 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 section are subject to Customer doing the following: (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 suit. 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 Deliverables or to pay sums indemnified hereunder. Such approval will not be unreasonably withheld. If the Services or Deliverables are found to infringe, or if Arctera determines in its sole opinion that either is likely to be found to infringe, then Arctera will either: (i)

obtain for Customer the right to continue to use the Deliverables; or (ii) modify the Services or Deliverable so as to make it non-infringing, or replace it with a non-infringing equivalent substantially comparable in functionality, in which case Customer will stop using any infringing version of the Services or Deliverable; however, if Arctera determines in its sole opinion that neither (i) nor (ii) are commercially reasonable, (iii) terminate Customer's rights and Arctera's obligations under the Agreement with respect to such Services or Deliverables, and refund to Customer the fees paid for the relevant Services or Deliverables. Notwithstanding the above, Arctera will have no liability for any infringement claim based on: (i) modification of the Services or Deliverable other than by Arctera; (ii) combination, use or operation of the Services or Deliverable with products not specifically authorized by Arctera to be combined with the Services or Deliverables; (iii) use of Services or Deliverables other than in accordance with the Agreement; (iv) Customer's continued use of infringing Services or Deliverables after Arctera, for no additional charge, supplies or offers to supply modified or replacement non-infringing Services or Deliverables. **THIS SECTION 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.** (b) In the event that any willful misconduct or grossly negligent act or omission of a party or its employees during the performance of Services on Customer's premises causes or results in the (i) loss, damage to or destruction of physical property of the other party or third parties, and/or (ii) death or injury to any person, then such party will indemnify, defend and hold the party harmless from and against any and all resulting claims, damages, liabilities, costs and expenses (including reasonable attorney's fees), subject to the Limitation of Liability, herein.

10. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THE AGREEMENT 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 FOR: I) 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; OR II) ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND; EVEN IF ADVISED OF THE POSSIBILITY AND WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THE AGREEMENT OR USE OF THE SERVICE AND/OR DELIVERABLES OR THE PERFORMANCE, DEFECTIVE PERFORMANCE, NON-PERFORMANCE OR DELAYED PERFORMANCE BY ARCTERA OF ANY OF ITS OBLIGATIONS UNDER OR IN CONNECTION WITH THE AGREEMENT. EXCEPT FOR LIABILITY ARISING FROM BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS AND REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED FOR THE SERVICE GIVING RISE TO THE CLAIM. NOTHING IN THE AGREEMENT SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY LAW.

11. **Governing Law and Export.** (a) **Governing Law.** The Agreement shall be governed by and construed by the following laws: the laws of the State of California, for Customers located in the Americas; the laws of England and Wales, for Customers located in EMEA; the substantive laws of England, if Customer is located in India; the substantive laws of New South Wales, Australia, if Customer is located in ANZ; the substantive laws of the People's Republic of China, if Customer is located in China, excluding Hong Kong, Macau and Taiwan; the substantive laws of Japan if Customer is located in Japan; and 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. **(b) Export Controls.** Services and Deliverables, including documentation, may include controlled technology or technical data (collectively, “**Controlled Technology**”) that is subject to U.S. (including, but not limited to, the U.S. Department of Commerce Export Administration Regulations (“EAR”) and the U.S. Office of Foreign Assets Control (“OFAC”) regulations), European Union, and other government export controls and sanctions regimes, and to the import regulations of applicable jurisdictions. Diversion contrary to U.S. or other applicable law of Controlled Technology is prohibited. Customer agrees to comply with all such applicable export controls and economic sanctions laws and regulations. Customer is prohibited from exporting or re-exporting Controlled Technology: (i) to any embargoed or sanctioned country or region, including Russia, Belarus, Cuba, Iran, North Korea, Syria, Kherson, Zaporizhzhia, the Crimea regions of Ukraine and the occupied regions in Donetsk and Luhansk Oblasts including Donetsk People’s Republic (DNR), Luhansk People’s Republic (LNR); (ii) to any party listed on the U.S. Commerce, U.S. Department of State, and Treasury Departments lists (e.g., Denied Persons List, Specially Designated Nationals), or other such lists published by the U.S., the European Union, and applicable jurisdictions; (iii) to any country to which such export or re-export is restricted or prohibited, or to which an export license or other governmental approval is required, without first obtaining such license or approval; (iv) to any military entity or to any other entity for any military purpose, nor for use in connection with chemical, biological or nuclear weapons or missiles capable of delivering such weapons, without first obtaining any required export license or other governmental approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of U.S. or other applicable jurisdictions. More information can be found at: <https://www.arctera.io/export-compliance>.

12. Customer Entity Data Protection. Customer may be required to supply certain business information which is necessary for Arctera to provide the Service and which may contain personally identifiable information (“**Personal Information**”), including but not limited to, names, e-mail address, IP address and contact details of designated users and contacts for the Services, Personal Information provided during provision of the Services and other Personal Information as described in the Agreement (“**Personal Data**”). Additionally, Customer acknowledges that it is the controller of such Personal Data, and agrees that it is will take all necessary measures to ensure that it, and all of its employees, are aware that their Personal Information may be processed as part of the Services and that they have given their consent to such processing as well as complied with their responsibilities as data controller or data subjects, as applicable, in accordance with applicable laws and/or regulations. By providing Personal Information, Customer consents, for itself, its users and contacts, to the following: Personal Information will be processed and accessible on a global basis by Arctera, its affiliates, agents and subcontractors for the purposes of providing the Services and as otherwise described in the Agreement, including in countries that may have less protective data protection laws than the country in which Customer or its users are located. Arctera may disclose the collected Personal Information as required or permitted by law or in response to a subpoena or other legal process. Customer understands and agrees that Arctera performs the Services on behalf of Customer and that Arctera will only process the Personal Information in accordance with Customer’s instructions, provided that such instructions are not incompatible with the terms of this Agreement. Arctera will also take appropriate technical and organizational measures to protect Personal Information against accidental loss or destruction of, or damage to, that Personal Information. Where

Customer's processing of the Personal Data provided to Arctera under this Agreement 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 that may exist in the European Economic Area and/or Switzerland, 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 Technologies LLC – Privacy Program Office at Arctera's headquarters location published at [arctera.io](https://www.arctera.io) or by email: privacy@arctera.io.

- 13. Miscellaneous.** **(a)** This 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. 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. **(b)** The Agreement may not be assigned or otherwise transferred by Customer. A change of control shall constitute an assignment. **(c)** Except for a subsidiary or affiliate of Arctera, no person other than a party to this Agreement will be entitled to enforce any term of it except as expressly provided herein. **(d)** 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. **(e)** 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. A waiver of any breach or default under this Agreement will not constitute a waiver of any other right for subsequent breach or default. **(f)** Any term of this Agreement, which is intended to survive expiration or termination will survive, including, without limitation, confidentiality, restrictions on use of intellectual property, limitations on liability and disclaimers of warranties and damages, audit, governing law, and Customer's payment obligations accrued prior to termination.