

# Supplemental Subscription Software License Terms

## ("Supplemental Terms")

Capitalized terms not defined in these Supplemental Terms have the meaning given in the written license agreement and/or End User License Agreement between Arctera and Customer ("**Agreement**").

### 1. **Subscription Software Terms.**

- a) If Customer has a written license agreement with Arctera, Customer agrees that these Supplemental Terms are incorporated into and form a part of the Agreement, and Customer's use of the Subscription Software shall be governed by the Agreement and Supplemental Terms.
- b) If Customer does not have a written license agreement with Arctera, Customer's use of the Subscription Software will be governed by the applicable license terms, including the Certificate and the Arctera EULA and Product Use Rights Supplement for the Subscription Software.

**2. Maintenance/Support.** Subscription Software (defined as Licensed Software licensed on a non-perpetual (term-limited) basis, as reflected in the applicable Addendum or Certificate) includes related Maintenance/Support as reflected in the Certificate. Maintenance/Support is provided and performed subject to Arctera's then-current terms, policies and processes.

**3. Licensed Quantity; Subscription Term.** The quantity of Subscription Software licensed to Customer ("**Licensed Quantity**") and the term of a Subscription Software entitlement ("**Subscription Term**") are as set forth in the Certificate.

**4. Periodic Reviews.** The following terms apply to Subscription Software:

- a) Customer will participate in an annual review of its Subscription Software usage during the Subscription Term ("**Periodic Review**"). An interim review may also be triggered by exceptional usage of the Subscription Software.
- b) If Customer's use of the Subscription Software during the relevant measurement period exceeds the Licensed Quantity, then Customer will pay the fees associated with all usage in excess of the Licensed Quantity, pro-rated for the remainder of the Subscription Term. Customer will submit an Order to Arctera or customer's authorized channel partner for such excess usage promptly upon Arctera's request and/or pay any invoice for such excess usage as provided in the Agreement or the applicable terms.

### 5. **Reporting.**

- a) **Automated Reporting.** Customer shall enable any usage reporting mechanism or tool included in the Subscription Software and automatically upload usage reporting to Arctera for all deployed Subscription Software ("**Automated Reporting**"). If Customer cannot automatically upload usage reporting, then Customer shall manually upload Automated Reporting on each Report Due Date (as defined below).
- b) **Manual Reporting.** If the Subscription Software does not include a usage reporting mechanism or tool, then Customer shall provide manual reporting as described below during the Subscription Term:
  - i. Manual reports are due: (i) on an annual basis, no later than ninety (90) days prior to the anniversary date of the first day of the Subscription Term or a Periodic Review, if applicable; and (ii) no later than thirty (30) days after a written request for a manual report from Arctera (each, a "**Report Due Date**").
  - ii. Each manual report shall identify the following information on a cumulative basis, with respect to the Subscription Software: the product name (including license type), version number, quantity of each product/amount of capacity deployed, hardware model, and the regional location of the computer on which each such copy is installed.
  - iii. All manual reporting shall be submitted to [Usage.Reporting@arctera.io](mailto:Usage.Reporting@arctera.io) or any successor address.

**6. License Relinquishment.** Customer agrees to relinquish and terminate all perpetual licenses ("**Perpetual Licenses**") that are transitioned to the term-based subscription licenses set forth in the applicable quote from Arctera or its channel partner, as applicable ("**Subscription Licenses**").

- a) The Perpetual Licenses will be noted as expired in Customer's Install Base as of the date that the Arctera Order Operations team processes this Form ("**Relinquishment Date**").
- b) Maintenance/Support for the Perpetual Licenses will be terminated as of the Relinquishment Date.

v Sept 2025

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- c) After the Relinquishment Date, the Perpetual Licenses shall be deemed terminated and Customer will cease all use of such licenses. Customer acknowledges that the quantity of Subscription Licenses is sufficient to support its prior usage under the Perpetual Licenses.

### 7. **Subscription Software Orders; Termination.**

- a) **Orders.** Subscription Software fees are based on Licensed Quantity and not actual usage. Licensed Quantity of Subscription Software cannot be decreased during the relevant Subscription Term. Multi-year Subscription Terms may be invoiced annually in advance, as agreed by the parties. Payment obligations related to Subscription Software Orders, including any installment payments for a multi-year Subscription Term, are non-cancelable and any sums when paid shall be non-refundable.
- b) **Termination.** Termination for convenience provisions in the Agreement, if any, do not apply to Subscription Software or installment payments associated with a Subscription Software Order. In the event of any termination of these Supplemental Terms, the survival terms of the Agreement shall apply; provided, however, that notwithstanding anything to the contrary in the Agreement, Customer's payment obligations for all outstanding Subscription Software Orders, including installment payments and the Reporting obligations under these Supplemental Terms shall also survive to the extent permitted by applicable law.

- 8. **Limitation of Liability – Subscription Software.** The following limitation of liability will apply to any claims arising from Subscription Software: IN NO EVENT, REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES LOSSES, EXPENSES, OR COSTS OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA OR BUSINESS INTERRUPTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING FROM BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY INDEMNITY OBLIGATIONS SET FORTH IN THE AGREEMENT OR FROM CUSTOMER'S BREACH OF THE LICENSE GRANT AND/OR LICENSE RESTRICTIONS SET FORTH IN THE AGREEMENT, AND REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, EACH PARTY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED TO ARCTERA, DIRECTLY OR INDIRECTLY, DURING THE PRECEDING TWELVE (12) MONTH PERIOD FOR THE SUBSCRIPTION SOFTWARE GIVING RISE TO THE CLAIM. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW.

- 10. **General.** These Supplemental Terms supplement and modify the terms of the Agreement. Except as modified by these Supplemental Terms, the terms of the Agreement remain unmodified and in full force and effect. In the event of any conflict between the terms of the Agreement and these Supplemental Terms, these Supplemental Terms will control.