Arxscan Software Support and Maintenance Agreement

This Software Support and Maintenance Agreement ("Agreement") is entered into as of the effective date set forth below by and between Arxscan, Inc. ("Arxscan") and the ARXVIEW DCAE License Holding Customer under this Agreement ("Customer"). BY PURCHASE ORDER OR REMITTANCE OF PAYMENT FOR THE SOFTWARE SUPPORT AND MAINTENANCE AGREEMENT, CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

TERMS AND CONDITIONS

1.   Definitions. For purposes of this Agreement

(a)   "Effective Date" shall mean the date when the Customer issues an unconditional Purchase Document for the initial Term of the Software Support and Maintenance, subject to provision of payment.

(b)   "Error" means any failure of the Software to conform in any material respect to its published specifications.

(c)   "Error Correction" means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with its published specifications, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.

(d)   "Purchase Document" means Arxscan's purchase acknowledgment document or other document in which Arxscan and the Customer acknowledge the Customer's purchase of a Software Support and Maintenance Agreement.

(e)   "Releases" means new versions of the Software, which may include Error Corrections and/or Updates.

(f)   "Software" means the object code version of the software program listed on Corresponding License Agreement as well as any related software programs, purchased or provided, which are designed to operate in conjunction with that software program.

(g)   "Update" means a new update of the Software or Software component (i) which Arxscan makes commercially available and (ii) which would normally be designated as a change in the digit(s) to the right of the tenths digit in the Software version number [x.x.x]. An "Update" may consist of minor modifications of or improvements to the existing features of the

Software, which Arxscan is providing to its support agreement customers at no additional charge. "Update" does not include a product revision that provides any material enhancement of Software features or functionality. Arxscan reserves the right and authority to define an update.

2.   Term. The maintenance term for the Software shall commence on the Effective Date set forth above and shall continue for the duration of the term purchased.

(a)   Expiration – The agreement expires at the end of the term unless renewed.

(b)   Impact of Expiration – If a new agreement is not purchased within 60 days of the term expiration, the Customer can only receive software updates via a repurchase of subscription, subject to future terms and pricing. Once a new subscription term is purchased, the customer will be afforded the opportunity to the software support and maintenance agreement for the term purchased.

3.   Scope of Maintenance. During the maintenance term, Arxscan agrees to basic maintenance services in support of the Software product platform specifically identified on the first page of this Agreement. Basic maintenance services shall consist of:

(a)   Error Correction. Arxscan shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to Arxscan in accordance with its standard reporting procedures. The Error Correction, when completed, may be provided in the form of a "temporary fix," consisting of sufficient programming and operating instructions to implement the Error Correction.

(b)   New Releases. Arxscan may, from time to time, issue new Releases of the Software, containing Error Corrections and/or Updates, to customers who generally have maintenance agreements in effect. Arxscan shall provide the Customer with one (1) copy of each new Release for each copy of the Software being maintained under this Agreement, without additional charge. Arxscan shall provide reasonable assistance to help the Customer install and operate each new Release. Note: Some compatible and related software may be released by Arxscan and made available to the Customer through additional purchases. After purchasing such software, updates to the compatible and related software may be provided for the unit(s) covered under this Software Support and Maintenance Agreement.

(c)   Staff. Arxscan shall maintain a trained staff capable of rendering the services set forth in this Agreement.

4.   Additional Services. In addition, Arxscan may provide additional services, as mutually agreed, in support of the Software, subject to payment of its normal charges and expenses:

(a)   Remote Support. At no additional charge to the Customer, Arxscan will provide Customer Remote Support via phone and screen share within 24 hours of being notified of any Error in the Software, or for any issue that requires Error Correction or for Software Configuration Issues. If Remote Support is engaged and it is found that there is no issue with the Arxscan Software or the Arxscan Software Configuration, Arxscan reserves the right to charge Customer at an hourly rate for the time spent working with the Customer, not to exceed $175 US per hour.

(b)   Additional Training. Subject staff availability, Arxscan will provide the Customer's employees with additional or advanced remote training classes.

(c)   Custom Enhancements. Arxscan will consider and evaluate the development of custom enhancements for the Customer's specific use and will respond to the Customer's requests for additional services pertaining to the Software (e.g., as data conversion and report-formatting assistance).

5.   Software Location. The Customer understands and acknowledges that the Software is licensed for use by the Customer specifically identified in the Arxview DCAE License Agreement and that the Software is licensed for use at a specific location. Subject to any and all applicable regulatory requirements, the Customer may move the Software and designate a new Software Location by giving written notice to Arxscan.

6.   Cooperation of the Customer. The Customer agrees to notify Arxscan promptly following the discovery of any Error. Further, upon discovery of an Error, the Customer agrees, if requested by Arxscan, to submit to Arxscan a listing of output and any other data that Arxscan may require in order to reproduce the Error and the operating conditions under which the Error occurred or was discovered.

7.   Exceptions. The following matters are not covered by basic maintenance:

    (a)   Any problem resulting from the misuse, improper use, alteration, or damage of the Software;

    (b)   Any problem caused by modifications in any version of the Software not made or authorized by Arxscan;

    (c)   Any problem resulting from programming other than the Software or equipment;

    (d)   Any problem resulting from the combination of the Software with such other programming or equipment to the extent such combination has not been approved by Arxscan; or

(e)   Errors in any version of the Software other than the most recent Release, provided that Arxscan will continue to support superseded Releases for a reasonable period, not to exceed forty-five (45) days, sufficient for Customer to implement the newest Release.

The Customer is responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate the Software and to obtain maintenance services from Arxscan. Arxscan will not be responsible for delays caused by events or circumstances beyond its reasonable control.

8.   Fees and Expenses. The maintenance fee for the Software is included as part of the total License cost of the Software before any discounts or any other special offers. Such fee is due and payable at the beginning of the initial Term and each renewal term of any subscription hereunder. Maintenance fees do not include any applicable travel and living expenses for installation and training, file conversion costs, optional products and services, directories, consulting services, shipping charges, or the costs of any recommended hardware. The Customer agrees to pay such fees and costs, when and as the services are rendered and the expenses incurred, as invoiced by Arxscan. Arxscan reserves the right to require prepayment or advance deposit for such additional charges or expenses in some instances. The Customer is also responsible for sales or use taxes and state or local property or excise taxes associated with Customer's licensing, possession, or use of the Software or any associated services.

9.   Renewal. The Software Support and Maintenance Agreement shall automatically expire at the end of the Subscription Term unless renewed by the Customer prior to end of the Term of the Agreement. Within thirty (30) days of expiration, Arxscan will provide notification to the Customer with instructions for renewal. Subscription renewal will provide Customer an additional Term of Software Support and Maintenance as outlined in the original Agreement

10.   Use and Restrictions. Arxscan shall have sole and exclusive ownership of all right, title, and interest in and to such works (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the license expressly granted to the Customer therein. Unless otherwise agreed, the Customer is entitled to make and use only the number of copies of such works as the Customer is authorized to use of the Software to which they relate, and the Customer agrees to return or destroy, as requested by Arxscan, superseded copies of the Software when replaced by such works.

11.   Data Transfer. There may be occasions where transfer of data between Arxscan and the customer is required for support functions. Those transfers may occur via email, the Arxscan Portal or sftps with prior Customer consent. Any Transfer of Data is to manage and provide monitoring information and support services offered to customers of Arxscan. To carry out any agreed functions in relation to this and to provide ongoing support, maintenance, and systems enhancements these processes are consistent with ISO/IEC 27001:2022 guidelines.

12.   Limited Warranty. Arxscan shall perform its services hereunder in a workmanlike manner. Notwithstanding the addition of any Error Correction, Update, or Release to the Software for purposes of the Software License Agreement, Arxscan's obligation to correct Errors in such additions shall be limited to the maintenance terms of this Agreement. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ARXSCAN SHALL HAVE NO LIABILITY FOR THE SOFTWARE OR ANY SERVICES PROVIDED, INCLUDING ANY LIABILITY FOR NEGLIGENCE; ARXSCAN MAKES AND the CUSTOMER RECEIVES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND ARXSCAN SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

13.   Limitation of Liability; Exclusion of Consequential Damages. IN NO EVENT SHALL ARXSCAN BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES OF ANY NATURE IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES OR SOFTWARE PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF: BUSINESS PROFITS, BUSINESS INTERRUPTION, BUSINESS INFORMATION OR DATA STORAGE, GOODWILL, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, EVEN IF ARXSCAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.   Default. Should the Customer fail to pay any fees or charges due hereunder or fail to carry out any other obligation under this Agreement or any other agreement with Arxscan, Arxscan may, at its option, in addition to other available remedies, terminate this Agreement or suspend maintenance services, provided that it first gives the Customer thirty (30) days' prior notice in order to permit the Customer to cure the Customer's default. In addition, maintenance coverage will automatically terminate with respect to any copies of Software that are no longer regularly used by Arxscan customers whether as a result of expiration or replacement of such versions with new Releases.

15.   Notices. All notices or other communications required to be given hereunder shall be in writing and shall be delivered by personal delivery, mail, courier, or facsimile to the address or facsimile number of the other party set forth on the Purchase Document. Notice shall be deemed given based on any one of the following notification methods: upon personal delivery; if sent by fax, with confirmation of correct transmission, on the next business day after it was sent; upon the courier's confirmed delivery if sent by courier; and if sent by mail with proper postage prepaid, five (5) days after the date of mailing. A party may change its address for notice by delivering to the other party written notice.

16.   Governing Law. This Agreement shall be governed by the laws of the State of New Jersey and the United States as applied to agreements entered into and fully performed therein by residents thereof.

17.   Jurisdiction and Venue. Any action or proceeding arising directly or indirectly from this Agreement shall be litigated in an appropriate state or federal court in the County of Essex, New Jersey. Both parties consent to the jurisdiction of such courts.

18.   Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover costs and expenses, including attorneys' fees.

19.   Modification and Waiver. This is the entire agreement between Arxscan and the Customer relating to the subject matter hereof and it may be amended only by a writing executed by the Customer and Arxscan. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any subsequent breach of the same provision or any other provision.

20.   Purchase Order Terms. The terms stated in this Agreement are the exclusive terms regarding the Customer's rights and obligations with respect to the services provided hereunder or the Software. Any terms or conditions stated in any purchase order, acknowledgment or invoice shall be of no force and effect, and no course of dealing, usage of trade, or course of performance shall be relevant to explain or modify any term expressed in the Agreement. The issuance of a purchase order and/or payment of the license fee invoice by the Customer shall constitute full and unconditional acceptance and acknowledgement of this Agreement and its terms by the Customer.

21.   Language. The official version of this Agreement is in the English language and this Agreement will be construed in accordance with this version. Translations of this agreement into any other language are for the purpose of accommodation only and shall be of no legal effect.