

## ARCTIC WOLF MASTER SOLUTIONS AGREEMENT (MSA) TERMS AND CONDITIONS

### SECTION 1 – INTERPRETATION

#### 1.1 Definitions.

- 1.1.1 **"Agreement"** means, collectively, terms and conditions set forth below, any Order Forms that reference this Agreement. If there is a conflict between the, terms below, the Order Form, or the terms set forth in an URL referenced herein, the documents will control in the following order: Order Form, this Master Solutions Agreement, and the terms located at any URL referenced in this Agreement.
- 1.1.2 **"Order Form(s)"** means, collectively, order forms, quotes, or any other ordering documents
- 1.1.3 **"Arctic Wolf"** means Commerx's Cybersecurity partner Arctic Wolf Networks, Inc.

### SECTION 2 – SCOPE

- 2.1 Scope.** Customer will purchase and Arctic Wolf will provide the specific products and services ("Solutions") as specified in the applicable Order Form. A Solution may consist of hardware equipment ("Equipment"), a cloud service offering ("Service"), software, including any add-ons offering enhanced features and functionality (collectively, the "Software"), and/or professional services ("Professional Services"). Each Solution is provided on a subscription basis for a set term designated on the Order Form (each, a "Subscription Term") for the one-time and subscription fees set forth therein (the "Fees"). Customer may access and use the Solutions, and any Documentation associated therewith, solely for its own internal business purposes and in accordance with the terms and conditions of this Agreement, such associated Documentation, any scope of use restrictions designated in the applicable Order Form, and the Solutions Terms found at [www.arcticwolf.com/terms/solutionterms](http://www.arcticwolf.com/terms/solutionterms), as may be updated from time to time by Arctic Wolf. "Documentation" means user manuals, training materials, product descriptions and specifications and other printed information relating to the Arctic Wolf Solution, as in effect and generally available from Arctic Wolf, but expressly excluding marketing and sales collateral and materials.

### SECTION 3 – EQUIPMENT

- 3.1 Equipment.** If the Order Form specifies that Customer will receive Equipment, then Customer is responsible for installing the Equipment at the location(s) specified by Arctic Wolf. The Equipment is a part of the Solutions and loaned to Customer by Arctic Wolf, not sold. Customer acknowledges that if Customer attempts to install or use the Equipment at a location other than specified by Arctic Wolf, the Solutions may fail to function or may function improperly. Other than normal wear and tear, Customer is directly responsible for loss, repair, replacement and other costs, damages, fees and charges during the Subscription Term and if Customer does not return the Equipment to Arctic Wolf in an undamaged condition. Customer is responsible for all costs associated with shipping the Equipment back to Arctic Wolf upon termination of the Subscription Term. Customer understands and agrees that should Customer elect to use Equipment outside the U.S., additional charges may apply for the shipping, export, and/or import of the Equipment.

### SECTION 4 – SERVICES

- 4.1 Professional Services.** Certain Arctic Wolf Solutions may require Professional Services, such as onboarding, or may be stand-alone offerings, and any such Professional Services shall be specified on an applicable Order Form.
- 4.2 Software and Services.** Provided Customer is in full compliance with the terms of this Agreement, Arctic Wolf grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to (i) install the object code form of the Software, but only in connection with Customer's use of the Solutions and otherwise in accordance with the Documentation, this Agreement, and the Solution Terms located at [www.arcticwolf.com/terms/solutionterms](http://www.arcticwolf.com/terms/solutionterms), as may be updated from time-to-time, (ii) use Arctic Wolf's third party cloud service providers in conjunction with Customer's use of the Solution, and (iii) access the Arctic Wolf Customer Portal, subject to the Privacy Policy located at <https://arcticwolf.com/privacy-policy-for-customer-portal-users/>, as may be updated from time-to-time. Customer Data will be retained in accordance with the Solutions Terms. Customer must implement Software and Services in order to enable features of the Solutions. Customer acknowledges that any changes made to the Customer's infrastructure or configuration of the Solutions after initial deployment may cause the Solutions to cease working or function improperly and that Arctic Wolf will have no responsibility for the impact of any such Customer changes.

## SECTION 5 – RESERVATION OF RIGHTS AND OWNERSHIP

**5.1 Reservation of Rights and Ownership.** Arctic Wolf owns, or has the right to license, the Solutions, any associated Documentation ("Arctic Wolf Technology"). Customer acknowledges and agrees that (a) the Arctic Wolf Technology is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws, (b) Arctic Wolf retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Arctic Wolf Technology, excluding any rights, title, and interest in any Third Party Products (as defined in Section 12.3 below) which shall be retained by its third party licensor(s), any other deliverables, any and all related and underlying technology and any derivative works or modifications of any of the foregoing, including, without limitation, any Feedback, (c) there are no implied licenses and any rights not expressly granted to Customer hereunder are reserved by Arctic Wolf, (d) the Solution, excluding Professional Services, is licensed on a subscription basis, not sold, and Customer acquires no ownership or other interest (other than the license rights expressly stated herein) in or to the Arctic Wolf Technology, and (e) the Solution is offered as an on-line, hosted solution, and Customer has no right to obtain a copy of the Software. Feedback includes suggestions, comments or other feedback ("Feedback") provided to Arctic Wolf by Customer with respect to the Solutions

## SECTION 6 – RESTRICTIONS, RESPONSIBILITIES, AND PROHIBITED USE

**6.1 Restrictions.** Customer agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works based on the Arctic Wolf Technology, (ii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non public APIs to the Solutions, except to the extent expressly permitted by applicable law (and then only upon advance notice to Arctic Wolf); (iii) interfere with or disrupt the integrity or performance of the Solutions or the data contained therein or block or disrupt any use or enjoyment of the Solutions by any third party, (iv) attempt to gain unauthorized access to the Solution or their related systems or networks or (v) remove or obscure any proprietary or other notice contained in the Arctic Wolf Technology, including on any reports or data printed from the Arctic Wolf Technology. Customer agrees to abide by the terms of the Acceptable Use Policy at <http://www.arcticwolf.com/terms/acceptableuse>, as may be updated from time-to-time. If Arctic Wolf, in its reasonable discretion, determines that Customer's use of the Solutions imposes an unreasonable or disproportionately large load on Arctic Wolf's infrastructure or that Customer is abusing its use of the Solutions, Arctic Wolf may, in addition to any other right herein, temporarily suspend Customer's access to the Solutions until such activity is rectified. If commercially practicable, Arctic Wolf shall provide Customer with notice prior to any such suspension and shall work with Customer in good faith to reinstate the Solutions promptly.

**6.2 Arctic Wolf Responsibilities.** Arctic Wolf shall provide the Solutions in accordance with the terms of this Agreement, as further described in the Solutions Terms. The Solutions provided under this Agreement shall include any updates, upgrades, bug fixes, version upgrades or any similar changes that are made generally available to Arctic Wolf's customers free of charge from time to time during the Subscription Term.

**6.3 Customer Responsibilities.** Customer must identify the administrative users for its account ("Administrators"). Each Administrator will receive an administrator ID and password and will need to register with Arctic Wolf. Customer is responsible for notifying Arctic Wolf about changes to Administrators, including but not limited to termination, change of authority, and the addition of Administrators. Customer acknowledges and agrees that Administrators will be able to view all Customer Data and other traffic and activities that occur on Customer's network and that Customer is responsible for all activities that occur under Administrator accounts. Administrator IDs are granted to individual, named persons and cannot be shared or used by more than one Administrator but may be reassigned from time to time to new Administrators. Customer represents and warrants that it shall (i) obtain any licenses and/or consents necessary for Arctic Wolf to perform its obligations under this Agreement, (ii) be responsible for ensuring the security and confidentiality of all Administrator IDs and passwords, (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Solutions, (iv) notify Arctic Wolf promptly of any unauthorized use of the Solutions or any breach, or attempted breach, of security of the Solutions, (v) not use the Solutions in a manner that would violate applicable laws or regulations, and (vi) use of the Solutions and the transfer of any Customer Data to Arctic Wolf will not be used for any fraudulent purposes. Customer acknowledges and agrees that the Solutions may consume additional CPU and memory in Customer's environment while in running in production.

**6.4 Prohibited Use.** Because Customer may access the Solutions from anywhere in the world, it is Customer's responsibility to ensure that Customer has the right to access and use the Solutions where Customer is located. Customer represents and warrants that Customer is not a Prohibited Person nor owned or controlled by a Prohibited Person. "Prohibited Persons" shall mean a person or entity appearing on the lists published by the U.S. Department of

Commerce, the U.S. Department of State, the U.S. Department of Treasury or any other list that may be published by the U.S. Government, as amended from time to time, that is prohibited from acquiring ownership or control of items under this Agreement, or with which Arctic Wolf is prohibited from doing business. Customer further represents that the Solutions shall not be used for or in connection (i) with nuclear activities, (ii) in the development of biological or chemical weapons, missiles, or unmanned aerial vehicles, (iii) to support terrorist activities, or (iv) in any other way that would violate economic sanctions laws. Customer agrees to promptly notify Arctic Wolf, and terminate its use of the Solutions, if Customer discovers that any of the foregoing conditions apply. Arctic Wolf may suspend any use of the Solutions if it reasonably believes Customer may be (or is alleged to be) in violation of the foregoing.

- 6.5** Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing: (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any of its users to) access or use the Solutions in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Arctic Wolf, directly or through the Solutions, any information that is controlled under the U.S. International Traffic in Arms Regulations.

## SECTION 7 - FEES, PAYMENT, TAXES, AND AUDIT

- 7.1** Pricing for the Solutions will be specified on an "Order Form". All fees are payable in the currency stated on the Order Form and are non-cancelable and non-refundable. Delinquent amounts shall bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or the maximum rate permitted by law, whichever is less. If Customer fails to make any payments due under this Agreement or an applicable Order Form, Commerx shall notify Customer of such nonpayment. If a payment that is due remains unpaid for ten (10) days after Commerx provides Customer with notice of such nonpayment, Arctic Wolf may cease providing the Solutions without any liability to Commerx. The amounts payable to Commerx are exclusive of any sales, use, excise, value added, import, or other applicable taxes, tariffs or duties ("Taxes"). Customer is solely responsible for payment of all Taxes except for any taxes based solely on Commerx's net income.

If Customer is required to pay any Taxes, Customer shall pay such Taxes with no reduction or offset in the amounts payable to Commerx hereunder and Customer will pay and bear such additional amount as shall be necessary such that Commerx receives the full amount of the payment required as if no such reduction or offset were required. If Commerx has the legal obligation to pay or collect Taxes for which Customer is responsible, Customer authorizes Commerx to charge Customer for such amount. If Customer believes that Commerx has billed Customer incorrectly, Customer must contact Commerx no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Commerx's customer sales department.

- 7.2** Customer understands and agrees that should Customer fail to remit payments to Commerx when due or if Customer terminates or suspends its business, becomes subject to any bankruptcy or insolvency proceeding under federal or state or similar statute that is not dismissed within sixty (60) days, or becomes insolvent or subject to direct control by a trustee, receiver, or similar authority, Commerx may immediately terminate this MSA without any further obligation or liability.

## SECTION 8 – COMPLIANCE WITH LAWS

- 8.1** Each party represent and warrant that, during the term of this Agreement, the parties will comply with all foreign, federal, state and local statutes, laws, orders, rules, regulations and requirements, including those of any governmental (including any regulatory or quasi-regulatory) agency applicable to such party as it pertains to its performance obligations herein and, in the case of Customer, in connection with its use of the Solutions.

## SECTION 9 – CONFIDENTIALITY

- 9.1 Customer Supplied Components.** Either party (as a "Discloser") may disclose confidential and proprietary information, orally or in writing ("Confidential Information") to the other party (as a "Recipient"). All such information shall be marked with a restrictive legend of the Discloser or reasonably understood to constitute confidential information. Notwithstanding the foregoing, contract terms relating to Customer Data shall be set forth in Section 10. Notwithstanding the marking requirements of this Section, Customer acknowledges that the following constitutes Confidential Information of Arctic Wolf: any trade secrets, know-how, inventions (whether or not patentable), techniques, ideas, or processes related to the Arctic Wolf Technology; the design and architecture of the Arctic Wolf Technology; the computer code, internal documentation, and design and functional specifications of the Arctic Wolf Technology; and any problem reports, analysis and performance information related to the Arctic Wolf Technology. Each party agrees to hold the other party's Confidential Information in strict confidence, not to

disclose such Confidential Information to third parties not authorized by the Discloser to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take commercially reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this Agreement. The Recipient may disclose



July 13, 2020 Confidential Information. Copyright 2020. All rights reserved. **3**

Confidential Information only (a) with the Discloser's prior written consent, or (b) to those employees, officers, directors, agents, consultants, and advisors with a clear and well-defined "need to know" purpose who are informed of and bound by the obligations of this Agreement. Notwithstanding the foregoing, the Recipient may disclose Confidential Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order and such Confidential Information disclosed to the extent required by law shall otherwise remain

confidential and subject to the protections and obligations of this Agreement. The Discloser agrees that the foregoing obligations shall not apply with respect to any information that the Recipient can document (i) is rightfully in its possession or known to it prior to receipt from the Discloser without an obligation of confidentiality, (ii) is or has become public knowledge through no fault of the Recipient, (iii) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation, or (iv) is independently developed by employees of the Recipient who had no access to Discloser's Confidential Information. Upon expiration or termination of this Agreement for any reason, and except as otherwise provided in Section 16 below, each party shall promptly return to the other party or destroy all copies of the other party's Confidential Information and copies, notes or other derivative material relating to the Confidential Information. Notwithstanding the foregoing, and subject to the Privacy Policy, Arctic Wolf may retain Customer's name, contact names, email address, and such other necessary contact information following termination of this Agreement for its internal business purposes, including but not limited to the improvement of its Solutions.

## SECTION 10 – CUSTOMER DATA

**10.1 "Customer Data"** means operational data and other internal business information submitted by or on behalf of Customer to the Solutions, including, but not limited to operational values, event logs, and usernames. As between the parties, Customer shall retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Arctic Wolf and the Solutions (excluding any Arctic Wolf Technology used with the Customer Data). Customer hereby grants Arctic Wolf a non-exclusive, worldwide, royalty-free right to collect, use, copy, store, transmit, modify and create derivative works of data Customer Data solely to the extent necessary to provide the Solutions to Customer. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Arctic Wolf that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement. Customer further represents and warrants that all Customer Data complies with the Acceptable Use Policy. Customer hereby authorizes Arctic Wolf to aggregate Customer Data with other data so that results are non-personally identifiable with respect to Customer and collect anonymous technical logs and data regarding Customer's use of the Solutions ("**Aggregate/Anonymous Data**"). Notwithstanding anything to the contrary herein, such Aggregate/Anonymous Data will be deemed Arctic Wolf Technology, which Arctic Wolf may use for any business purpose during or after the term of this Agreement, including without limitation to develop and improve the Solutions and services and to create and distribute reports and other materials. For clarity, this Section 10.1 does not give Arctic Wolf the right to identify Customer as the source of any Aggregate/Anonymous Data without Customer's prior written permission. Customer understands and agrees that Customer Data may be accessed by Arctic Wolf in the US, Canada, and other parts of the world and by non-US citizens, and Customer hereby consents to such access.

**10.2 European Union General Data Protection Regulation.** If and to the extent Customer submits to Arctic Wolf personal data (as that term is defined under the GDPR) of individuals located in the European Union, United Kingdom and/or the European Economic Area, the Arctic Wolf Data Processing Agreement available at [www.arcticwolf.com/terms/dpa](http://www.arcticwolf.com/terms/dpa), as may be updated by Arctic Wolf from time-to-time (the "DPA") is hereby incorporated into this Agreement unless Customer has signed a standalone Arctic Wolf Data Processing Agreement, in which case such terms shall control. Customer acknowledges that a list of Arctic Wolf's current Authorized Sub-Processors list, which may be updated by Arctic Wolf from time-to-time (the "List") is available at the URL specified in the DPA, and that Customer's is responsible for subscribing to updates to such List via the URL. It is Customer's sole responsibility to notify Arctic Wolf of requests from data subjects related to the modification, deletion, restriction and/or objection of personally identifiable information.



**10.3 California Consumer Privacy Act.** The parties acknowledge and agree that Arctic Wolf is a service provider for the purposes of the California Consumer Privacy Act ("CCPA") and may receive personal information from Customer pursuant to this Agreement for a business purpose. Arctic Wolf shall not sell any such personal information. Arctic Wolf shall not retain, use or disclose any personal information provided by Customer pursuant to this Agreement except as necessary for the specific purpose of performing the Solutions for Customer pursuant to this Agreement or as permitted by the CCPA. The terms "personal information," "service provider," "sale," and "sell" are as defined in Section 1798.140 of the CCPA. Arctic Wolf certifies that it understands the restrictions of this Section 10.3.

## SECTION 11 – INDEMNITY

**11.1 Commerx's Indemnity.** Subject to Section 11.3, Commerx will defend any third party claim or action brought against Customer to the extent based on the allegation that the Solutions infringe any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) having effect in the United States and Commerx will pay any settlements that Arctic Wolf agrees to in a writing signed by an authorized officer of Arctic Wolf or final judgments awarded to the third party claimant by a court of competent jurisdiction. The foregoing obligations do not apply with respect to the Solutions, or portions or components thereof, that are (a) not provided by Arctic Wolf, (b) combined with other products, processes or materials that are not reasonably contemplated by the Documentation where the alleged infringement relates to such combination, or (c) not used by Customer in strict accordance with this Agreement or the published Documentation.

**11.2 Customer Indemnity.** Subject to Section 11.3, Customer agrees to defend any claim or action brought against Commerx to the extent based on Customer's alleged breach of Sections 6 or 10 and Customer agrees to pay any settlements that Customer agrees to in a writing signed by an authorized officer of Customer or final judgments awarded to the third party claimant by a court of competent jurisdiction.

**11.3 Procedures.** The indemnification obligations on the part of either party are conditional upon: (i) the indemnifying party being notified in writing promptly of the indemnified party's receipt of notice of the claim (provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations under this Section 11, except to the extent of any material prejudice to the indemnifying party as a direct result of such failure); (ii) the indemnifying party having sole control over the defense or settlement of such claim; and (iii) the indemnifying party being given the necessary authorization, information and full co-operation and assistance by the indemnified party for the defense of same (at the indemnifying party's cost); provided in all cases, however, that the indemnifying party shall not enter into any settlement or compromise of any such claim in the event such settlement or compromise imposes any liability or obligation on the indemnified party without such indemnified party's prior written consent.

**11.4 Options.** If Customer's use of the Solutions has become, or in Commerx's opinion is likely to become, the subject of any claim of infringement, Commerx may at its option and expense (a) procure for Customer the right to continue using and receiving the Solutions as set forth hereunder, (b) replace or modify the Solutions to make them non-infringing, (c) substitute an equivalent for the Solutions, or (d) if Commerx, in its sole discretion, determines that options (a)-(c) are not reasonably practicable, terminate this Agreement and refund any pre-paid unused Fees as of the effective date of termination.

**11.5 Sole Remedy.** THIS SECTION 11 STATES COMMERX'S ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

## SECTION 12 – WARRANTY AND WARRANTY DISCLAIMER

**12.1 Solutions Warranty.** COMMERX WARRANTS THAT DURING THE SUBSCRIPTION TERM AND PROVIDED THAT CUSTOMER IS NOT IN BREACH OF THIS AGREEMENT THAT, (I) THE SOLUTIONS PROVIDED UNDER THIS AGREEMENT DO NOT INFRINGE OR MISAPPROPRIATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (II) THE SOLUTIONS SHALL SUBSTANTIALLY PERFORM IN ALL MATERIAL RESPECTS AS DESCRIBED IN THE DOCUMENTATION. IN THE EVENT OF ANY BREACH OF THIS SECTION 12.1, COMMERX SHALL, AS ITS SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY, REPAIR OR REPLACE THE SOLUTIONS THAT ARE SUBJECT TO THE WARRANTY CLAIM AT NO COST TO CUSTOMER OR IF COMMERX IS UNABLE TO REPAIR OR REPLACE, THEN COMMERX WILL REFUND ANY PRE-PAID FEES FOR THE SOLUTIONS, OR PARTS

THEREOF, SUBJECT TO THE WARRANTY CLAIM. EXCEPT FOR THE WARRANTY DESCRIBED IN THIS SECTION, THE SOLUTIONS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE. CUSTOMER ACKNOWLEDGES THAT THE SOLUTIONS ARE PROVIDED "AS IS" AND FURTHER ACKNOWLEDGE THAT COMMERX DOES NOT WARRANT (A) THE OPERATION OF THE SOLUTIONS WILL BE UNINTERRUPTED, OR ERROR FREE, (B) THE SOLUTIONS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE, (C) THE FEATURES OR FUNCTIONALITIES OF THE SOLUTIONS WILL BE AVAILABLE AT ANY TIME IN THE FUTURE, AND (D) THE SOLUTIONS WILL IDENTIFY OR DETECT EVERY VULNERABILITY OR SECURITY ISSUE. CUSTOMER IS RESPONSIBLE AND COMMERX SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT THE USE OF THE SOLUTIONS COMPLIES WITH APPLICABLE LAWS IN THE JURISDICTION(S) IN WHICH CUSTOMER MAY DEPLOY AND USE THE SOLUTIONS.

**12.2 Open Source Warranty.** The Software includes certain Open Source Software. Open Source Software is governed solely by the applicable open source licensing terms, if any, and is provided "AS IS". Arctic Wolf provides no warranty specifically related to any Open Source Software or any applicable Open Source Software licensing terms. The foregoing language is not intended to limit Arctic Wolf's warranty obligation for the Solution pursuant to Section 12.1. "Open Source Software" means software with its source code made available pursuant to a license by which, at a minimum, the copyright holder provides anyone the rights to study, change, and/or distribute the software to anyone and for any purpose.

**12.3 Third Party Product.** Third Party Product (as defined in this Section 12.3) may carry a limited warranty from a limited warranty from the third-party publisher, provider, or original manufacturer of such Third-Party Products. To the extent required or allowed, Arctic Wolf will pass through to Customer or directly manage for the benefit of Customer's use of the Third Party Products as part of the Solutions (such decision to be made in Arctic Wolf's discretion), the manufacturer warranties related to such Third Party Products. "Third Party Product" means any non-Arctic Wolf branded products and services (including Equipment, and any operating system software included therewith) and non-Arctic Wolf-licensed software products, including Open Source Software.

## SECTION 13 LIMITATION OF LIABILITY; FORCE MAJEUR

**13.1 LIMITATION OF LIABILITY.** FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, COMMERX WILL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR (A) DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SOLUTIONS, LOST REVENUES OR PROFITS, LOSS OF SOLUTIONS, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION OR BREACHES IN SYSTEM SECURITY, OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR (C) ANY AMOUNTS THAT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT COMMERX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**13.2 FORCE MAJEURE.** EXCEPT FOR PAYMENT OBLIGATIONS, NEITHER PARTY WILL BE LIABLE FOR ANY DELAY IN PERFORMANCE OR FAILURE TO PERFORM DUE ANY REASON BEYOND THE REASONABLE CONTROL OF SUCH PARTY OR ITS SOURCES, SUCH AS, FIRE, EXPLOSION, ACCIDENT, FLOOD, LABOR TROUBLE, WEATHER CONDITION, ANY REGULATION, RULE OR ACT OF ANY GOVERNMENT OR GOVERNMENTAL AGENCY, OR THE INABILITY TO OBTAIN OR SHORTAGE OF SUITABLE MATERIAL, COMPONENTS, PARTS, EQUIPMENT, MACHINERY, FUEL, POWER, COMMUNICATION FACILITIES OR TRANSPORTATION, ACT OF GOD, ARMED CONFLICTS, CIVIL COMMOTION OR ANY OTHER CAUSE OF LIKE CHARACTER; PROVIDED, PROVIDED THAT THE PARTY THAT IS UNABLE TO PERFORM HAS TAKEN ALL REASONABLE AND CUSTOMARY MEASURES TO AVOID THE OCCURRENCE OF, OR TO PREVENT OR MITIGATE THE EFFECTS OF, ANY SUCH DELAYS OR NONPERFORMANCE. IN ANY SUCH EVENT, THE PARTY THAT IS UNABLE TO PERFORM SHALL PROMPTLY NOTIFY THE OTHER PARTY AND SHALL USE ITS BEST EFFORTS ON A CONTINUOUS BASIS TO REMEDY THE FAILURE OR DELAY.

## SECTION 14 – TERM & RENEWAL

**14.** This Agreement shall be in effect for the Subscription Term specified in the Order Form.

**14.1** The Subscription Term to the Solutions will automatically renew at the end of the initial Subscription Term (i) for the same period of time as the initial Subscription Term, but in no event more than a twelve (12) month Subscription Term, and (ii) will renew at the then-current price, and subject to the then-current terms, at the time of renewal; provided however, that if either party would like to opt out of automatic renewal of the Subscription or modify any of the terms prior to renewal, then such party must notify the other party no less than sixty (60) days prior to

the expiration of the then-current Subscription Term. With respect to any month-to-month Subscriptions, the effective date of termination will be the last day of the Subscription Term immediately following the 60-day notification period. As a matter of example, Customer's Subscription Term is month to-month and Customer provides notification of termination on the 15th of September. The effective date of termination for the Subscription Term will be the 30th of November.

## SECTION 15 - UPDATES

- 15.1** Commerx and Arctic Wolf reserves the right to modify the Solutions, this Agreement, any terms referenced in a URL set forth herein, and the Documentation in Commerx's sole discretion and without notice provided that such changes shall not materially decrease the Solutions that Customer has subscribed to during the then-current Subscription Term. Should Arctic Wolf make any modifications, Arctic Wolf will post the amended terms on the respective URL links and will update the "Last Updated Date" within such terms. If any change materially decreases the Solutions, Arctic Wolf will notify Customer via the Customer Portal, Customer newsletter, [www.arcticwolf.com/terms](http://www.arcticwolf.com/terms) website, or such other communication method implemented by Arctic Wolf from time-to-time. Customer may notify Commerx within 30 days after the effective date of the material change of its rejection of such change. If Customer notifies Commerx of its rejection during such thirty (30) day period, then Customer will remain governed by the terms in effect immediately prior to the change until the end of Customer's then-current Subscription Term. However, any subsequent renewal of the Subscription Term will be renewed under the then-current terms, unless otherwise agreed in writing by the parties.

## SECTION 16 - TERMINATION

- 16.1** Either party may terminate this Agreement for cause if the other party commits a material breach of this Agreement, provided that such terminating party has given the other party fifteen (15) days advance notice to try and remediate the breach. If Customer purchases the Solutions through an Authorized Reseller, Customer acknowledges and agrees that Arctic Wolf may immediately without notice terminate this Agreement should Customer fail to pay any amounts due and owing to the Authorized Reseller. Upon termination, Customer agrees to cease all use of the Solutions and Arctic Wolf Technology, installed or otherwise, and destroy all copies of any Arctic Wolf Technology that are in its possession or under its control and promptly remove and return all Equipment to Arctic Wolf. Except as otherwise required by law, upon termination Arctic Wolf will remove, delete, or otherwise destroy all copies of Customer Data in its possession. Sections 7 (only as to amounts due and owing) and 9 through 14, 16, and 17 will survive the non-renewal or termination of this Agreement.

## SECTION 17 – MISCELLANEOUS

- 17.1** Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the next business day after the date sent, if sent for overnight delivery by a generally recognized international courier (e.g., FedEx, DHL, etc.) (receipt requested); or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the addresses set forth on the signature page hereof (or at such other address for a party as shall be specified in a notice given in accordance with this Section 17). For contractual purposes, Customer (1) consents to receive communications in an electronic form via the email address it provides herein or via the Customer Portal; and (2) agrees that all agreements, notices, disclosures, and other communications that Arctic Wolf provides electronically satisfies any legal requirement that those communications would satisfy if they were on paper. This Section does not affect Customer's non-waivable rights.
- 17.2** The parties acknowledge and agree that Commerx and Customer are independent contractors and will have no power, nor will either party represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. This Agreement will not be construed as constituting Commerx and Customer as partners, joint venture or agents or to create any other form of legal association that would impose liability upon one party for the act or failure to act of the other party.
- 17.3** This Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Customer shall not be entitled to assign, subcontract, delegate or otherwise transfer any of its rights and/or duties arising out of this Agreement and/or parts thereof to third parties, voluntarily or involuntarily, including by change of control, operation of law or any other manner, without Arctic Wolf's express prior written consent. Any purported assignment, subcontract, delegation or other transfer in violation of the foregoing shall be null and void. No such assignment, subcontract, delegation or other transfer shall relieve the assigning party of

any of its obligations hereunder.

- 17.4** If there is a disagreement or dispute arising out of or in connection with this Agreement or in respect of any legal relationship associated with or derived from this Agreement (a "Dispute"), the parties shall attempt in good faith to resolve the Dispute by mutual agreement. Any Dispute that is not resolved within one hundred and twenty (120) calendar days, or such other period as the parties may agree, will be finally resolved by arbitration under the Simplified Arbitration Rules of the ADR Institute of Canada, Inc. The seat of Arbitration will be Toronto. The language of the arbitration will be English. Nothing in this section shall restrict or prevent either party from seeking and obtaining temporary or interim relief from a court of law, to the extent required to preserve the property.
- 17.5** Each party acknowledges and agrees that any dispute or claim that may arise out of or relate to this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.
- 17.6** No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
- 17.7** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. The parties agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purpose of such void or unenforceable provision.
- 17.8** This Agreement (including the exhibits hereto, if any, and any BAA (as defined in Section 17.9 below)) constitutes the parties' entire agreement by and between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding by and among the parties with respect to such subject matter. Except as otherwise provided herein, this Agreement may be amended, modified or supplemented only by an agreement in writing signed by each party.
- 17.9** In the event that Arctic Wolf will have access to personal healthcare information in the delivery of the Solutions, the Customer and Arctic Wolf agree to the Business Associate Addendum ("BAA") located at [www.arcticwolf.com/terms/baa](http://www.arcticwolf.com/terms/baa). In the event the parties have entered into a BAA in relation to protected health information, the parties intend for both this Agreement and BAA to be binding upon them and the BAA is incorporated into this Agreement by reference.
- 17.10** The parties have participated mutually in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted mutually by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.