

## Incident360 Retainer Agreement For Managed Service Provider Partners

This Incident360 Retainer Agreement for Managed Service Providers (the “**Agreement**”) is a legal agreement entered into by and between Arctic Wolf Networks, Inc. and its affiliates (“**Company**” or “**Arctic Wolf**”) and the managed service provider partner (“**Partner**”) reflected on any order forms, quotes, or other ordering document that references this Agreement (“**Order Form**”). The Order Form will be issued to Partner by Company or its authorized distributor partner (the “**Distribution Partner**”). This Agreement is effective on the date Partner executes the Order Form or submits a matching purchase order to Company or the Distribution Partner, as applicable (the “**Effective Date**”). This Agreement permits Partner to purchase a subscription to I360 Retainer for Managed Service Providers (“**I360 Retainer**”), as described below, and identified in the Order Form for the specific and designated end user of Partner (the “**End User**”) and sets forth the terms and conditions under which such offering will be delivered by Company to Partner for such End User. Partner and Company may be individually referred to as a “party” and collectively referred to as the “parties”. This Agreement consists of the terms and conditions set forth below, any URL terms (the “**URL Terms**”) referenced herein, and any attachments or exhibits included herewith. If there is a conflict between the terms of this Agreement, the Order Form, or the terms set forth in the URL Terms, the documents will control in the following order: this Agreement, the URL Terms, and the Order Form.

BY EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING I360 RETAINER, ACCEPTING AN ORDER FORM FOR I360 RETAINER, OR CLICKING AN “I ACCEPT”, “SUBMIT”, OR “CONTINUE” BUTTON ASSOCIATED WITH THIS AGREEMENT, PARTNER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND PARTNER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT AND ACCEPTS THE OFFER TO SUBSCRIBE TO I360 RETAINER PURSUANT TO THE TERMS HEREIN. IF THE PERSON ACCEPTING THESE TERMS IS AN EMPLOYEE OR OTHER REPRESENTATIVE OF PARTNER, THE PERSON ACCEPTING HEREBY REPRESENTS AND WARRANTS TO COMPANY THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF PARTNER; AND (B) YOU ARE OVER 18 YEARS OLD. IF PARTNER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR IS NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT, DO NOT SUBMIT A REQUEST TO SUBSCRIBE TO I360 RETAINER OR OTHERWISE USE I360 RETAINER.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Description of I360 Retainer.** I360 Retainer includes the following:

1.1 The I360 Retainer product description (“**Product Description**”) can be found at <https://docs.arcticwolf.com/>. The Product Description is incorporated herein by reference and sets forth the availability and use of any I360 Retainer product tiers (if applicable), features, and functionalities by Partner on behalf of Partner’s End Users and Company’s direct engagement with the End User on any incident response services engagement (“**IR Services**”).

1.2 Any use by Partner of IR Planner and/or CRA on behalf of an End User are subject to the Cyber JumpStart Portal Subscription Agreement located at <https://arcticwolf.com/terms/>. Partner shall be deemed Arctic Wolf’s “Customer” as it relates to any such use.

**2. In the event of a Cybersecurity Incident.** In the event an End User experiences a cybersecurity incident, Partner (or the End User on its own behalf) may submit a request for IR Services to Company in accordance with the process described in the Product Description. Company will respond to the request for engagement directly with the End User in accordance with the Product Description. For the avoidance of doubt, Partner will not be party to or a third-party beneficiary of any IR Services agreement between Company and the End User, including any SOW and/or Services Agreement referenced therein. Company shall have no liability to Partner for any of Company’s obligations thereunder.

**3. Partner Agreement.** Partner understands and agrees the terms of the Partner Agreement and related MSP Addendum and such terms related to Partner’s responsibilities as an MSP Partner for Company shall apply, including the End User License Agreement requirements.

**4. Term and Termination.** The term of this Agreement will be as set forth on the Order Form. 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 ten (10) days’ advance notice to try and remediate the breach.

**5. Confidentiality.** During the term of this Agreement, both parties agree that (1) Confidential Information (as defined below) will be used only in accordance with the terms and conditions of this Agreement; (2) each will use the same degree of care it uses to protect its own Confidential Information, but in no event less than reasonable care; and (2) Confidential Information may be disclosed only to employees, consultants, agents, and contractors, with a need to know, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality no less restrictive than those required by this Agreement. “Confidential Information” means any information designated as confidential orally or in writing by either party, or any information that the receiving party knows, or has reason to know, is confidential or proprietary based upon its treatment by the disclosing party. This Agreement imposes no obligation with respect to information which: (1) is a part of or enters into the public domain; (2) was already in the recipient’s possession prior to the date of disclosure other than by breach of this Agreement; (3) is rightfully received from a third party without any duty of confidentiality; (4) is independently developed without reference to the Confidential Information of the disclosing party.

**6. Intellectual Property.** Except as expressly set forth herein, neither party will acquire any rights, title or interest, in any of the IP Rights belonging to the other party. As between the parties, each party owns all IP Rights in its products, services and Marks. “IP Rights” means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

**7. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY NOR ITS SUPPLIERS MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. EACH PARTY, FOR ITSELF AND ITS SUPPLIERS, SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT.

**8. Limitation of Liability.** To the fullest extent permitted by applicable law, in no event shall a party or its suppliers be liable for damages other than direct damages, including the cost of procurement of substitute goods or technology, loss of profits, or for any special, consequential, incidental, punitive or indirect damages on any theory of liability, whether in statute, contract, tort, strict liability or otherwise, even if advised of the possibility of such damages. To the fullest extent permitted by applicable law, in no event shall the total liability of a party to the other party under this Agreement exceed \$100 USD. The liability limitations in this paragraph (and otherwise in this Agreement) do not limit or exclude damages that under applicable law cannot be limited or excluded.

**9. Updates.** Company reserves the right to modify this Agreement and the URL Terms in Company's sole discretion. Should Company make any modifications to this Agreement or the URL Terms, Company will post the amended terms on the applicable URL link located at <https://arcticwolf.com/terms/> and will update the "**Last Updated Date**" within such document.

**10. Miscellaneous Terms.**

**10.1 Assignment.** This Agreement may not be assigned by either party by operation of law or otherwise, without the prior written consent of the other party, which consent will not be unreasonably withheld. Such consent is not required in connection with the assignment of this by Company to an affiliate or pursuant to a merger, acquisition or sale of all or substantially all its assets.

**10.2 Force Majeure.** Neither party will be liable for failure or delay in its performance under this Agreement to the extent caused by circumstances beyond its reasonable control.

**10.3 Governing Law.** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. Except as otherwise prohibited by law, the governing law and exclusive venue applicable to any lawsuit, settlement, or other dispute arising in connection with the Agreement will be determined by the location of Partner's principal place of business ("**Domicile**"), as follows:

Domicile	Governing Law	Venue
United States (including, D.C. and its inhabited territories)	Delaware	Kent County, Delaware
Japan	California	Santa Clara, California
Canada	Ontario	Toronto
United Kingdom, Europe Union, Iceland, Switzerland, Norway, Africa, Australia, New Zealand, Middle East, and Asia-Pacific (excluding Japan)	England	London

The parties hereby irrevocably consent to the personal jurisdiction and venue as shown above. Unless prohibited by governing law or venue, or otherwise inapplicable, each party irrevocably agrees to waive jury trial. In all cases, the application of law will be without regard to, or application of, conflict of law rules or principles. Any dispute, controversy, or claim (including non-contractual disputes, controversies, or claims) arising out of or relating to this Agreement, the breach thereof, or its subject matter or formation, shall be referred to and finally determined by arbitration within the venue in the table above in English and in accordance with the JAMS International Arbitration Rules then in effect. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s).

provided that a permanent injunction and damages shall only be awarded by the arbitrator(s). In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.

**10.4 Independent Contractors.** This Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors.

**10.5 No Third-Party Beneficiaries.** This Agreement does not confer any benefits on any third party unless it expressly states that it does.

**10.6 Notices.** All notices must be in writing and addressed to the other party's legal department and primary point of contact. Notice will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

**10.7 Severability and Waiver.** In the event that any provision of this Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, the provision (or portion) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of enforcement, will be deemed to be severed and deleted from this Agreement, while the remainder of this Agreement will continue in full force. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.

**10.8 Survival.** The following sections will survive any expiration or termination of this Agreement: Confidentiality, Intellectual Property, Disclaimer, Limitation of Liability, and Miscellaneous Terms.

**10.9 English Language.** The parties have agreed that this Agreement as well as any notice, document or instrument relating to it be drawn up in English only; *les parties aux présentes ont convenu que la présente convention ainsi que tous autres avis, actes ou documents s'y rattachant soient rédigés en anglais seulement.*