

vxIntel
Subscription Agreement
[Direct]
(Last Updated: 07/2022)

This vxIntel Subscription Agreement (this “Agreement”) is a legal agreement entered into by and between Arctic Wolf Networks, Inc. (“Arctic Wolf”) and the Customer identified on an order form (“Customer”) and governs any order forms, quotes, or other ordering document executed by Customer (“Order Form”) that reference this Agreement. The Order Form will be issued to Customer by Arctic Wolf. Customer and Arctic Wolf may be individually referred to as a “party” and collectively referred to as the “parties”. This Agreement is effective on the date Customer executes the Order Form or submits a matching purchase order to Arctic Wolf (the “Effective Date”). This Agreement permits Customer to purchase subscriptions to the Product, as defined below, and identified in the Order Form and sets forth the terms and conditions under which the Product will be delivered. The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified herein and any Order Forms that reference this Agreement. If there is a conflict between the terms below or the Order Form, the documents will control in the following order: this Agreement and the Order Form.

BY EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, AN ORDER FORM, DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO ARCTIC WOLF, OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE PRODUCTS, OR CLICKING AN “I ACCEPT” OR “CONTINUE” BUTTON ASSOCIATED WITH THIS AGREEMENT, CUSTOMER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT AND ACCEPTS THE OFFER TO SUBSCRIBE TO THE PRODUCTS PURSUANT TO THE TERMS HEREIN. IF YOU ARE AN EMPLOYEE OR OTHER REPRESENTATIVE ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER, YOU HEREBY REPRESENT AND WARRANT TO ARCTIC WOLF THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER; AND (B) YOU ARE OVER 18 YEARS OLD. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR IS NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT, DO NOT ACCEPT THE ORDER FORM, ISSUE A PURCHASE ORDER OR OTHER CONFIRMATION, OR OTHERWISE USE THE PRODUCTS.

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. DEFINITIONS

- 1.1 “Data” means the malicious and non-malicious data feeds, URLs, and other related content provided by Arctic Wolf via the Service during the Term.
- 1.2 “Product” means the Service and Data.
- 1.3 “Service” means the vxIntel Data Feed Service and the software incorporated therein.
- 1.4 “Term” means the subscription period set forth on an Order Form and any renewal thereof.

2. PRODUCT USE RIGHTS

2.1 **Use Rights.** Subject to the terms and conditions of this Agreement, Arctic Wolf grants to Customer (A) during the Term, a non-exclusive, limited, non-transferable, non-sublicensable, worldwide right to access and use the Services solely for Customer’s internal business purposes; and (B) a perpetual, worldwide, irrevocable, non-exclusive right to (i) use, store, reproduce, create derivative works of, display, export and import the Data, and (ii) offer for download the Data from within or as part of the Customer’s product or service (which may be sold or distributed through multiple tiers).

2.2 Use Restrictions.

- (a) **Use Restrictions – Services:** Customer may not (i) rent, lease, sell, assign, or otherwise transfer rights in or to the Services; (ii) use the Services for timesharing or service bureau purposes or for any purpose other than for its own internal business purposes; or (iii) publish, distribute, or make available the Services to any other party.
- (b) **Use Restrictions – Data:** Customer may not offer for sale or sell the Data as a standalone data feed either by itself or in combination with other data feeds.

2.3 **Future Functionality.** Customer agrees that it has not relied on the promise of availability of any future functionality of the Services or any other future product or service in executing this Agreement or any Order Form. Customer acknowledges that information provided by Arctic Wolf regarding future functionality should not be relied upon to make a purchase decision. Should Arctic Wolf offer additional optional functionality in the future that complement the Services, Customer may elect to subscribe to and obtain use rights to the optional functionality for an additional fee.

3. OWNERSHIP

- 3.1 **Services Ownership.** Customer acknowledges and agrees that: (a) the Services are 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 Services, any other deliverables, know-how, databases, developed programs, and registered or unregistered intangible property rights, but excluding any rights, title, and interest in the Data which shall be retained by its third party provider(s), if applicable; (c) there are no implied licenses and any rights not expressly granted to Customer hereunder are reserved by Arctic Wolf; and (d) the Services are provided on a subscription basis, not sold, and Customer acquires no ownership or other interest (other than the use rights expressly stated herein) in or to the Services.

3.2 Customer's Intellectual Property. Arctic Wolf acknowledges and agrees that Customer will retain all right, title and interest (including intellectual property rights) in and to any work of authorship, derivative works, software, or product resulting from Customer's use rights to the Data granted hereunder ("Customer IP").

4. PAYMENT AND REPORTING

4.1 Subscription Fees. In consideration for the rights granted to the Services and Data, Customer hereby agrees to pay Arctic Wolf the amounts set forth in the Order Form (the "Subscription Fees"). All Subscription Fees shall be due as set forth on the Order Form.

4.2 All Subscription Fees are payable in the currency set forth in 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. The amounts payable to Arctic Wolf are exclusive of any sales tax, use tax, excise tax, VAT, GST, HST, or similar taxes ("**Indirect Taxes**"). Customer is solely responsible for payment of all Indirect Taxes. If Customer is required to pay any Indirect Taxes, Customer shall pay such Indirect Taxes with no reduction or offset in the amounts payable to Arctic Wolf hereunder and Customer will pay and bear such additional amount as shall be necessary such that Arctic Wolf receives the full amount of the payment required as if no such reduction or offset were required. If Arctic Wolf has the legal obligation to pay or collect Indirect Taxes for which Customer is responsible, Customer authorizes Arctic Wolf to charge Customer for such amount. If Customer believes that Arctic Wolf has billed Customer incorrectly, Customer must contact Arctic Wolf no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit.

5. **Anti-corruption.** In no event shall Arctic Wolf be obligated to take any action (including the shipping of any product or the provision of any service) or omit to take any action that Arctic Wolf believes in good faith would cause it to be in violation of any U.S. or foreign laws or regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act (the "**FCPA**"). Neither party will (i) attempt to, directly or indirectly, improperly influence the sale or purchase of products by payments or other actions contrary to law or regulation, or (ii) take any action or permit or authorize any action that would violate or cause a party to violate the FCPA, the UK Bribery Act, or other applicable anti-corruption laws or regulations. Neither party will, for the purpose of influencing any act or decision to obtain or retain business or direct business to any person, pay, offer or promise to pay, or authorize the payment of, directly or indirectly, any money or anything of value to or for the use or benefit of any of the following: (a) any government official (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or any representative of any public international organization, or any person acting in any official capacity for or on behalf of any government, state-owned business or public organization); (b) any political party, official thereof, or candidate for political office; or (c) any other person if a party or any respective partner, officer, director, employee, agent, representative or shareholder of such party knows or has reason to suspect or know that any part of such money or thing of value will be offered, given or promised, directly or indirectly, to any of the above-identified persons or organizations. Each party acknowledges and agrees that none of its officers, directors, employees, agents or representatives is a government official or employee or an official or employee of any department or instrumentality of any government, nor is any of them an officer of a political party or candidate for political office, who will share directly or indirectly any part of the sums that may be paid pursuant to performance of this Agreement; and each party agrees to immediately notify the other party should the foregoing change during the term of this Agreement. Each party represents and warrants that neither this Agreement nor the performance of or exercise of rights under this Agreement is restricted by, in conflict with, requires registration or approval or tax withholding under, or will require any termination or expiration, compensation, or any compulsory licensing under, any applicable law or regulation of any country or other governmental entity, and each party will not make any claim to the contrary (each party is relying on this representation and warranty, among other provisions of this Agreement, in entering this Agreement and would not enter this Agreement in its absence).

6. **Trade Controls.** Customer understands that the Product may be subject to the export control, economic sanctions, customs, import, export and anti-boycott laws, regulations, and orders promulgated or enforced by Canada, the United States, Customer's country of residence, and any other country or governmental body having jurisdiction over the parties to this Agreement ("Trade Controls"). To the extent applicable to the Product, in whole or part, Customer shall ensure that the Product is not re-exported, provided or transferred to any person or entity listed on any restricted persons list issued by Canada or identified on the Bureau of Industry and Security's Denied Persons, Entity, or Unverified List or the Office of Foreign Assets Control's Specially Designated Nationals List or List of Consolidated Sanctions (collectively, the "Restricted Persons Lists"). Customer represents and warrants that it and its shareholders, members, partners, or other owners are not listed on, or owned 50% or more, collectively or individually, by anyone on a Restricted Persons List. Customer shall not use the Product (a) for a military application, wherever located; or (b) with knowledge or reason to know that the Product will be used for nuclear, chemical, or biological weapons proliferation or (c) for any other end use or by any end user otherwise prohibited by applicable Trade Controls. Upon request by Arctic Wolf, Customer will complete and provide an end use certificate in the form requested by Arctic Wolf. Arctic Wolf may suspend and/or cancel the export, delivery, and or servicing of the Product, if: (i) Arctic Wolf has

not received requested end-user certifications; (ii) Arctic Wolf has not received any government approvals required to comply with Trade Controls, or (iii) Arctic Wolf believes that such activity may violate any Trade Controls. If the Product is resold or transferred in violation of any Trade Controls or the provision of this Agreement, Arctic Wolf shall not be obligated to provide any warranty service or technical support for such Items.

7. TERM AND TERMINATION

7.1 Initial Term and Renewals.

(a) Initial Term. This Agreement will be effective for an initial term, commencing on the Subscription Start Date specified in the Order Form and continuing for the term specified in the Order Form (the "Initial Term").

(b) Renewals. After the Initial Term, and unless otherwise set forth on an Order Form, the Term for the subscription of the Product will automatically renew, in its entirety, at the end of the initial Term for the same period of time as the initial Term, but in no event more than a twelve (12) month term, and subject to the then-current terms and price at the time of renewal; provided however, if either party would like to opt out of automatic renewal or reduce the scope of the subscription of the Product, then such party must notify the other party no less than sixty (60) days prior to the expiration of the then-current Term.

7.2 Termination for Cause. This Agreement may be terminated by either party upon written notice if the other party: (a) becomes insolvent; (b) files a petition in bankruptcy; (c) makes an assignment for the benefit of its creditors; or (d) breaches any of its obligations under this Agreement in any material respect, which breach is not remedied within thirty (30) days following written notice to such party (except in the event of non-payment by Customer where the notice period is ten (10) days).

7.3 Effect of Termination. Any termination shall be without any liability or obligation of the terminating party, other than with respect to any breach of this Agreement prior to termination. The provisions relating to property rights and confidentiality shall survive any termination or expiration of this Agreement. Upon termination or expiration of this Agreement for any reason, Customer shall (i) promptly and permanently erase or destroy the Service that is on Customer's computer systems or otherwise in Customer's possession or under Customer's control and (ii) immediately cease use of the Service.

8 REPRESENTATION AND WARRANTIES

Each party represents and warrants to the other party that (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws and regulations of its jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement, to grant the rights set forth hereunder and to perform its obligations hereunder; (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and (d) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party.

9 CONFIDENTIALITY

9.1 Confidential Information. The parties acknowledge that each of them may have access to confidential and proprietary information relating to the other party, including, without limitation, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (the "Confidential Information"). The Confidential Information of Arctic Wolf includes the Services. Each party agrees to preserve and protect the confidentiality of the Confidential Information of the other party, not to disclose such Confidential Information to any third party without the prior written consent of the other party, and not to use such Confidential Information except for the purpose of exercising its rights and fulfilling its obligations under this Agreement.

9.2 Non-Confidential Information. The restrictions of Section 9.1 shall not apply to information that is:

9.2.1 publicly available;

9.2.2 was known by or in the possession of the receiving party prior to being disclosed by the disclosing party pursuant to this Agreement; or

9.2.3 independently developed by the receiving party without reference to the disclosing party's Confidential Information.

9.3 Either party may disclose any Confidential Information (i) to such party's agents, attorneys and other representatives who have a need to know such information and agree to keep it confidential; or (ii) to any court of competent jurisdiction or any other party empowered hereunder as reasonably required to resolve any dispute between the parties.

10 CUSTOMER OBLIGATIONS

10.1 Customer acknowledges and/or agrees:

10.1.1 to comply with all legal requirements in connection with the use of the Product;

10.1.2 that all rights in and to the Product not expressly granted are reserved to Arctic Wolf or its respective third party providers;

- 10.1.3 not to sublicense, assign, transfer, pledge, offer as security, or otherwise encumber the Product or any of the rights granted in this Agreement in any way other than as expressly provided in the Agreement;
- 10.1.4 not to use the Product in any manner or for any purpose in violation of the terms of this Agreement;
- 10.1.5 not to engage in any activity that could damage, overload, harm or impede the normal functioning of the Service;
- 10.1.6 not to attempt to gain unauthorized access to Arctic Wolf's systems, the server on which the Service operates, or any server, computer or database connected to the Service;
- 10.1.7 not to attack or attempt to attack the Service via a denial-of-service attack or a distributed denial-of service attack; and
- 10.1.8 that it shall not at any time during the Term or thereafter (i) challenge the title or any other rights of Arctic Wolf in or to the Service or any parts, derivatives or variations thereof; (ii) contest the validity of the copyrights or other proprietary interests in or to the Service; or (iii) claim any right, title or interest in or to the Service or any parts, derivatives or variations thereof except as explicitly granted in this Agreement.

11 INDEMNIFICATION

11.1 Indemnification by Arctic Wolf. Arctic Wolf, at its own expense, will indemnify, defend and hold harmless Customer and its employees against any third-party claim, suit, action, or other proceeding brought against Customer based on the allegation that the Service infringes 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 Canada. The indemnification obligations set forth in this Section 9.1 are Arctic Wolf's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

11.2 Indemnification by Customer. Customer, at its own expense, will indemnify, defend and hold harmless Arctic Wolf and its employees against any third party claim, suit, action, or other proceeding brought against Arctic Wolf based on or arising from (i) a claim that the Customer IP infringes in any manner any intellectual property right of any third party or contains any material or information that is obscene, defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or has otherwise resulted in any tort, injury, damage or harm to any person, where there would be no such claim but for such modification; (ii) a claim pertaining to the use of the Data; or (iii) any breach by Customer of this Agreement.

11.3 Procedures. Each party's indemnification obligations are conditioned on the indemnified party: (a) providing the indemnifying party with prompt written notice of any claim, provided that the failure to provide such notice shall only limit the indemnifying party's obligation to indemnify to the extent that the failure prejudices the indemnifying party in its defense of the claim; (b) granting the indemnifying party the sole control of the defense or settlement of the claim; and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense. Notwithstanding the foregoing, the indemnifying party (i) may not make an admission of fault on behalf of the other party without written consent, (ii) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (iii) the other party may join in the defense with its own counsel at its own expense.

11.4 Options. If Customer's use of the Service has become, or in Arctic Wolf's opinion is likely to become, the subject of any claim of infringement, Arctic Wolf may at its option and expense: (a) procure for Customer the right to continue using and receiving the Service as set forth hereunder; (b) replace or modify the Service to make them non-infringing; (c) substitute an equivalent for the Service; or (d) if Arctic Wolf, 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.

12 LIMITED 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, ARCTIC WOLF 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 PRODUCT, LOST REVENUES OR PROFITS, LOSS OF PRODUCTS, 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 (B) ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (C) ANY AMOUNTS THAT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT ARCTIC WOLF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. EACH PARTY UNDERSTANDS AND AGREES THAT THE LIMITATIONS OF LIABILITIES FOR EACH PARTY SET FORTH IN THIS AGREEMENT ARE REASONABLE AND THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT WITHOUT SUCH LIMITATIONS.

13 UPDATES.

Arctic Wolf reserves the right to modify this Agreement in Arctic Wolf's sole discretion. Should Arctic Wolf make any modifications to the Agreement, Arctic Wolf will post the amended terms on the applicable URL links and will update the "**Last Updated Date**" within such documents and notify Customer via the Customer Portal, Customer newsletter, <https://arcticwolf.com/terms/> website, or such other written communication method implemented by Arctic Wolf from time-to-time of any such changes. Customer may notify Arctic Wolf within 30 days after the effective date of the change of its rejection of such change. If Customer notifies Arctic Wolf 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.

14 GENERAL PROVISIONS

14.1 Notices.

14.1.1 Form of Notice. All notices, requests, claims, demands and other communications between the parties shall be in writing.

14.1.2 Method of Notice. All notices shall be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service; (iii) by first class, registered or certified mail, postage prepaid; or (iv) by facsimile or email, with confirmation of receipt, to the principal business address (including fax numbers and email address) of a party or to such other address as a party may specify in writing.

14.2 Assignment. Customer may not assign this Agreement or any right or obligation of this Agreement, by operation of law or otherwise, without the prior written consent of Arctic Wolf, which shall not be unreasonably withheld. Notwithstanding any other terms to the contrary contained herein, Customer grants Arctic Wolf the right to use Customer's name or logo in customer lists, marketing materials, and verbal discussions with prospective customers to communicate that Customer uses the Solutions. If Arctic Wolf intends to disclose information about Customer's purchase(s) (such as dollar amount of sale or project objectives) in conjunction with the use of Customer's name or logo, Arctic Wolf will obtain Customer's prior written or email approval.

14.3 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. This Agreement shall be governed by the laws of the State of Delaware without regard to the conflicts of law provisions thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Kent County, Delaware 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.

14.4 Audit Rights. During the term of this Agreement and for two (2) years thereafter, Arctic Wolf or an independent auditor may, upon reasonable advance written notice and during normal business hours, audit Customer's records (including electronic records) solely to the extent reasonably necessary to verify that Customer has complied with its obligations under this Agreement. Customer will provide Arctic Wolf or the auditor with any information and documentation that Arctic Wolf or the auditor may reasonably request in connection with such audit.

14.5 Severability. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the validity or enforceability of any other provision hereof.

14.6 Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

14.7 Waiver. 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. Arctic Wolf does not accept, expressly or impliedly, and rejects and deems deleted any additional or different terms or conditions that Customer presents, including, but not limited to, any terms or conditions contained Customer's purchase order, or other such document, or established by trade usage or prior course of dealing.

14.8 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.*