

End User License Agreement



This document is an agreement (“Agreement”) between You, the end user, and Extreme Networks, Inc., on behalf of itself and its Affiliates (“Extreme”) that sets forth Your rights and obligations with respect to the “Licensed Materials”. BY INSTALLING SOFTWARE AND/OR THE LICENSE KEY FOR THE SOFTWARE (“License Key”) (collectively, “Licensed Software”), IF APPLICABLE, COPYING, OR OTHERWISE USING THE LICENSED SOFTWARE AND/OR ANY OF THE LICENSED MATERIALS UNDER THIS AGREEMENT, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT, WHICH INCLUDES THE LICENSE(S) AND THE LIMITATION(S) OF WARRANTY AND DISCLAIMER(S)/LIMITATION(S) OF LIABILITY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, RETURN THE LICENSE KEY (IF APPLICABLE) TO EXTREME OR YOUR DEALER, IF ANY, OR DO NOT USE THE LICENSED SOFTWARE AND/OR LICENSED MATERIALS AND CONTACT EXTREME OR YOUR DEALER WITHIN TEN (10) DAYS FOLLOWING THE DATE OF RECEIPT TO ARRANGE FOR A REFUND.

- 1. DEFINITIONS.** “Affiliates” means, with respect to a party, any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such party. “Server Application” means the software application associated to software authorized for installation (per License Key, if applicable) on one or more of Your servers as further defined in the Ordering Documentation. “Client Application” means the application to access the Server Application. “Network Device” means a physical computer device, appliance, appliance component, controller, wireless access point, or virtual appliance as further described within the applicable product documentation, which includes, without limitation, the Order Documentation. “Licensed Materials” means the Licensed Software (including, without limitation, the Server Application and Client Application), Network Device (if applicable, but excluding any ODM Network Device), Firmware, media embodying software, and the accompanying documentation. “Concurrent User” means any of Your individual employees who You provide access to the Server Application at any one time. “Firmware” means any software program or code embedded in chips or other media. “Standalone” software is software licensed for use independent of any hardware purchase as identified in the Ordering Documentation. “ODM Network Device” means a Network Device purchased by You from a Specified ODM as identified in the Ordering Documentation. “Specified ODM” means an original device manufacturer as identified in the Ordering Documentation. “Licensed Software” collectively means the software, including without limitation Standalone software, Firmware, Server Application, Client Application or other application licensed with conditional use parameters as defined in the Ordering Documentation. “Ordering Documentation” means the applicable price quotation, corresponding purchase order, relevant invoice, order acknowledgement, and accompanying documentation or specifications for the products and services purchased, acquired or licensed hereunder from Extreme either directly or indirectly. “Open Source Software” means any software code or component that is distributed as open source software or freeware or is otherwise distributed publicly or made generally available in source code form under terms that permit modification and redistribution on one or more triggering conditions.
- 2. TERM.** This Agreement is effective from the date on which You accept the terms and conditions of this Agreement via click-through, commence using the products and services or upon delivery of the License Key if applicable, and shall be effective until terminated. In the case of Licensed Materials offered on a subscription basis, the term of “licensed use” shall be as defined within Your Ordering Documentation.
- 3. GRANT OF LICENSE.** Extreme hereby grants You a non-transferable, non-sublicensable, non-exclusive license to use the Licensed Materials and the accompanying documentation for Your own business purposes, subject to the terms and conditions of this Agreement, applicable licensing restrictions, and any term, user server networking device, field of use, or other restrictions as set forth in Your Ordering Documentation. If the Licensed Materials are being licensed on a subscription and/or capacity basis, the applicable term and/or capacity limit of the license shall be specified in Your Ordering Documentation. You may install and use the Licensed Materials as permitted by the license type purchased as described below in License Types. The license type purchased is specified in the Ordering Documentation. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.
- 4. LICENSE TYPES.**
 - *Single User, Single Network Device.* Under the terms of this license type, the license granted to You by Extreme authorizes You to use the Licensed Materials as bundled with a single Network Device as identified by a unique serial number for the applicable term, if and as specified in Your Ordering Documentation, or any replacement for that Network Device for that same term, for internal use only. A separate license, under a separate license agreement, is required for any other Network Device on which You or another individual, employee or other third party intend to use the Licensed Materials. A separate license under a separate license agreement is also required if You wish to use a Client license (as described below).
 - *Single User, Multiple Network Devices.* Under the terms of this license type, the license granted to You by Extreme authorizes You to use the Licensed Materials with a defined amount of Network Devices as defined in the Ordering Documentation.
 - *Client.* Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Materials on Your server and allow the specific number of Concurrent Users as ordered by you and is set forth in Your Ordering Documentation. A separate license is required for each additional Concurrent User.
 - *Standalone.* Software or other Licensed Materials licensed to You for use independent of any Network Device.
 - *Subscription.* Licensed Materials, and inclusive Licensed Software, Network Device or related appliance updates and maintenance services, licensed to You for use during a subscription period as defined in Your applicable Ordering Documentation.
 - *Capacity.* Under the terms of this license, the license granted to You by Extreme authorizes You to use the Licensed Materials up to the amount of capacity or usage as defined in the Ordering Documentation.
- 5. AUDIT RIGHTS.** You agree that Extreme may audit Your use of the Licensed Materials for compliance with this Agreement and Your License Type at any time, upon reasonable notice. In the event that such audit reveals any use of the Licensed Materials by You other than in full compliance with the

Extreme Networks End User License Agreement

license granted and the terms of this Agreement, Extreme reserves the right to charge You for all reasonable expenses related to such audit in addition to any other liabilities and overages applicable as a result of such non-compliance, including but not limited to additional fees for Concurrent Users, excess capacity or usage over and above those specifically granted to You. From time to time, the Licensed Materials may upload information about the Licensed Materials and the associated usage to Extreme. This is to verify the Licensed Materials are being used in accordance with a valid license and/or entitlement. By using the Licensed Materials, you consent to the transmission of this information.

6. **RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS.** Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompile, disassemble, electronically transfer, reverse engineer, extract or otherwise derive, the source code and any other ideas, algorithms or procedures from the Licensed Materials, including without limitation the Licensed Software, or to translate the Licensed Materials into another computer language, except to the extent that Extreme is not permitted by applicable law to exclude or limit such rights. The media or software in other form embodying the Licensed Materials may be copied by You, in whole or in part, into machine-readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including without limitation the original media, in Your possession for said purposes without Extreme's prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. Notwithstanding the above, you may not copy or reproduce the documentation. You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You agree to include any copyright, trademark, claims of confidentiality, or trade secrets, or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Materials in any form, in whole or in part, or on any modification of the Licensed Materials or any such modular work containing the Licensed Materials or any part thereof.

7. **TITLE AND PROPRIETARY RIGHTS.**

(a) The Licensed Materials are copyrighted works and, as between You and Extreme, are the sole and exclusive property of Extreme, its Affiliates, and/or its and their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

(b) You further acknowledge that in the event of a breach of this Agreement, Extreme shall suffer severe and irreparable damages for which monetary compensation alone will be inadequate. You therefore agree that in the event of a breach of this Agreement, Extreme shall be entitled to monetary damages and its reasonable attorney's fees and costs in enforcing this Agreement, as well as injunctive relief to restrain such breach, in addition to any other remedies available to Extreme.

8. **PROTECTION AND SECURITY.** In the performance of this Agreement or in contemplation thereof, You and Your employees and agents may have access to private or confidential information owned or controlled by Extreme relating to the Licensed Materials supplied hereunder including, but not limited to, product specifications and schematics, and such information may contain proprietary details and disclosures. All information and data so acquired by You or Your employees or agents under this Agreement or in contemplation hereof shall be and shall remain Extreme's exclusive property, and You shall use all commercially reasonable efforts to keep, and have Your employees and agents keep, any and all such information and data confidential, and shall not copy, publish, or disclose it to others, without Extreme's prior written approval, and shall return, destroy or expunge such information and data to Extreme at its request. Nothing herein shall limit Your use or dissemination of information not actually derived from Extreme or of information which has been or subsequently is made public by Extreme, or a third party having authority to do so.

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to Your use of the Licensed Materials on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme, its Affiliates, and its and their suppliers.

9. **MAINTENANCE AND UPDATES.** Except as otherwise defined below, updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of a separate service and/or maintenance agreement, if Extreme and You enter into such an agreement. Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide updates, modifications, or enhancements, or maintenance and support services for the Licensed Materials to You. If you have purchased Licensed Materials on a subscription basis then the applicable service terms for Your Licensed Materials are as provided in Your Ordering Documentation. Extreme will perform the maintenance and updates in a timely and professional manner, during the term of Your subscription, using qualified and experienced personnel. You will cooperate in good faith with Extreme in the performance of the support services including, but not limited to, providing Extreme with: (a) access to the Extreme Licensed Materials (and related systems); and (b) reasonably requested assistance and information. Further information about the applicable maintenance and updates terms can be found on Extreme's website at <http://www.extremenetworks.com/company/legal/terms-of-support>.

10. **DEFAULT AND TERMINATION.** In the event that You shall fail to keep, observe, or perform any obligation under this Agreement, including without limitation a failure to pay any sums due to Extreme, or in the event that you become insolvent or seek protection, voluntarily or involuntarily, under any bankruptcy law, Extreme may, in addition to any other remedies it may have under law, terminate this Agreement and any other related agreements between Extreme and You.

(a) Immediately after any termination of this Agreement, Your licensed subscription term, or if You have for any reason discontinued use of Licensed Materials, You shall return to Extreme, destroy or expunge (in Extreme's discretion) the original and any copies of the Licensed Materials and remove the Licensed Materials, including without limitation any Licensed Software, from any Network Devices, and certify in writing that through Your best efforts and to the best of Your knowledge the original and all copies of the terminated or discontinued Licensed Materials have been returned to Extreme, destroyed or expunged.

(b) Sections 1, 7, 8, 10, 11, 12, 13, 14 and 15 shall survive expiration or termination of this Agreement for any reason.

Extreme Networks End User License Agreement

11. **EXPORT REQUIREMENTS.** You are advised that the Licensed Materials, including without limitation the Licensed Software, is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, re-export, import or transmit the Licensed Materials, including without limitation the Licensed Software to any country, end user or for any use that is prohibited by applicable United States laws or regulations (including but not limited to those countries embargoed from time to time by the United States government) or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, re-export, import, transmission or use.

12. **UNITED STATES GOVERNMENT RESTRICTED RIGHTS.** The Licensed Materials (i) incorporate commercial computer software and commercial computer software documentation developed exclusively at private expense, and (ii) are in all respects proprietary property belonging solely to Extreme or its suppliers. If You are acquiring the Licensed Materials on behalf of any part of the U.S. government, the following provisions apply. The object code and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the object code or the accompanying documentation by the U.S. government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the provisions hereof. Any technical data provided that is not covered by the above provisions is deemed to be “technical data” and “commercial items” pursuant to DFAR Section 252.227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 252.227.7015(b).

13. **LIMITED WARRANTY AND LIMITATION OF LIABILITY.** Extreme warrants to You that (a) the initially-shipped version of the Licensed Materials will materially conform to the Ordering Documentation; and (b) the media on which the Licensed Software is recorded will be free from material defects for a period of ninety (90) days from the date of delivery to You or such other minimum period required under applicable law. Extreme does not warrant that Your use of the Licensed Materials will be error-free or uninterrupted.

NONE OF EXTREME, ITS AFFILIATES, OR ITS OR THEIR LICENSORS OR SUPPLIERS, MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. IN NO EVENT WILL EXTREME OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR ANY LOST PROFITS OR DATA, OR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF EXTREME OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXTREME OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS DURING THE TWELVE (12)-MONTH PERIOD PRECEDING THE EVENT CAUSING THE CLAIM.

Some jurisdictions do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary based on Your applicable jurisdiction.

14. **GOVERNING LAW; JURISDICTION.** The validity, performance and construction of this Agreement and the rights and obligations of the parties pursuant to this Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to any conflicts of law rules that would mandate the application of the laws of another jurisdiction. Extreme and You hereby consent to the exclusive jurisdiction of, and venue in, the State and Federal courts of the State of California. You waive any objections to the personal jurisdiction and venue of such courts. None of the 1980 United Nations Convention on the Limitation Period in the International Sale of Goods, the United Nations Convention on Contracts for the International Sale of Goods, or the Uniform Computer Information Transactions Act shall apply to this Agreement.

15. **FREE AND OPEN SOURCE SOFTWARE.** Portions of the Licensed Software provided to You may contain Open Source Software that is subject to a license that permits You to modify these portions and redistribute the modifications (an “Open Source License”). Your use, modification, and redistribution of the Open Source Software are governed by the terms and conditions of the applicable Open Source License. Some of the Open Source Software may be subject to: the GNU General Public License (GPL), the Lesser General Public License (LGPL), the Artistic License, the Mozilla Public License, Common Public License, the BSD License, the MIT License, the Apache License, the Creative Commons License, and/or other Open Source Licenses, copies of which are provided with the Licensed Materials or can be found on Extreme’s website at <https://www.extremenetworks.com/support/policies/open-source-declaration/>. In accordance with the terms of GPL and LGPL, you may request a copy of the relevant source code should GPL and/or LGPL terms apply to your Licensed Software. Additional details are available upon request to Extreme. This offer is valid for up to three years from the date of original distribution of the relevant Licensed Software.

All Open Source Software is provided to You on an “AS IS” basis, and Extreme makes no representations or warranties for the use of this Open Source Software by You independent of any Extreme provided product, software, or services. Refer to the licenses and copyright notices listed in the relevant open source declaration for any specific license terms that apply to each Open Source Software component and warranty, if any, from the associated authors or licensors. Extreme specifically disclaims any warranties for defects caused by altering or modifying any Open Source Software or the products’ recommended configuration. You have no warranty or indemnification claims against Extreme in the event that the Open Source Software infringes the intellectual property rights of a third party. Technical support, if any, will only be provided for the unmodified Extreme product as used within such product's recommended configuration.

16. **GENERAL.**

(a) This Agreement is the entire agreement between Extreme and You with respect to the subject matter hereof, including without limitation the Licensed Materials, and all prior agreements, representations, statements, and undertakings, oral or written, are hereby expressly superseded and canceled.

Extreme Networks End User License Agreement

- (b) This Agreement may not be changed or amended except in writing signed by both parties hereto. No purchase order shall supersede or amend any terms of this Agreement.
- (c) You represent that You have full right and/or authorization to enter into this Agreement.
- (d) This Agreement shall not be assignable by You without the express written consent of Extreme. The rights of Extreme and Your obligations under this Agreement shall inure to the benefit of Extreme's assignees, licensors, and licensees.
- (e) Section headings are for convenience only and shall not be considered in the interpretation of this Agreement.
- (f) The provisions of the Agreement are severable and if any one or more of the provisions hereof are judicially determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions of this Agreement shall nevertheless be binding on and enforceable by and between the parties hereto.
- (g) Extreme's waiver of any right shall not constitute waiver of that right in future.
- (h) Should You have any questions regarding this Agreement, You may contact Extreme at the address set forth below. Any notice or other communication to be sent to Extreme must be mailed by certified mail to the following address:

Extreme Networks, Inc.
6480 Via Del Oro
San Jose, CA 95119 United States
ATTN: Legal Department