

ExtremeCloud Services Agreement



This document is an agreement (“Agreement”) between You, the end user or subscriber, and Extreme Networks, Inc., on behalf of itself and its affiliates (“Extreme”) that sets forth your rights and obligations with respect to the “Services”. **BY USE OF THE CLOUD SERVICES AND AS FURTHER DESCRIBED IN AN APPLICABLE ORDERING DOCUMENT THAT INCORPORATES BY REFERENCE THIS AGREEMENT (THE “ORDERING DOCUMENT”), YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH INCLUDES BUT IS NOT LIMITED TO THE LICENSE SUBSCRIPTION, LIMITED WARRANTY AND DISCLAIMER(S)/LIMITATION(S) OF LIABILITY. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND, IN SUCH EVENT, “YOU” AND “YOUR” AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR SUCH ENTITY DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT USE THE SERVICES. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, CONTACT EXTREME, ATTN: LegalTeam@extremenetworks.com**

1. AGREEMENT DEFINITIONS

1.1 “Ancillary Software” means any software agent or tool that Extreme makes available to You for download for purposes of facilitating Your access to, operation of, and/or use with, the Services Environment.

1.2 “Auto Renew” or “Auto Renewal” is the process by which the Services Period of certain Cloud Services under an Ordering Document is automatically extended for an additional Services Period unless such Services are otherwise terminated in accordance with the terms of the Ordering Document or this Agreement. The Service Specifications incorporated into Your Ordering Document define which Cloud Services are eligible for Auto Renewal as well as any terms applicable to any such renewal.

1.3 “Cloud Services” means, collectively, the Extreme cloud services (e.g., Extreme software as a service offerings and related Extreme Software) listed in Your Ordering Document and defined in the Service Specifications. The term “Cloud Services” does not include Professional Services.

1.4 “Customer Personal Data” means all personal data (as defined in the Data Protection Law) which is processed by Extreme on Your behalf in connection with the Services.

1.5 “Data Protection Law” means all applicable laws relating to data protection and privacy including (without limitation) the EU Data Protection Directive (95/46/EC) as implemented in each jurisdiction, the EU General Data Protection Regulation (2016/679), the EU Privacy and Electronic Communications Directive 2002/58/EC as implemented in each jurisdiction, and any amending or replacement legislation from time to time.

1.6 “Extreme Software” refers to the software products owned or licensed by Extreme to which Extreme grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services.

1.7 “Professional Services” means, collectively, the consulting and other professional services which You have ordered pursuant to the applicable Ordering Documentation. Professional Services include any deliverables described in Your Ordering Document and delivered by Extreme to You under the Ordering Document. The term “Professional Services” does not include Cloud Services. In the absence of a written agreement between the parties, the terms and conditions specific to Extreme’s performance of Professional Services are as published online at www.extremenetworks.com

1.8 “Program Documentation” refers to the user manuals referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for the Extreme Software that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Extreme Software. You may access the documentation online at www.extremenetworks.com or such other address specified by Extreme.

1.9 “Services” means, collectively, both the Cloud Services and/or Professional Services that You have ordered.

1.10 “Services Environment” refers to the combination of hardware and software components owned, licensed or managed by Extreme to which Extreme grants You and Your Users access as part of the Cloud Services which You have ordered. As applicable and subject to the terms of this Agreement and Your Ordering Document, Extreme Software, Third Party Content, Your Content and Your Applications may be hosted in the Services Environment.

ExtremeCloud Services Agreement



1.11 “**Service Specifications**” means the descriptions on www.extremenetworks.com, or such other address specified by Extreme, that are applicable to the Services under Your Ordering Document, including any Program Documentation, hosting, support and security policies, and other descriptions referenced or incorporated in such descriptions or Your Ordering Document.

1.12 “**Services Period**” refers to the period of time for which You have ordered Cloud Services as specified in Your Ordering Document.

1.13 “**Third Party Content**” means all applications, text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Extreme and made available to You through, within, or in conjunction with Your use of, the Cloud Services.

1.14 “**Users**” means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Cloud Services in accordance with this Agreement and Your Ordering Document. For Cloud Services that are specifically designed to allow Your clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered “Users” subject to the terms of this Agreement and Your Ordering Document.

1.15 “**You**” and “**Your**” refers to the individual or entity that has executed this Agreement.

1.16 “**Your Applications**” means all software programs, including any source code for such programs, that You or Your Users provide and load onto, or create using, any Extreme “platform-as-a-service” or “infrastructure-as-a-service” Cloud Services. Services under this Agreement, including Extreme Software and Services Environments, Extreme intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Your Applications.”

1.17 “**Your Content**” means all text, files, images, graphics, illustrations, information, data (including Customer Personal Data as defined in this Agreement), audio, video, photographs and other content and material (other than Your Applications), in any format, provided by You or on behalf of Your Users that reside in, or run on or through, the Services Environment.

2. TERM OF AGREEMENT

This Agreement is valid for the order which this Agreement accompanies. This Agreement may also be referenced for any purchase that increases the quantity of the original Services ordered (e.g., additional Users), for any Cloud Services options offered by Extreme for the original Services ordered, and for any renewal or Auto Renewal of the Services Period of the original order.

3. RIGHTS GRANTED

3.1 For the duration of the Services Period and subject to Your payment obligations, and except as otherwise set forth in this Agreement or Your Ordering Document, You have the non-exclusive, non-assignable, worldwide limited right to access and use the Services that You ordered, including anything developed by Extreme and delivered to You as part of the Services, solely for Your internal business operations and subject to the terms of this Agreement and Your Ordering Document, including the Service Specifications. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users’ compliance with this Agreement and the Ordering Document.

3.2 You do not acquire under this Agreement any right or license to use the Services, including the Extreme Software and Services Environment, in excess of the scope and/or duration of the Services stated in Your Ordering Document. Upon the end of the Services ordered, Your right to access and use the Services will terminate.

3.3 To enable Extreme to provide You and Your Users with the Services, You grant Extreme the right to use, process and transmit, in accordance with this Agreement, Your Content and Your Applications for the duration of the Services Period plus any additional post-termination period during which Extreme, at Extreme’s discretion, provides You with access to retrieve an export file of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Extreme may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperation of such third party programs with the Services. Extreme will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

3.4 Except as otherwise expressly set forth in Your Ordering Document, certain Cloud Services offerings (e.g., a private cloud hosted at Your facility) shall be mutually agreed upon in a separate agreement between the parties.

ExtremeCloud Services Agreement

3.5 As part of certain Cloud Services offerings, Extreme may provide You with access to Third Party Content. The type and scope of any Third Party Content is defined in Your Ordering Document or applicable Service Specifications. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider, unless otherwise specified in Your Ordering Document.

4. OWNERSHIP AND RESTRICTIONS

4.1 You retain all ownership and intellectual property rights in and to Your Content and Your Applications. Extreme or its licensors retain all ownership and intellectual property rights to the Services, including Extreme Software and Ancillary Software, and derivative works thereof, and to anything developed or delivered by or on behalf of Extreme under this Agreement.

4.2 You may not, and may not cause or permit others to:

- a) remove or modify any program markings or any notice of Extreme's or its licensors' proprietary rights;
- b) make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services You have acquired);
- c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to develop or support, and/or assist a third party in developing or supporting, products or Services competitive to Extreme;
- d) perform or disclose any benchmark or performance tests of the Services, including the Extreme Software;
- e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- f) license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Extreme Software, Ancillary Software, Services Environments or Extreme materials to any third party, other than as expressly permitted under the terms of the applicable Ordering Document.

5. SERVICE SPECIFICATIONS

5.1 The Services are subject to and governed by Service Specifications applicable to Your Ordering Document. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources, functional and technical aspects of the Extreme Software, as well as any Services deliverables. You acknowledge that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit You to exceed the ordered quantity (e.g., user or node count, capacity, etc.), then You are responsible for promptly purchasing additional quantity to account for Your excess usage. For any month that You do not promptly purchase such additional quantity, Extreme may require You to pay, in addition to the fees for the additional quantity, an excess usage fee for those Services equivalent to 10% of the fees for the additional quantity in the month in which such excess usage occurred.

5.2 Extreme may make changes or updates to the Services during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at Extreme's discretion; however, Extreme changes to the Service Specifications will not result in a material reduction in the level of performance, security or availability of the applicable Services provided to You for the duration of the Services Period.

5.3 Extreme and its affiliates may perform certain aspects of Cloud Services, such as service administration and support, as well as other Services (including Professional Services and disaster recovery), from locations and/or through use of subcontractors, worldwide. Extreme shall remain liable for any non-performance by such subcontractors as it otherwise would herein.

ExtremeCloud Services Agreement

6. USE OF THE SERVICES

6.1 You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Extreme, You accept responsibility for the confidentiality and the timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers. Extreme is not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Extreme immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

6.2 You shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Extreme under this Agreement, Extreme reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Extreme shall have no liability to You in the event that Extreme takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. You agree to defend and indemnify Extreme against any claim arising out of a violation of Your obligations under this section.

6.3 You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Extreme Software, as such Patches are generally released by Extreme as described in the Service Specifications. Extreme is not responsible for performance or security issues encountered with the Cloud Services that result from Your failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Extreme will coordinate the scheduling of application of Patches, where possible, based on Extreme's next available standard maintenance window.

7. FEES AND TAXES

7.1 All fees payable to Extreme are due within thirty (30) days from the invoice date and shall be issued on a monthly basis. Once placed, Your Ordering Document is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement or Your Ordering Document. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Extreme incurs based on the Services You ordered, except for taxes based on Extreme's income. You agree to reimburse Extreme for reasonable expenses related to providing any Professional Services. Fees for Services listed in an Ordering Document are exclusive of taxes and expenses.

7.2 You understand that You may receive multiple invoices for the Services You ordered. Invoices will be submitted to You on a yearly or monthly basis, based on the agreement between the parties as further defined in an Ordering Document.

7.3 You agree and acknowledge that You have not relied on the future availability of any Services, programs or updates in entering into the payment obligations in Your Ordering Document; however, the preceding does not relieve Extreme of its obligation during the Services Period to deliver Services that You have ordered per the terms of this Agreement.

8. SERVICES PERIOD; END OF SERVICES

8.1 Services provided under this Agreement shall be provided for the Services Period defined in Your Ordering Document, unless earlier suspended or terminated in accordance with this Agreement or the Ordering Document. If stated in the Service Specifications, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) You provide Extreme with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intention not to renew such Cloud Services, or (ii) Extreme provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.

ExtremeCloud Services Agreement



8.2 Upon the end of the Services, You no longer have rights to access or use the Services, including the associated Extreme Software and Services Environments; however, for a period of up to sixty (60) days after the end of the applicable Services Period, Extreme will make available Your Content and Your Applications then in the Services Environment for the purpose of retrieval by You. At the end of such sixty (60) day period, and except as may be required by law, Extreme will delete or otherwise render inaccessible any of Your Content and Your Applications that remain in the Services Environment.

8.3 Extreme may temporarily suspend Your password, account, and access to or use of the Services if You or Your Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Agreement, or if in Extreme's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Extreme will provide advance notice to You of any such suspension in Extreme's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Extreme will use reasonable efforts to re-establish the affected Services promptly after Extreme determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Extreme will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Extreme may terminate the Services under an Ordering Document if any of the foregoing causes of suspension is not cured within thirty (30) days after Extreme's initial notice thereof. Any suspension or termination by Extreme under this paragraph shall not excuse You from Your obligation to make payment(s) under this Agreement.

8.4 If either of us breaches a material term of this Agreement and fails to correct the breach within thirty (30) days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the Ordering Document under which the breach occurred. If Extreme terminates the Ordering Document as specified in the preceding sentence, You must pay within thirty (30) days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such Ordering Document plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the thirty (30) day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Services ordered.

8.5 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

9. NONDISCLOSURE

9.1 By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to the terms and pricing under this Agreement, Your Content and Your Applications residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.

9.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

9.3 We each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three (3) years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Extreme will hold Your Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. We each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Extreme will protect the confidentiality of Your Content or Your Applications residing in the Services Environment in accordance with the Extreme security practices defined as part of the Service Specifications applicable to Your Ordering Document. In addition, Personal Data will be treated in accordance with the terms of Section 10 below. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or Ordering Documents placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

ExtremeCloud Services Agreement

10. DATA PROTECTION

10.1 Subject to Section 10.2, in performing the Services, Extreme will comply with industry standard privacy requirements as may further be defined within the *Extreme Networks Privacy and Cookies Policy*, which is available at www.extremenetworks.com, and is incorporated herein by reference. Extreme's Privacy and Cookies Policy is subject to change at Extreme's discretion; however, Extreme policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period of Your Ordering Document.

10.2 This Section 10.2 shall apply where Extreme's processing of personal data in connection with this Agreement is subject to Data Protection Law. In the event of a conflict between Section 10.1 and Section 10.2, this Section 10.2 shall apply. You have appointed Extreme to process Personal Data on Your behalf as is necessary to provide the Services and in accordance with such other written instructions as You may issue from time to time. The parties' respective obligations for the processing and control of Customer Personal Data are set out in Annex 1 – Processing of Customer Personal Data, located at <http://bit.ly/2s6YBfi> which is incorporated herein by reference.

10.3 The Service Specifications applicable to Your Ordering Document define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for the introduction of any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content and Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

10.4 You may not provide Extreme access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless explicitly agreed between the parties. If available, You may purchase services from Extreme designed to address particular data protection requirements applicable to Your business or Your Content.

11. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

11.1 Extreme warrants that it will perform (i) Cloud Services in all material respects as described in the Service Specifications, and (ii) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Extreme that describes the deficiency in the Services (including, as applicable, the service request number notifying Extreme of the deficiency in the Services).

11.2 EXTREME DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT EXTREME WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY EXTREME, AND (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT EXTREME DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. EXTREME IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. EXTREME IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT.

11.3 FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND EXTREME'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF EXTREME CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND EXTREME WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO EXTREME FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

11.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. LIMITATION OF LIABILITY

ExtremeCloud Services Agreement



NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. EXTREME'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDERING DOCUMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO EXTREME FOR THE SERVICES UNDER THE ORDERING DOCUMENT GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM EXTREME UNDER SUCH ORDERING DOCUMENT.

13. INDEMNIFICATION

13.1 Subject to the terms of this Section 13 (Indemnification), if a third party makes a claim against either You or Extreme ("Recipient" which may refer to You or Extreme depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Extreme ("Provider" which may refer to You or Extreme depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following: (a) notifies the Provider promptly in writing, not later than thirty (30) days after the Recipient receives notice of the claim (or sooner if required by applicable law); (b) gives the Provider sole control of the defense and any settlement negotiations; and (c) gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

13.2 If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Extreme's ability to meet its obligations under the relevant Ordering Document, then Extreme may, at its option and upon thirty (30) days prior written notice, terminate the Ordering Document. If such Material is third party technology and the terms of the third party license do not allow Extreme to terminate the license, then Extreme may, upon thirty (30) days prior written notice, end the Services associated with such Material and refund to You any unused, prepaid fees for such Services.

13.3 The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or (c) continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. Extreme will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Extreme. Extreme will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible or made available to You within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.). Extreme will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Extreme will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

13.4 This Section 13 provides the parties' exclusive remedy for any infringement claims or damages.

14. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

14.1 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, platforms, content, products, services, and information of third parties. Extreme does not control and is not responsible for such Web sites or platforms or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

14.2 Any Third Party Content made accessible by Extreme is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or

ExtremeCloud Services Agreement



unlawful, and You acknowledge that Extreme is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Extreme reserves the right to take remedial action if any such content violates applicable restrictions under Section 6.2 of this Agreement, including the removal of, or disablement of access to, such content. Extreme disclaims all liabilities arising from or related to Third Party Content.

14.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with applications or platforms of third parties (each, a “Third Party Service”), depend on the continuing availability of such third parties’ respective application programming interfaces (APIs) for use with the Services. Extreme may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Extreme in its sole discretion, Extreme may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under this Agreement or the applicable Ordering Document, and You will not be entitled to any refund, credit or other compensation due to any such changes.

14.4 Any Third Party Content that You store in Your Services Environment will count towards any storage or other allotments applicable to the Cloud Services that You ordered.

15. SERVICES TOOLS AND ANCILLARY SOFTWARE

15.1 Extreme may use tools, scripts, software, and utilities (collectively, the “Tools”) to monitor and administer the Services and to help resolve Your Extreme service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Extreme’s product and service portfolio, to help Extreme address deficiencies in its product and service offerings, and for license and Services management.

15.2 Extreme may provide You with on-line access to download certain Ancillary Software for use with the Services. If Extreme licenses Ancillary Software to You and does not specify separate terms for such Ancillary Software, then, subject to Your payment obligations, (i) You have the non-exclusive, non-assignable, worldwide limited right to use such Ancillary Software solely to facilitate Your access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Your Ordering Document, including the Services Specifications, (ii) Extreme will maintain such Ancillary Software as part of the Cloud Services, and (iii) Your right to use such Ancillary Software will terminate upon the earlier of Extreme’s notice to You or the end of the Cloud Services associated with the Ancillary Software. If Ancillary Software is licensed to You under separate third party license terms, then Your use of such software is subject solely to such separate terms.

16. SERVICE ANALYSES

Extreme may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (collectively “Service Analyses”). Extreme may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Extreme retains all intellectual property rights in Service Analyses.

17. EXPORT

17.1 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern Your use of the Services (including technical data) and any Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

17.2 You acknowledge that the Cloud Services are designed with capabilities for You and Your Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Your Content and Your Applications between the Services Environment and other locations such as User workstations. You are solely responsible for

ExtremeCloud Services Agreement



the authorization and management of User accounts, as well as export control and geographic transfer of Your Content and Your Applications.

18. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either of us may cancel unperformed Services and affected Ordering Documents upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

19. GOVERNING LAW AND JURISDICTION

The rights and obligations of the parties to this Agreement shall be governed and construed in accordance with the laws and in the State and Federal courts of the State of California, without regard to its rules with respect to choice of law. 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, and the Uniform Computer Information Transactions Act shall apply to this Agreement.

20. NOTICE

20.1 Any notice required under this Agreement shall be provided to the other party in writing. If You have a legal dispute with Extreme or if You wish to provide a notice under the Indemnification Section of this Agreement, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Extreme Networks, Inc., 145 Rio Robles, San Jose, California, 95134 U.S.A., Attention: General Counsel, Legal Department.

20.2 To request a termination of Services in accordance with this Agreement, You must submit a service request to Extreme at the address specified in Your Ordering Document or the Service Specifications.

20.3 Extreme may give notices applicable to Extreme's Cloud Services customer base by means of a general notice on the Extreme portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Extreme's account information or by written communication sent by first class mail or pre-paid post to Your address on record in Extreme's account information.

21. ASSIGNMENT

You may not assign this Agreement or give or transfer the Services (including the Extreme Software) or an interest in them to another individual or entity. If You grant a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables.

22. OTHER

22.1 Extreme is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We are each responsible for paying our own employees, including employment related taxes and insurance. You understand that Extreme's business partners and other third parties, including any third parties with which Extreme has an integration or that are retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Extreme and are not Extreme's agents. Extreme is not liable for, bound by, or responsible for any problems with the Services, Your Content or Your Applications arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Extreme subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Extreme would be responsible for Extreme resources under this Agreement.

22.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

22.3 Except for actions for nonpayment or breach of Extreme's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

ExtremeCloud Services Agreement



22.4 Extreme Software and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Extreme Software and Services in such applications.

22.5 You shall obtain at Your sole expense any rights and consents from third parties necessary for Your Content, Your Applications, and Third Party Content, as well as other vendor's products provided by You that You use with the Services, including such rights and consents as necessary for Extreme to perform the Services under this Agreement.

22.6 You agree to provide Extreme with all information, access and full good faith cooperation reasonably necessary to enable Extreme to provide the Services and You will perform the actions identified in Your Ordering Document as Your responsibilities.

22.7 You remain solely responsible for Your regulatory compliance in connection with Your use of the Services. You are responsible for making Extreme aware of any technical requirements that result from Your regulatory obligations prior to entering into an Ordering Document governed by this Agreement. Extreme will cooperate with Your efforts to determine whether use of the standard Extreme Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Extreme or changes to the Services.

22.8 Extreme may audit Your use of the Services to assess whether Your use of the Services is in accordance with Your Ordering Document and the terms of this Agreement. You agree to cooperate with Extreme's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within thirty (30) days of written notification any fees applicable to Your use of the Services in excess of Your rights. If You do not pay, Extreme can end Your Services and/or Your Ordering Document. You agree that Extreme shall not be responsible for any of Your costs incurred in cooperating with the audit.

22.9 The purchase of Cloud Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other order. Your obligation to pay under any Ordering Document is not contingent on performance of any other service offerings or delivery of programs or products.

23. ENTIRE AGREEMENT

23.1 You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Ordering Document, is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

23.2 It is expressly agreed that the terms of this Agreement and any Extreme Ordering Document shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Extreme document and no terms included in any such purchase order, or other non-Extreme document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an Ordering Document and the Agreement, the Ordering Document shall take precedence. Except as otherwise permitted in Section 5 (Service Specifications), Section 10 (Data Protection) and Section 14 (Third Party Web Sites) with respect to the Services, this Agreement and Ordering Documents hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of You and of Extreme. No third party beneficiary relationships are created by this Agreement.