



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 1

CONTRACT #: AR3230

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Extreme Networks, Inc. (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Attachment D is amended to incorporate the following 2 documents attached to this amendment –

1. ExtremeCloud IQ Service Agreement
2. Amendment 1 to ExtremeCloud IQ Service Agreement

Effective Date of Amendment: As of the last signature date below.

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

DocuSigned by:

Pete Doolittle

November 24, 2020 | 4:12:35 PM PST

23987154AD564E8...

Contractor's Signature

Date

Director, State of Utah Division of Purchasing

Date

Pete Doolittle

11/25/2020

Contractor's Name (Print)

SVP sales

Title (Print)

For Division of Purchasing Internal Use

Purchasing Agent	Phone #	E-mail Address	Contract #
Solomon Kingston	801-957-7142	skingston@utah.gov	AR3230

ExtremeCloud™ IQ Service Agreement

This ExtremeCloud IQ™ Agreement (“Agreement”) is a legal agreement between You and Extreme Networks, Inc. and its affiliates, including Extreme Ireland Ops Limited (collectively, “Extreme” or “we” or “us” or “our”), regarding Your use of the ExtremeCloud™ IQ service (“Cloud Service”).

If You are entering into this Agreement on behalf of a company or legal entity, You represent that You have the authority to bind such entity to this Agreement, in which case, the terms “You” and “Your” shall refer to such entity.

By using the Cloud Service, You agree to the terms of this Agreement. If You do not agree to this Agreement, do not attempt to access or use the Cloud Service.

1. **Definitions.** Capitalized terms in this Agreement have the meaning ascribed to them as set forth in Section 15 below.
2. **Use of the Cloud Service.**
 - 2.1 During the Service Term, we will make the Cloud Service available to You pursuant to this Agreement and Your Entitlement Notice, and You have the limited, non-exclusive, non-transferable, non-sublicensable, revocable right to use the Cloud Service for Your internal business purposes, unless otherwise expressly permitted by Extreme in writing.
 - 2.2 We reserve the right to make periodic changes to the Cloud Service that we deem necessary or useful to maintain or enhance the quality or delivery of the Cloud Service, provided that we do not materially degrade its functionality.
 - 2.3 Except as provided in this Agreement, the Cloud Service is non-cancelable and non-refundable.
 - 2.4 **Use Restrictions.** You may not, and may not permit others to:
 - Copy or reproduce any portion, feature, function or user interface of the Cloud Service;
 - Use the Cloud Service to build a competitive product or service;
 - Reverse engineer the Cloud Service;
 - Perform or engage a third party to perform security testing of the Cloud Service without our prior written approval;
 - Disclose any information relating to the performance or operation of the Cloud Service (including any benchmarking or other testing results) to any third party without our express, prior written consent;
 - damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Cloud Service, in whole or in part; or
 - access or use the Cloud Service beyond the scope of use granted in this Agreement and Your Subscription.

3. **Ownership.**

- 3.1 Extreme and its licensors own and retain all right, title and interest, including all related intellectual property rights in and to the Cloud Service and Cloud IQ Analytics, including any and all enhancements, enhancement requests, suggestions, modifications, extension and/or derivative works thereof. All rights not expressly granted to You herein are reserved by Extreme and its licensors.
- 3.2 You retain all ownership and intellectual property rights in and to Your Data. During the Service Term, we will use Your Data as necessary to provide the Cloud Service, or as otherwise required by law, and You hereby provide to Extreme all necessary rights to enable us to provide the Cloud Service to You.

4. **User Accounts.**

- 4.1 To use the Cloud Service, You must have an ExtremeCloud IQ account. Access to, and use of the password-protected Cloud Service web site is restricted to Your Authorized Users. You are responsible for identifying and approving Your Authorized Users of the Cloud Service, and for maintaining the confidentiality of Your usernames, passwords, and account information created for access to the Cloud Service.
- 4.2 You are responsible for all activities that occur under Your Authorized Users' passwords or accounts or as a result of Your and Your Authorized Users' access to the Cloud Service web site, 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 Cloud Service web site.

5. **Nondisclosure.**

- 5.1 Under this Agreement, the parties may disclose to each other Confidential Information that is confidential ("Confidential Information"). A party's Confidential Information shall not include information that:
- (a) is independently developed by the other party without reference to the disclosing party's Confidential Information,
 - (b) is or becomes generally available to the public through no fault of, and without breach of the Agreement by the other party,
 - (c) at the time of disclosure, was rightfully known to the other party free of confidentiality restrictions, or
 - (d) the other party rightfully obtains from a third party without restriction on use or disclosure.
- 5.2 Subject to Section 5.1 above, each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Extreme will protect the confidentiality of Your Data residing in the Cloud Service for as long as such information resides in the Cloud Service. Each party may disclose Confidential Information only to those employees, agents or subcontractors, as necessary for such party's performance

under this Agreement, provided that any such employee, agent or subcontractor is subject to a written agreement that includes binding restrictions on use and disclosure of Confidential Information that are at least as protective as those set forth herein. Each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Upon reasonable written request of the discloser, the recipient will either return, delete or destroy all Confidential Information and certify the same.

6. Protection of Your Data.

6.1 The Cloud Service is ISO 270001 certified. Extreme's ISO certificate is found at <https://cloud.kapostcontent.net/pub/d8b0c577-e7f3-457d-9669-daa3d666df61/iso-27001-certification-1>.

6.2 We will process Your Data only as permitted under this Agreement and in compliance with:

- (a) applicable data protection laws to which Extreme is subject as a service provider and processor of Your Data; and
- (b) Extreme's Cloud IQ Data Privacy Policy <https://www.extremenetworks.com/company/legal/data-privacy-and-protection/> ("Privacy Policy").

6.3 The Data Processing Addendum ("DPA") set forth at <https://www.extremenetworks.com/company/legal/data-privacy-and-protection/> shall apply when applicable for compliance with EU and other data privacy laws, and is incorporated herein by reference and will remain in force during the Service Term.

6.4 Following the end of the Service Term, we will delete Your Data after ninety (90) days, unless applicable law requires retention. If You renew the Cloud Service *before* the end of the then-current Service Term, Your Data will not be deleted until the end of the renewal Service Term.

7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES.

7.1 We warrant that during the Service Period we will perform the Cloud Service using commercially reasonable care and skill consistent with the Documentation. If the Cloud Service provided to You is not performed as warranted, You must promptly provide us with written notice that describes the deficiency in the Cloud Service (including, as applicable, the service request number notifying us of the deficiency in the Cloud Service).

7.2 WE DO NOT WARRANT THAT (A) THE CLOUD SERVICE WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT WE WILL CORRECT ALL SERVICES ERRORS OR THAT THE CLOUD SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. WE ARE NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE CLOUD SERVICE THAT ARISE FROM YOUR DATA OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

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

7.4 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, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

8. **Limitation Of Liability.**

8.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR LICENSORS, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL, PROFITS, SALES, DATA, DATA USE, OR LOSS DATA, OR EXEMPLARY OR PUNITIVE DAMAGES REGARDLESS OF: (A) WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (B) THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, INDEMNITY, OR OTHERWISE; AND (C) WHETHER THE DAMAGES WERE FORESEEABLE.

8.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EXTREME AND OUR AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER YOUR ENTITLEMENT NOTICE FOR THE CLOUD SERVICE GIVING RISE TO THE LIABILITY DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

9. **Intellectual Property Rights Infringement.**

9.1 We will: (a) defend You against any Infringement Claim; and (b) indemnify You from all fines, damages, and costs finally awarded against You by a court of competent jurisdiction or a government agency, or agreed to in settlement with regard to any Infringement Claim. The foregoing obligations are applicable only if You:

- (a) promptly notify us in writing of the Claim;
- (b) grant us the right to exclusively control of the defense and any settlement of the Infringement Claim and any subsequent appeal; and
- (c) co-operate with us in the defense of the Infringement Claim.

We will have no obligation to reimburse You for attorneys' fees and costs incurred *prior* to our receipt of Your notification of the Infringement Claim. You may, at Your own expense, retain Your own counsel.

- 9.2 **Additional Remedies.** If an Infringement Claim occurs or if we reasonably believe that such a claim is likely to occur, we will procure for You the right to continue to use the Cloud Service or replace or modify the Cloud Service to be non-infringing (while substantially preserving its utility or functionality), or if we determine that these alternatives are not commercially reasonable, upon our written notice/request, Your right to use will terminate and You will cease using the Cloud Service and we will refund to You the balance of any pre-paid amount of fees You paid for the remaining unused portion of the Cloud Service.
- 9.3 **Exclusions.** Notwithstanding Sections 9.1 and 9.2 above, we are not responsible for Infringement Claims resulting from: (a) an unauthorized use of the Cloud Service; or (b) Your provided Data; (c) Your modification of the Cloud Service or a modification of the Cloud Service made by a third party on Your behalf; (d) combination, operation or use of the Cloud Service with non-Extreme products, software or business processes; (e) Your failure to modify or replace the Cloud Service as required by Extreme to avoid the alleged infringement.
- 9.4 **This Section 9 provides Extreme's sole and exclusive obligation and Your exclusive remedy for intellectual property rights infringement.**
10. **Temporary Suspension, Term and Termination.**
- 10.1 The Cloud Service will be provided for the Cloud Service Term as set forth in Your Entitlement Notice. At the end of the Cloud Service Term, Your Data will continue to be available for a period of up to ninety (90) days after the end of the Service Term. At the end of such ninety (90) day period, and except as may be required by law, we will delete or otherwise render unrecoverable Your Data that remains in the Cloud Service.
- 10.2 **Temporary Suspension.** We may, at our option, suspend Your or Your Users' access to, or use of the Cloud Service, or availability of the Cloud Service if: (a) we believe that Your use of the Cloud Service poses a security risk to the Cloud Service or to other users of the Cloud Service; (b) we suspect fraud or abuse; or (c) if You are in breach of the Agreement and do not cure that breach within thirty (30) days after we notify You in writing of that breach. When reasonably practicable and lawfully permitted, we will provide You with advance written notice of such suspension. We will use reasonable efforts to re-establish the Cloud Service promptly after we determine that the issue causing the suspension has been resolved. During any suspension period, we will make Your Data available to You. Any suspension under this Section 10.2 shall not excuse You from Your obligation to make payment for the Cloud Service.
- 10.3 Either party may terminate this Agreement on written notice if the other party fails to meet a material obligation and fails to remedy the breach within thirty (30) days of being notified in writing of the details of the breach.

10.4 **Survival.** The provisions that survive termination or expiration of this Agreement include Section 3 (Ownership), Section 5 (Nondisclosure), Section 6.4, Section 8 (Limitation of Liability), Section 9 (Intellectual Property Rights Infringement), Section 10.4, Section 14 (General), Section 15 (Definitions), and any other terms which by their nature are intended to survive.

11. **Cloud Service Analyses.**

We may compile statistical and other information related to the performance, operation and use of the Cloud Service and use data from the Cloud Service in aggregated form. We may make the Cloud Service Analyses publicly available; however the Cloud Service Analysis will not disclose Your Data or Confidential Information in a form that could serve to identify You or any individual. We retain all intellectual property rights to the Cloud IQ Analytics.

12. **Export Control.**

12.1 The Cloud Service, technology and Software are subject to U.S. and local export control laws and regulations. Such export laws govern use of the Cloud Service (including technical data) and any Cloud Service deliverables provided under this Agreement, and You and we each 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 the Cloud Service (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 proliferations, or development of missile technology.

12.2 You acknowledge that the Cloud Service is designed with capabilities for You and Your Users to access the Cloud Service without regard to geographic location. You are solely responsible for the authorization and management of Your User accounts across geographic locations.

12.3 You represent and warrant that (a) You and Your Users are not, and are not acting on behalf of (i) any person who is a citizen, nation, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nations and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and that You and any of Your Users are not subject, either directly or indirectly, to any order issued by any agency of the United States Government revoking or denying, in whole or part, your United States export privileges. You must notify Extreme promptly if You or any User, becomes subject to any order of that type.

13. **Service Level Agreement.** The Service Level Agreement set forth in Exhibit 1 is incorporated into, and made a part of, this Agreement.

14. **General.**

- 14.1 **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of California without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and United States of America law, rules, and regulations, United States of America law, rules, and regulations shall prevail and govern. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act as enacted shall apply to this Agreement. You and Extreme agree to submit to the exclusive jurisdiction of, and venue in, the state or federal courts located in California in any dispute arising out of or relating to this Agreement.
- 14.2 **Complete Agreement.** This Agreement, including all documents referenced and incorporated herein, constitutes the complete and exclusive statement of the agreement between Extreme and You related to the subject matter hereof, and supersedes all prior written and oral contracts, proposals and other communications between the Parties relating to the subject matter. It is expressly agreed that the terms of this Agreement shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Extreme document and no terms included in such purchase order, portal or other non-Extreme document shall apply to the Cloud Service ordered. This Agreement may not be modified except in a writing signed by the authorized representatives of each party.
- 14.3 You agree that, when applicable, Your electronic signature (including clicking an “I Accept” button, constitutes a valid method of contract formation.
- 14.4 **Independent Contractor.** Extreme is an independent contractor, and each party agrees that no partnership, joint venture, or agency relationship exists between the Parties. No third party beneficiary relationships are created by this Agreement.
- 14.5 **Assignment.** You may not assign or otherwise transfer any of Your rights under this Agreement without our prior written consent. Any attempted assignment or transfer of this Agreement without our consent will be void and will be a breach of the Agreement. Subject to these limitations, the Agreement will bind and inure to the benefit of the parties and their respective successors and assigns.
- 14.6 **Waiver.** If any provision of this Agreement proves to be invalid, this will not affect any other provision of this Agreement. The waiver by either party of any of its rights hereunder shall not be construed as a waiver of any subsequent breach.
- 14.7 **Severability.** If any provision of the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the extent feasible.
- 14.8 **Compliance with Laws.** Each party must each comply with all laws applicable to the actions contemplated by this Agreement.
- 14.9 **Force Majeure.** Neither You nor Extreme shall be responsible for events outside the reasonable control of the obligated party, including, without limitation, labor disputes, or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other acts of nature, embargoes, riots, acts or orders of

government, epidemics, acts of terrorism, or war. We will both use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty days, either You or we may cancel unperformed Cloud Service and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recover procedures or Your obligation to pay for the Cloud Service.

- 14.10 **Modifications.** We reserves the right, in our sole discretion, to make changes to the Cloud Service, the DPA, the Privacy Policy and other published policies, including, without limitation, changes required to comply with applicable law. We may make new applications, tools, features or functions available from time to time through the Cloud Service, the use of which may be contingent upon your agreement to additional terms.
- 14.11 **Notice.** Any notice by Extreme to You under this Agreement will be given by email address associated with Your Cloud Service account. You must direct legal notices or other correspondence to Extreme Networks, Inc., 6480 Via Del Oro, San Jose, California, 95119, Attention: Office of General Counsel.
- 14.12 **Language.** This Agreement is in English, and the English language version governs any conflict with a translation into any other language.

15. Definitions.

"Cloud Service" means the ExtremeCloud IQ Service described at ExtremecloudIQ.com that Extreme makes commercially available through a web portal, including any Software, technology, and other materials that Extreme makes available as part of the cloud service.

"Cloud Service Term" or "Service Term" means the term of Your subscription to the Cloud Service as set forth in Your Entitlement Notice.

"Confidential Information" means non-public technical, business or other information or materials disclosed or otherwise made available by either You or us to the other party regarding the Agreement or the Cloud Service, that are in tangible form and labeled "confidential" or the like or are provided under circumstances reasonably indicating confidentiality.

"ExtremeCloud IQ Analytics" or "Analytics" means the comparative analytics provided as part of the Cloud Service that anonymously compare Your operational and performance-based metrics to those of other organizations of a similar size and vertical.

"Your Data" means all information and data that You provide or that the Cloud Service collects, processes and transfers from You in connection with the Cloud Service, but which excludes the Cloud IQ Analytics.

"Your Users" or "Users" means Your employees, contractors, and end users, as applicable, who are authorized by You or on Your behalf, to use the Cloud Service in accordance with this Agreement and Your Entitlement Notice.

"Extreme Proprietary Information" includes information relating to the Cloud Service and Products, including, but not limited to, performance, reliability, stability, operation, know-how, techniques, processes, ideas, algorithms, software designs and architecture, as well as Software in source code form.

“Feedback” means any input regarding Extreme’s Cloud IQ Service and Products (including the Cloud IQ Trial), including, without limitation, changes or suggested changes to Extreme’s current or future Products or services.

“Entitlement Notice” means the email notice that Extreme provides to You as part of the initial Cloud Service activation process and per which You receive an assigned Customer User ID Number (“CUID”) and instructions regarding how to log into the Cloud Service.

“Infringement Claim” means any claim by a third party that the Cloud Service infringes any patent, trademark, or copyright of that third party, or misappropriates a trade secret of that third party (but only to the extent that the misappropriation is not a result of Your actions), under the laws of (a) the United States; (b) Canada; (c) European Economic Area member states, (d) the United Kingdom; (e) Australia; (f) New Zealand, or (g) Japan.

“Product(s)” means the Extreme-branded product(s) used in connection with the Cloud Service, including network wireless components and Software (in object code form only), as well as any accompanying **Software** (defined below) and documentation (**“Documentation”**).

“Service Term” means the duration term of Your Subscription to use the Cloud Service, as set forth in Your Entitlement Notice.

“Software” means the machine readable (object code) version of the computer programs associated with the hardware Product and/or the Cloud Service, as well as any updated, modified, or enhanced versions thereof, and all derivatives, made available by Extreme for license to You, and any copies made, bug fixes for, updates to, or upgrades. All Software is licensed per Extreme’s End User License Agreement (EULA), available at: <https://cloud.kapostcontent.net/pub/3cea3a27-431f-4d22-aff4-609b6dd6a6dc/end-user-license-agreement?kui=RWQrhDMFPQ3mjYarjbrnDg>.

“Subscription” means Your subscription to use the Cloud Service for the duration of time set forth in Your Entitlement Notice.

“You” or **“Your”** means both the individual and individuals obtaining or using the Product(s) and Cloud Service or exercising any rights under this Agreement, and any entity on whose behalf such individual or individuals are acting.

-Exhibit 1 follows this page-

Exhibit 1

EXTREMECLOUD IQ SERVICE LEVEL AGREEMENT

This Cloud Service Level Agreement (“SLA”) is incorporated into, and made a part of the ExtremeCloud IQ Service Agreement (“Agreement”).

1. Definitions

The following terms, as capitalized in this Exhibit 1, shall have the following meanings:

“Annual Uptime Percentage” is calculated by subtracting from 100% the percentage of 5-minute periods during a Service Year in which the Cloud Service was Unavailable to You. If You have been using the Cloud Service for less than a full 365 days, Your Service Year for purposes of submitting a Claim and determining a Service Credit will be deemed to be the preceding 365 days, but any such days prior to Your actual use of the Cloud Service will be deemed to have had 100% Availability. Any Unavailability occurring during Your period of use, but prior to submitting a Claim cannot be used as a basis for future submitted Claims. Annual Uptime Percentage measurements exclude Unavailability resulting directly or indirectly from any SLA Exclusion.

“Availability” means the ability to login and perform operations by means of the Cloud Service.

“Claim” means a claim for a Service Credit You submit by opening a support case with Extreme, on the basis that the Cloud Service has been Unavailable to You during a service period.

“Cloud Service” means ExtremeCloud IQ public cloud services as described at <https://www.extremenetworks.com/extremecloud-iq/>. For avoidance of doubt, it does not include private or on-prem cloud services maintained on the customer’s own network.

“Customer” refers to You – whether an individual or corporate entity – as the end user of the Cloud Service.

“Incident” means any set of circumstances resulting in the Unavailability of the Cloud Service at any time, consistent with the Service Level commitments under this SLA. An Incident, for purposes of submitting and determining the validity of a Claim, shall not be based on any SLA Exclusions.

“Service Credit” is a dollar credit, calculated as set forth below and in the table above that we may credit back to Your account upon Your submission of a validated SLA Claim.

“Service Level” means the amount of time expressed as a percentage during which the Cloud Service is available and accessible to Customers.

“Service Year” is the 365 day period preceding the date of an SLA claim.

“SLA Exclusion” means an instance or reason for which the Service commitment hereunder does not apply and the associated inability to login and perform operations by means of the Cloud Service does not constitute Unavailability for purposes of a Service Credit.

“Unavailable” or “Unavailability” means each full increment of 5 minutes during Your use of the Cloud Service where Your access to the Cloud Service, has no external connectivity and during which You are unable to login and monitor Your devices.

2. Cloud Service Commitment

Extreme will use commercially reasonable efforts to make the Cloud Service available to You with an Annual Uptime Percentage of at least 99.99%, excluding planned maintenance service. In the event that Extreme does not meet this SLA uptime commitment, You will be eligible to receive a Service Credit as follows:

Annual Uptime Percentage	Service Credit
99.9% to 99.99%	5 days
99% to 99.9%	10 days
Below 99%	20 days

3. Service Credit Requests.

- 3.1 To receive a Service Credit, You must notify us and submit a Claim within thirty (30) days from the Incident that is the basis for Your claim.
- 3.2 To be eligible, Your Claim must include:
 - (a) the dates, times, description and duration of each Incident experienced;
 - (b) Your account number and ExtremeCloud IQ instance(s) that were running and affected during the time of each Incident; and
 - (c) Your server request logs, network traceroutes and URL(s) affected by the Incident, that document the errors and corroborate the claimed Unavailability (any confidential or sensitive information should be removed).
- 3.3 Failure to provide a timely Claim, which includes all the required information, will disqualify the Claim and You from receiving a Service Credit. If we validate the Claim, then we will issue the Service Credit within two billing cycles following the month in which the Claim is submitted.

4. Service Credit Provisions.

- 4.1 The Service Credits are Your sole and exclusive remedy for any Incidents affecting the Service Level commitments to You under the Agreement, including with respect to any Incident or any Unavailability.
- 4.2 Service Credits shall be a credit towards future services only, and do not entitle You to any refund or other payment from Extreme.
- 4.3 Service Credits may not be transferred or applied to any other account, nor exchanged for, or converted to monetary amounts.
- 4.4 The maximum Service Credits awarded with respect to Claims a Customer submits in any calendar month shall not, under any circumstance, exceed in the aggregate the Customer's equivalent monthly Cloud Service fees for such month. In the event that an Incident results in the Unavailability of more than one Service Level, You must choose only one Service

Level under which to submit a Claim based on that Incident, and You may not submit any other Claim under any other Service Level with respect to the same Incident. Extreme will use all information reasonably available to it to validate Claims and make a good faith judgment on whether the SLA and which Service Levels apply to the Claim.

5. SLA Exclusions.

5.1 This SLA does not apply to any Availability or Unavailability of the Cloud Service:

- Caused by factors outside of Extreme's reasonable control, including any force majeure event or interruption or impediment to Internet access or related problems beyond the demarcation point of Extreme and its Cloud infrastructure suppliers;
- That result from Your equipment, software or other Technology and/or third party equipment, software or other Technology (other than third party equipment within Extreme's direct control);
- That resulted from performing announced maintenance service and Cloud Service upgrades;
- Associated with beta testing, evaluation and trial usage of Cloud Service accounts;
- That result from any actions or inactions from Customer or any third party, including employees, agents, contractors, or vendors, or anyone gaining access to the Cloud Service by means of Customer's passwords or equipment.
- Arising from our suspension and termination of Your right to use the Cloud Service in accordance with this Agreement.

5.2 Extreme may, but is not obligated to, issue a Service Credit in its sole discretion where Your use of the Cloud Service may be Unavailable due to factors other than expressly provided here in this SLA.

-End of Exhibit I-

-End of Agreement-



AMENDMENT No. 1 TO EXTREMECLOUD™ IQ SERVICE AGREEMENT

This Amendment No. 1 (“Amendment”) to the ExtremeCloud IQ Service Agreement (“Agreement”) is entered into as of the last date executed below by and between **Extreme Networks, Inc.** (“Contractor”) a Delaware corporation, whose principal place of business is located at 6480 Via Del Oro, San Jose, CA 95119, and **Utah Division of Purchasing** (“Division”).

RECITALS

WHEREAS, Contractor and Division entered into the State of Utah Cooperative Contract also known as NASPO ValuePoint Master Terms and Conditions (NASPO Agreement) effective as of October 1, 2019;

WHEREAS, the parties wish to incorporate the Agreement into the NASPO Agreement, and

WHEREAS, the parties wish to amend the Agreement in accordance with the NASPO Agreement. Unless otherwise defined, capitalized terms in this Amendment shall have the same meaning as in the Agreement.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties modify and amend the Agreement as follows:

AMENDMENT

1. The Agreement and this Amendment are incorporated by reference into the NASPO Agreement. If there is any conflict between the terms and conditions of the NASPO Agreement, the Agreement and the Amendment then the order of precedence is as follows: the NASPO Agreement, the Amendment and the Agreement.
2. Section 7, Warranties, Disclaimers and Exclusive Remedies supplements the NASPO agreement and stands as a supplement to the product warranties under Exhibit 1 of the NASPO Agreement.
3. Section 8, Limitation of Liability, is deleted in its entirety and replaced with the limitation of liability language of Section 39 of the NASPO Agreement.
4. Section 9, Intellectual Property Rights Infringement is deleted in its entirety and replaced by Section 39 (b) of the NASPO Agreement.
5. Section 14.1, Governing Law and Venue is amended and the governing law of the Agreement will be in accordance with the Lead State as specified under the NASPO Agreement.
6. Continuing Effect. All other terms and conditions of the Agreement and its validly executed amendments remain unchanged and in full force and effect. This Amendment and the Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements of the parties relating thereto. In the event of any inconsistency between the Agreement and the Amendment, the terms of this Amendment shall control.



7. Counterparts. This Amendment may be signed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

Extreme Networks, Inc.

Utah Division of Purchasing

DocuSigned by:

Signature: _____
23987154AD664E8...

Signature: _____

Printed Name: Pete Doolittle

Printed Name: _____

Title: SVP sales

Title: _____

Date: November 24, 2020 | 4:12:35 PM PST

Date: _____