

Extreme Cloud Subscription Services Agreement



PLEASE READ ALL OF THE FOLLOWING TERMS AND CONDITIONS OF THIS EXTREME CLOUD SUBSCRIPTION SERVICES AGREEMENT. This Extreme Cloud Subscription Services Agreement (“Agreement”) is a legal agreement between You and/or the entity You represent and Extreme Networks, Inc., on behalf of itself and its affiliates, including, but not limited to, Extreme Network Ireland Ops Limited (collectively, “Extreme”) for the Subscription Services (defined below) licensed by Extreme or its licensors. By using the Subscription Services, You agree to the terms and conditions of this Agreement as a condition of Your use of, and right to use, the Subscription Services. Extreme may make changes to this Agreement at any time and will provide written notice of such changes to You and give You an opportunity to accept those changes. Your continued use of the Subscription Services after such changes have been posted will signify your assent to acceptance of the revised terms.

1. **Definitions.** “Services” means the various services 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. Services may also include hardware made available by Extreme, which may be necessary for the Services to be provided. “Service Term” means the duration term of Your Subscription to use the Services. “Software” means the Extreme branded software, including all modifications, additions and further enhancements, in each case, which are provided by Extreme. “Subscription Services” refer to the Extreme Software and Services provided to You for a specific Service Term. “Your Data” means all information and data that You provide or that the Subscription Services collects, processes and transfers from You in connection with the Subscription Services.
2. **Use of Subscription Services.** During the Service Term, Extreme will make the Subscription Services available to You pursuant to this Agreement and Your subscription order, and You have the limited, non-exclusive, non-transferable, non-sublicensable, revocable right to use the Subscription Services for Your internal business purposes, unless otherwise expressly permitted by Extreme in writing. Extreme reserves the right to make periodic changes to the Subscription Services that Extreme deems necessary or useful to maintain or enhance the quality or delivery of the Subscription Services, provided that Extreme does not materially degrade its functionality. Except as provided in this Agreement, the Subscription Services are non-cancelable and non-refundable.
3. **Limited License.** Subject to Your compliance with all the terms and restrictions set forth in this Agreement and payment of the applicable Subscription Services license fees, Extreme grants You, the end user of the Subscription Services, a non-transferable (except as expressly permitted below), non-sublicensable, non-exclusive license to download, install and use the Software for Your personal or internal business purposes as permitted by the type of license You have purchased.
 - 3.1. **Limitations and Restrictions.**

Except as expressly set forth in this Agreement, You agree that You shall not, and will not attempt to, directly or indirectly (and shall not permit others to), in any manner, in whole or part, absent Extreme’s prior written approval:

 - (i) modify, translate or create derivative works of the Software;
 - (ii) copy the Software onto any public or distributed network;
 - (iii) translate, decompile, disassemble, or reverse engineer the hardware or any copy of the Software, or otherwise attempt to discover the source code or underlying ideas, procedures or algorithms of the Software, except solely to the most minimal extent that Extreme is not permitted by applicable law to exclude or limit such rights;
 - (iv) use the Software as a general SQL server or for time-sharing purposes or in any other way that allows third-parties to exploit the Software;
 - (v) remove (or fail to include on any copy) any proprietary and copyright notices, disclaimers, headers, marks or labels (“Extreme Markings”);
 - (vi) place a disproportionate load on the Software so as to interfere with the Software or prevent others from using the Software (or related Extreme services);
 - (vii) gain unauthorized access to the Software or attempt to circumvent any security or access restrictions relevant to Software versions or features therein;
 - (viii) introduce any open source software onto the Software or Extreme’s systems which enable the Software;
 - (ix) introduce any virus or harmful code onto the Software or Extreme’s systems which enable the Software; or
 - (x) use any automated means, including, without limitation, agents, robots, scripts or spiders, to access, monitor, or copy any part of the Software or related Extreme services.
 - 3.2. You shall have no right or license in the Software or Subscription Services unless You rightfully acquire the Subscription Services through payment of a fee from an Extreme-authorized channel partner.

- 3.3. **Third-Party Use of the Software.** You may permit a third-party to use the Software licensed to You under this Agreement on the condition that such use is: (i) for Your benefit; (ii) for your internal operations; and (iii) in compliance with this Agreement. You remain liable for any breach of this Agreement by that third-party.
4. **Ownership.** Extreme and its licensors own and retain all rights, title and interest, including all related intellectual property rights in and to the Subscription Services, 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. You retain all ownership in and to Your Data. During the Service Term, Extreme will use Your Data as necessary to provide the Subscription Services, or as otherwise required by law, and You hereby provide to Extreme all necessary rights to enable us to provide the Subscription Services to You.
5. **User Accounts.** To use the Subscription Services, You must have a Subscription Services account. Access to and use of the password-protected Subscription Services web site is restricted to Your authorized users. You are responsible for identifying and approving Your authorized users of the Subscription Services, and for maintaining the confidentiality of Your usernames, passwords, and account information created for access to the Subscription Services. 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 Subscription Services 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 Subscription Services.
6. **Confidentiality.** Under this Agreement, the parties may disclose to each other Confidential Information that is confidential ("Confidential Information").
- 6.1. A party's Confidential Information shall not include information that:
- (i) is independently developed by the other party without reference to the disclosing party's Confidential Information,
 - (ii) is or becomes generally available to the public through no fault of, and without breach of the Agreement by the other party,
 - (iii) at the time of disclosure, was rightfully known to the other party free of confidentiality restrictions, or
 - (iv) the other party rightfully obtains from a third party without restriction on use or disclosure.
- 6.2. Subject to Section 6.1 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 Subscription Services for as long as such information resides in the Subscription Services. 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, provided advance notice and an opportunity to object to such disclosure is provided to the disclosing party by the party being required to provide such Confidential Information. Upon reasonable written request of the discloser, the recipient will either return, delete or destroy all Confidential Information and certify the same.
7. **Protection of Your Data.** Extreme 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) the then current ExtremeCloud Services Notice found at <https://www.extremenetworks.com/company/legal/data-privacy-and-protection/>.
- 7.1. 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.
- 7.2. Following the end of the Service Term, Extreme will delete Your Data after thirty (30) days, unless applicable law requires retention. If You renew the Subscription Services before the end of the then-current Service Term, Your Data will not be deleted until the end of the renewal Service Term.
8. **Warranties, Disclaimers and Exclusive Remedies.**
- 8.1. Extreme warrants that during the Service Term Extreme will provide the Subscription Services using commercially reasonable care and skill consistent with the documentation. If the Subscription Services provided to You is not performed as warranted, You must promptly provide us with written notice that describes the deficiency in the Subscription Services (including, as applicable, the service request number notifying us of the deficiency in the Subscription Services).

- 8.2. EXTREME DOES NOT WARRANT THAT (A) THE SUBSCRIPTION SERVICES WILL BE PROVIDED ERROR-FREE OR UNINTERRUPTED, OR THAT EXTREME WILL CORRECT ALL SERVICES ERRORS OR THAT THE SUBSCRIPTION SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. EXTREME IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SUBSCRIPTION SERVICES THAT ARISE FROM YOUR DATA OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.
- 8.3. FOR ANY BREACH OF THIS SERVICE WARRANTY, YOUR EXCLUSIVE REMEDY AND EXTREME'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICE THAT CAUSED THE BREACH OF WARRANTY, OR, IF EXTREME CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SUBSCRIPTION SERVICES AND EXTREME WILL REFUND TO YOU THE FEES FOR THE TERMINATED SUBSCRIPTION SERVICES THAT YOU PRE-PAID FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.
- 8.4. 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.
9. **Limitation of Liability.** EXTREME, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUPPLIERS AND LICENSORS, SHALL BE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST OR CORRUPTED DATA, BUSINESS INTERRUPTION, OR LOST PROFITS, LOST REVENUE, LOST GOODWILL, OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF EXTREME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SOFTWARE, MAINTENANCE SERVICES OR THE RESULTS THEREOF. EXTREME WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

ALL LIABILITY OF EXTREME, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS COLLECTIVELY, TO YOU SHALL NOT EXCEED THE LICENSE FEES PAID BY YOU TO THE EXTREME-AUTHORIZED CHANNEL PARTNER DURING THE PRIOR TWELVE MONTHS FOR THE SUBSCRIPTION SERVICES THAT GAVE RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

THE TERMS IN THIS SECTION 9 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

10. **Intellectual Property Rights Infringement.**

10.1. **Scope.** Extreme (the "Indemnitor") will defend You, your directors, officers, employees and agents (individually and collectively, the "Indemnified Party") at Indemnitor's expense, against any third party claim, action, suit or proceeding brought against an Indemnified Party (a "Claim") that a Subscription Services infringes third party patents or copyrights enforceable in the United States or the European Union and will indemnify an Indemnified Party against any final judgment entered by a court of competent jurisdiction or any settlement arising out of a Claim.

10.2. The Indemnitor's obligations to defend and indemnify the Indemnified Party are conditioned on the following:

- (i) **Notice.** The Indemnified Party shall give written notice to the Indemnitor promptly after the Indemnified Party becomes aware of the facts giving rise to the Claim; and
- (ii) **Control.** The Indemnitor shall have the sole right to control the defense and/or settlement of the Claim, including any appeals, in such manner as it may deem appropriate in its sole discretion. An Indemnified Party, at its expense, may hire legal counsel of its choice to participate in an advisory-only capacity related to the Claim.
- (iii) **Cooperation.** Indemnified Party shall cooperate with Indemnitor in the investigation, defense or settlement of a Claim, and provide available information, assistance and authority, at the Indemnitor's expense, to enable the Indemnitor to investigate, defend, compromise or settle the Claim.
- (iv) **Settlement.** Indemnitor shall be authorized to consent to a settlement of, or the entry of any judgment arising from the Claim, subject to the following: Indemnified Party must consent to such settlement, and such consent shall not be unreasonably withheld. Indemnitor will not be responsible for any compromise or settlement of a Claim made or expense incurred without its express written consent.

10.3. **Limitations.** Indemnitor will have no defense or indemnity obligation or liability to Indemnified Party with respect to a Claim which is based upon:

- (i) A Subscription Services that has been modified by someone other than the Indemnitor, if such modification results in the allegation of the infringement;
- (ii) A Subscription Services that has been modified by Indemnitor in accordance with the Indemnitee's provided specifications or instructions, if such modification results in the allegation of the infringement;
- (iii) Use or combination of a Subscription Services with Third Party Product, if such use or combination results in the infringement; The term "Third Party Product" means any products manufactured by or supplied by a party other than Indemnitor.
- (iv) Use of a version of a Subscription Services, other than the then-current version, after receiving notice of possible infringement from Indemnitor, if the Claim would have been avoided by the use of the then-current version; or a claim against any Open Source Software.

10.4. **Remedial Measures.** Upon notice of a Claim, or if Indemnitor reasonably believes a Third Party Claim is likely, Indemnitor may, at its own expense and in its sole discretion, do any of the following:

- (i) procure for Indemnified Party the right to continue to use, market or sell the Subscription Services at no additional cost;
- (ii) replace or modify the Subscription Services with a non-infringing Subscription Services with similar operating capabilities; or
- (iii) if Indemnitor determines that neither 10.4(i) nor 10.4(ii) described above are commercially reasonable, Indemnitor may terminate the infringing portion of the Subscription Services and refund to Indemnified Party any fees pre-paid by Indemnified Party for the remaining portion of the terminated Service Term, in which case Indemnified Party will cease all use of the Subscription Services.

10.5. **Exclusive Remedy.** The foregoing states Extreme's entire liability and the Indemnified Party's sole and exclusive remedies with respect to any and all claims of infringement of any proprietary rights of any third party.

11. Temporary Suspension, Term and Termination.

11.1. The Subscription Services will be provided for the Service Term as set forth in Your entitlements. At the end of the Service Term, Your Data will continue to be available for a period of up to thirty (30) days after the end of the Service Term. At the end of such thirty (30) day period, and except as may be required by law, Extreme will delete or otherwise render unrecoverable Your Data that remains in the Subscription Services.

11.2. **Temporary Suspension.** Extreme may, at its option, suspend Your or Your Users' access to, or use of the Subscription Services, or availability of the Subscription Services if: (a) Extreme believes that Your use of the Subscription Services poses a security risk to the Subscription Services or to other users of the Subscription Services; (b) Extreme suspects fraud or abuse; or (c) if You are in breach of the Agreement, including but not limited to the obligation to pay a fee for the Subscription Services, and do not cure that breach within thirty (30) days after Extreme notifies You in writing of that breach. When reasonably practicable and lawfully permitted, Extreme will provide You with advance written notice of such suspension. Extreme will use reasonable efforts to re-establish the Subscription Services promptly after Extreme determines that the issue causing the suspension has been resolved. During any suspension period, Extreme will make Your Data available to You. Any suspension under this Section 11.2 shall not excuse You from Your obligation to make payment for the Subscription Services.

11.3. 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.

11.4. **Survival.** The provisions that survive termination or expiration of this Agreement include Section 1 (Definitions), Section 4 (Ownership), Section 6 (Confidentiality), Section 9 (Limitation of Liability), Section 10 (Intellectual Property Rights Infringement), Section 14 (General Provision), and any other terms which by their nature are intended to survive.

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

13. **Export and Compliance with Laws.** You shall comply with all applicable laws and regulations in connection with Your use of the Subscription Services, as well as technical information and data. You acknowledge that the Subscription Services may be subject to export and/or import laws and regulations of various countries, including, but not limited to, the U.S. Export Administration Regulations, restricting the download, transfer, reexport, sale and import of the Subscription Services to certain countries and persons. You further acknowledge that the Subscription Services may include encryption/decryption features subject to licensing restrictions under U.S. and other applicable laws for export, re-export, import or in-country transfer. You shall fully comply with all applicable export license restrictions and requirements as well

as with all laws and regulations relating to the importation of the Subscription Services, in the United States and in any foreign jurisdiction into which the Subscription Services is downloaded or used.

Without limiting the foregoing, the Subscription Services may not be exported or re-exported (i) into (or to a national or resident of, other than a nationally lawfully admitted for permanent residence in third countries) Cuba, Iran, North Korea, Syria or any other country against which the United States maintains comprehensive country-wide sanctions from time to time; (ii) any end user known, or having reason to be known, will utilize them in the design, development or production of nuclear fuel or weapons, missiles, or chemical or biological weapons; or (iii) any restricted party identified on the U.S. Treasury Department's list of Specially Designated nations, the U.S. Commerce Department's Denied Persons List, Entity List or Unverified List as in force from time to time.

By using the Subscription Services, You agree to the foregoing and You represent and warrant that You are not located in, under the control of, acting on behalf of, or a national or resident of, any such country or on any such list. If You obtained this Subscription Services outside the United States, You also agree that you will not export or re-export it in violation of the laws of the country in which it was obtained, including, but not limited to, export and sanctions laws. You will, at Your own expense, obtain all necessary customs, import or other governmental authorizations and approvals.

14. GENERAL PROVISIONS.

14.1. **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 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.

14.2. **Entire Agreement, Order of Precedence and Amendments.** This Agreement is the entire agreement between Extreme and You with respect to the subject matter hereof. This Agreement shall supersede and void all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. If You have signed a separate written agreement with Extreme pertaining to Your rights and duties regarding the Subscription Services, then that written agreement shall control in the event of a conflict between that agreement and this Agreement.

14.3. **Your Authorization.** You represent that You have full right and/or authorization to enter into this Agreement.

14.4. **Assignment.** You may not sublicense, assign or transfer Your rights under this Agreement without Extreme's prior written consent. The rights of Extreme and Your obligations under this Agreement shall inure to the benefit of Extreme's assignees, licensors, and licensees.

14.5. **Severability.** 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.

14.6. **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligations under this Agreement shall be effective unless it is in writing and signed by the party granting the waiver.

14.7. **Contact and Notice.** If You have any questions concerning this Agreement, please send Your inquiry to Extreme Networks, Inc., 6480 Via Del Oro, San Jose, CA 95119 United States, ATTN: Legal Department. Notices to Extreme shall be sent to the above-provided address. Any notice to Extreme given under or in relation to this Agreement must be in writing, and will be considered delivered when received if delivered by hand with receipt, or the next Business Day after sending it by pre-paid, nationally-recognized overnight air courier with tracking capabilities or five (5) Business Days after being sent by registered or certified mail, return receipt required, postage prepaid to the above address.

14.8. **Consent to Marketing References.** You agree Extreme has the express right to use Your company logo and name in sales and marketing materials such as press releases, social media, case study briefs/project summaries, Extreme's website or brochures and other communications solely to identify Your company as an Extreme customer. Other than as expressly stated herein, neither party shall use the other party's marks, codes, drawings or specifications without the prior written permission of the other party.

15. **Services Descriptions.** In addition to the terms and conditions contained in this Extreme Cloud Services Agreement, depending upon which Extreme Cloud Services You have obtained, the following descriptions are incorporated herein by reference and shall apply to Your purchase of Subscription Services. In the event of a conflict between the terms of this Agreement and the Service Descriptions, the terms of the Service Descriptions shall prevail.

Extreme Cloud SD-WAN Service Description: <https://cloud.kapostcontent.net/pub/83942727-004b-4078-a2d1-9ebd87362194/extremecloud-sd-wan-customer-product-documentation-data-sheet?kui=6wAozfPVxi60Hkk8i51Ofw>

ExtremeCloud™ IQ Service Description: https://cloud.kapostcontent.net/pub/04285da3-9a15-4cd0-96d8-029ab29f6939/extremecloud-iq-service-agreement-2022?kui=4kAyRzcQQG8mpFoZ_jMyRg

-End of Agreement-

