

ExtremeCloud™ IQ Evaluation Agreement

PLEASE READ THIS AGREEMENT CAREFULLY.

This is a trial evaluation agreement (“Agreement”) between You and Extreme Networks, Inc. and its affiliates, including Extreme Networks Ireland Ops Limited (collectively “Extreme”), 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 all of the terms and conditions of this Agreement. If you do not agree to this Agreement, do not attempt to access or use the Cloud Service.

Definitions. Capitalized terms used in this Agreement are defined in Section 16 below.

1. **Trial Period.** The term of this Agreement is **ninety (90) days**, starting from the date when Extreme delivers to You the log-in and password key(s) for activating the Cloud Service. Extreme may agree with You in writing to extend the Trial Period. If You wish to use the Cloud Service *after* the end of the Trial Period, or for Your commercial, production purposes, You must first purchase a subscription to the Cloud Service.
2. **Fees. During the Trial Period, the Cloud Service is provided to You free of charge (no fees).**
3. **Use of the Cloud Service.**
 - 3.1 **During the Trial Period**, we will make the Cloud Service available to You and You will have the limited, non-exclusive, non-transferable, non-sublicensable, revocable right to use the Cloud Service for Your internal business purposes to evaluate the Cloud Service offering and Products, and not for any general commercial or competitive purpose.
 - 3.2 We reserve the right to periodically make changes to the Cloud Service that we deem necessary or useful, at any time, and without prior notice. All rights not expressly granted to You are reserved by Extreme and its licensors.
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 related 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 or Products beyond the scope of the authorization granted in this Agreement.

5. Ownership.

- 5.1 Extreme and its licensors own and retain all right, title and interest, including all related intellectual property rights in and to the Cloud Service, the Cloud Service, and the Products, 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.
- 5.2 You retain all ownership and intellectual property rights in and to Your Data. During the Cloud Service, 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.

6. User Accounts.

- 6.1 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.
- 6.2 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.

7. Nondisclosure.

- 7.1 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.

7.2 Subject to Section 7.1 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.

8. **Protection of Your Data.**

8.1 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>.

8.2 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 set forth at: <https://www.extremenetworks.com/company/legal/data-privacy-and-protection/> ("Privacy Policy").

8.3 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 Trial Period.

8.4 Following the end of the Trial Period, we will delete Your Data after ninety (90) days, unless applicable law requires retention. If You elect to purchase the Cloud Service *before* the end of the Trial Period, Your Data will not be deleted until the end of the term of Your Cloud Service subscription.

8.5 **Feedback.** You agree that Extreme or its licensors retain all ownership and intellectual property rights (including all derivatives or improvements thereof) in and to any Feedback provided by Your or any other party, and acknowledge that Extreme may use the Feedback for any purpose, including, but not limited to, incorporating or implementing of such Feedback into an Extreme product or service and to display, market, sublicense and distribute such Feedback as incorporated and embedded in any product or service distributed or offered by Extreme.

9. **Support. During the Trial Period,** if You require technical assistance, You may contact Your designated Extreme systems sales engineer for assistance. Notwithstanding the foregoing, You acknowledge and agree that Extreme is not obligated to provide technical support, phone support, or updates for the Cloud Service or for any Extreme Product or third-party product used with the Cloud Service.

10. **End of the Trial Period.**

10.1 At the end of the Trial Period, the Cloud Service will end. If You received any Products for the Trial, You must return the Products to Extreme within a reasonable time after the Trial Period ends, unless otherwise advised by Extreme. Prior to the end of the Trial Period, either party may terminate this Agreement and the Trial at any time, for whatever reason, upon ten (10) days' advanced written notice to the other party.

10.2 **Survival.** The following terms shall survive the expiration or termination of this Agreement: Section 5 (Ownership), section 6 (Ownership and Processing of Your Data), 8 (Nondisclosure), 11 (Disclaimers and Exclusions of Warranties), 12 (Limitation of Liability), and 15 (General).

11. **Disclaimers and Exclusions of Warranties.**

THE CLOUD SERVICE AND PRODUCTS ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXTREME DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES ARISING OUT OF A COURSE OF DEAL, TITLE, USAGE OF TRADE, OR MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, CONDITIONS OF MERCHANTABILITY, WHETHER ARISING BY STATUTE OR IN LAW OR THAT THE CLOUD SERVICES OR PRODUCTS WILL MET YOUR REQUIREMENTS OR THAT THE SERVICES' OPERATIONS WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. Some jurisdictions do not allow the exclusion of implied warranties or the exclusion or limitation of certain damages, so the above exclusions may not apply to You.

EXTREME RESERVES THE RIGHT TO MAKE CHANGES OR UPDATES TO THE CLOUD IQ SERVICES, THE CLOUD SERVICES, AND THE PRODUCTS AT ANY TIME WITHOUT NOTICE.

12. **Limitation of Liability.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL EXTREME, ITS AFFILIATES, OR LICENSORS, BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES REGARDLESS OF: (I) WHETHER YOU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (II) THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, INDEMNITY, OR OTHERWISE; AND (III) WHETHER THE

DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL EXTREME'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES EXCEED ONE THOUSAND DOLLARS (\$1,000 USD).

13. **Cloud Service Analyses.**

During the Trial Period, 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.

14. **Export Control.**

14.1 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.

14.2 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.

14.3 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.

15. **General.**

15.1 **Marketing Materials.** Customer agrees Extreme has the express right to use Customer's 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 Customer 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.

- 15.2 **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.
- 15.3 **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.
- 15.4 **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.
- 15.5 **Assignment.** You may not assign or otherwise transfer any of Your rights under this Agreement without Extreme's 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.
- 15.6 **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.
- 15.7 **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.
- 15.8 **Compliance with Laws.** Each party must each comply with all laws applicable to the actions contemplated by this Agreement.
- 15.9 **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 terminate the Cloud Service and this Agreement. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recover procedures.

- 15.10 **Modifications.** We reserve 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.
- 15.11 **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.
- 15.12 **Language.** This Agreement is in English, and the English language version governs any conflict with a translation into any other language.

16. Definitions.

“Cloud Service” means the Extreme Cloud IQ Services described at www.extremecloudiq.com that Extreme makes commercially available through a web portal, including any Software, technology, platform and other materials that Extreme makes available during the Trial Period for your access and evaluation.

“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. You may elect to opt in or out of obtaining Analytics at any time during the Trial Period.

“Your Data” means all information and data that You provide or that the Cloud Service collects, processes and transfers from You to Extreme Cloud IQ in connection with the Cloud Service and excludes the 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 during the Trial Period in accordance with this Agreement.

“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.

“Product(s)” means the Extreme-branded product(s) provided or made available to You by Extreme during the Trial Period in connection with Your evaluation of 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”**) and any updates that Extreme may provide to You during the Trial Period.

“**Software**” means the machine readable (object code) version of the computer programs associated with the hardware Product and/or the Cloud Services, 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 the terms of Extreme’s End User License Agreement (EULA) available at: <https://extr-p-001.sitecorecontenthub.cloud/api/public/content/11bb0c6dffdf49319aedd05df9dfcfe5?v=3be62fa7>

“**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.

-End of Agreement-