

CORRECT ORDER NUMBER MUST APPEAR  
ON ALL PACKAGES, INVOICES, AND  
SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT

**Extended Description:**

Culture Center Networking Equipment

The Vendor, ConvergeOne Inc, agrees to enter with the Agency, the West Virginia Department of Arts, Culture, and History, into a one-time purchase to provide networking equipment and its associated software and hardware. for the Culture Center per the specifications, terms and conditions, bid requirements, Addendum No.01 issued 11/12/2022, and the Vendor's bid dated 11/29/2022, all incorporated herein by reference, and made a part of hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43222612	0.00000		0.000000	64827.34
Service From	Service To	Manufacturer	Model No		

**Commodity Line Description:** Network Switches and its associated software and hardware.

**Extended Description:**

As per Attached Pricing page (Exhibit A)

	Document Phase	Document Description	Page 3
DCH2300000002	Draft	Culture Center: Networking Equipment	

**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☐ **Term Contract**

**Initial Contract Term:** The Initial Contract Term will be for a period of \_\_\_\_\_. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to \_\_\_\_\_ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for \_\_\_\_\_ years;

☐ the contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☒ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in \_\_\_\_\_

**4. AUTHORITY TO PROCEED:** Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☒ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

**6. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

**7. REQUIRED DOCUMENTS:** All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: One Million Dollars (\$1,000,000.00) per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☒ **Cyber Liability Insurance** in an amount of: Ten Million Dollars (\$10,000,000) per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract. [ ] **Pollution Insurance** in an amount of: \_\_\_\_\_ per

☐ currence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

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**9. WORKERS' COMPENSATION INSURANCE:** Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.



**10. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

**14. PAYMENT IN ARREARS:** Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

**16. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**17. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

**18. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

**19. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

**22. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

**24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

**DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.**

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.  
Revised 09/12/2022

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**34. VENDOR NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

**38. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
  - 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
  - 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. PROHIBITION AGAINST USED OR REFURBISHED:** Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

**45. VOID CONTRACT CLAUSES:** This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

**46. ISRAEL BOYCOTT:** Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

**DESIGNATED CONTACT:** Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Lynne' Fosson, National Account Manager

(Address) 2615 Reedyville Road, Roundhill, KY 42275

(Phone Number) / (Fax Number) 317.813.5128 / None

(email address) LFosson@ConvergeOne.com

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

ConvergeOne, Inc.

(Company) 

(Signature of Authorized Representative)

David Raftery, Regional Vice President

December 15, 2022

(Printed Name and Title of Authorized Representative) (Date)

651.994.6800 (Main) / 651.994.6801 (Main)

(Phone Number) (Fax Number)

LFosson@ConvergeOne.com (Project Contact)

(Email Address)



**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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**SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Arts, Culture, and History to establish a contract for the one-time purchase of networking equipment and its associated software and hardware.
- 2. DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
  - 2.1 “Contract Item”** means the list of items identified in Section 3.1 below and on the Pricing Pages as more fully described by these specifications.
  - 2.2 “Pricing Page”** means the pages, contained in wvOASIS or attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
  - 2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
  - 2.4 “Gbps”** means billions of bits per second and is a measure of bandwidth.
  - 2.5 “Gb”** means gigabites.
  - 2.6 “Omnidirectional”** means receiving signals from or transmitting in all directions.
  - 2.7 “PoE”** means Power over Ethernet
  - 2.8 “SFP”** means Small Form-Factor Pluggable.
  - 2.9 “AC”** means Alternating Current.
- 3. GENERAL REQUIREMENTS:**
  - 3.1 Mandatory Contract Item Requirements:** Contract Item must meet or exceed the mandatory requirements listed below.
    - 3.1.1 Contract Item #1: Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-48P-8XE), or Equal**
      - 3.1.1.1** Vendor must provide a quantity of ten (10).
      - 3.1.1.2** Must have a base software license that includes a one (1)-year ExtremeCloud® IQ Pilot Subscription, or equal.
      - 3.1.1.3** Ports: 48 x 10/100/1000BASE-T full/half duplex 802.3a.

**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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**3.1.1.4 PoE: 30W**

**3.1.1.5 Flexible Port Configuration: 8 x 1Gb SFP ports upgradeable to 10Gb SFP+**

**3.1.1.5.1 Must include two (2) x stacking ports @10Gb.**

**3.1.1.6 Must have one (1) internal fixed AC Power supply. 1 internal fixed AC PSU, fixed fan module (on-off mode up to 35°C).**

**3.1.2 Contract Item #2: Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-16P-4XE), or Equal**

**3.1.2.1 Vendor must provide a quantity of three (3).**

**3.1.2.2 Must have a base software license that includes a one (1)-year ExtremeCloud IQ Pilot Subscription, or equal.**

**3.1.2.3 PoE: 30W**

**3.1.2.4 Ports: 24 x 10/100/1000 + 4 x 1 Gigabit / 10 Gigabit SFP+ + 2 x SFP-DD**

**3.1.2.4.1 Must be stackable.**

**3.1.2.5 Must have one (1) internal fixed AC Power supply. 1 internal fixed AC PSU, fixed fan module (on-off mode up to 35°C).**

**3.1.3 Contract Item #3: Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-24P-8XE), or Equal**

**3.1.3.1 Vendor must provide a quantity of five (5).**

**3.1.3.2 PoE: 30W**

**3.1.3.3 Ports: 24 x 10/100/1000 + 4 x 1 Gigabit / 10 Gigabit SFP+ + 2 x SFP-DD (must be stackable)**

**3.1.3.4 Must have one (1) internal fixed AC Power supply. 1 internal fixed AC PSU, fixed fan module (on-off mode up to 35°C).**

**3.1.4 Contract Item #4: Extreme Networks® ExtremeCloud IQ (AP 305C-FCC), or Equal**

**3.1.4.1 Vendor must provide a quantity of twenty-nine (29).**

**3.1.4.2 Must have 802.11ac technology.**

**3.1.4.3 Must have 2x2:2 stream multiple-in, multiple-out radio data rates up to 2.4 Gbps.**

**3.1.4.4 Antennas: Must have three (3) integrated dual band 2.4/5GHz omnidirectional antennas and one (1) integrated single band**

**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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5GHz omnidirectional antenna.

**3.1.5 Contract Item #5: Extreme Networks® Advanced Hardware Support (97000-AP305C-FCC), or Equal**

3.1.5.1 Vendor must provide a quantity of twenty-nine (29).

3.1.5.2 Vendor must include Extreme Networks® EW TAC OS AP305C-FCC, or equal, for each wireless access point,

**3.1.6 Contract Item #6: Extreme Networks® ExtremeCloud IQ Support and Management Subscription for Access Points (XIQ-PIL-S-C-EW), or Equal**

3.1.6.1 Vendor must provide a quantity of twenty-nine (29).

3.1.6.2 License term must be a minimum of three (3) years.

3.1.6.3 Licenses must be compatible with the State's existing Aerohive System and Manager.

**3.1.7 Contract Item #7: Extreme Networks® Advanced Hardware Support (97004-5320-48P-8XE), or Equal**

3.1.7.1 Vendor must provide a quantity of ten (10).

3.1.7.2 License term must be a minimum of three (3) years.

3.1.7.3 Vendor must include Extreme Networks® EW NBD AHR 5320-48P-8XE, or equal, for each wireless access point,

3.1.7.4 Licenses must be compatible with the State's existing Aerohive System and Manager.

**3.1.8 Contract Item #8: Extreme Networks® Advanced Hardware Support (97004-5320-16P-4XE), or Equal**

3.1.8.1 Vendor must provide a quantity of three (3).

3.1.8.2 License term must be a minimum of three (3) years.

3.1.8.3 Vendor must include Extreme Networks® EW NBD AHR 5320-16P-4XE, or equal, for each wireless access point, or equal.

3.1.8.4 Licenses must be compatible with the State's existing Aerohive System and Manager.

**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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**3.1.9 Contract Item #9: Extreme Networks® Advanced Hardware Support (97004-5320-24P-8XE), or Equal**

**3.1.9.1** Vendor must provide a quantity of five (5).

**3.1.9.2** License term must be a minimum of three (3) years.

**3.1.9.3** Vendor must include Extreme Networks® EW NBD AHR 5320-24P-8XE, or equal, for each wireless access point, or equal.

**3.1.9.4** Licenses must be compatible with the State's existing Aerohive System and Manager.

**3.1.10 Alternate 'or Equal' Submission**

Vendor submitting an alternate brand must include documentation such as spec sheets confirming interoperability with Aerohive hardware with their bid. Vendor must include alternate brand information with alternative part numbers on the Pricing Sheet. Any equivalent items must meet or exceed the specifications herein and must be compatible with the current operating environment. Failure to submit such information may result disqualification of your bid.

Vendor will assume any costs related to any required installation of new software, and/or training of the alternate submission provided as part of this agreement.

**4. CONTRACT AWARD:**

**4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price for the Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

**4.2 Pricing Page:** Vendor should complete the Pricing Page by filling out the attached Excel Exhibit A Pricing Page and enter the total bid amount into the commodity line of wvOasis as a lump sum price. Vendor must complete the Pricing Page in full and return with their bid as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

**4.3 Software Terms and Conditions:** Vendor should provide with their bid a copy of any and all software Terms and Conditions or licenses that the State of West Virginia or the Agency will have to agree to or accept as part of this agreement/solicitation. *This information will be required prior to award and before any Purchase order is issued.*

**4.4 Maintenance Terms and Conditions:** Vendor should provide with their bid a copy of any and all maintenance Terms and Conditions or licenses that the State of West Virginia or the Agency will have to agree to or accept as part of this agreement/solicitation. *This information will be required prior to award and before any Purchase order is issued.*

**5. PAYMENT:**

**5.1 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

**6. DELIVERY AND RETURN:**

**6.1 Shipment and Delivery:** Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order or notice to proceed. Vendor shall deliver the Contract Items within ninety (90) working days after receiving a purchase order or notice to proceed. Contract Items must be delivered to Agency at *Building 9, 1900 Kanawha Blvd. E., The Culture Center, Charleston, WV 25305 ATTN: Doug Litton.*

**6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

Any Agency seeking to obtain the Contract Items from a third party under this provision must first obtain approval of the Purchasing Division.

**6.3 Delivery Payment/Risk of Loss:** Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.

**REQUEST FOR QUOTATION**  
**Culture Center: Networking Equipment**

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- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**7 VENDOR DEFAULT:**

**7.1** The following shall be considered a vendor default under this Contract.

- 7.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2** Failure to comply with other specifications and requirements contained herein.
- 7.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4** Failure to remedy deficient performance upon request.

**7.2** The following remedies shall be available to Agency upon default.

- 7.2.1** Immediate cancellation of the Contract.
- 7.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3** Any other remedies available in law or equity.



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

State of West Virginia  
Centralized Request for Quote  
Info Technology

**Proc Folder:** 1128214

**Doc Description:** Addendum No. 1 Culture Center: Networking Equipment

**Proc Type:** Central Purchase Order

**Reason for Modification:**

Addendum No.1 is issued to publish questions and answers and to modify the bid opening date

Date Issued	Solicitation Closes	Solicitation No	Version
2022-11-22	2022-11-29 13:30	CRFQ 0432 DCH2300000002	2

**BID RECEIVING LOCATION**

BID CLERK  
DEPARTMENT OF ADMINISTRATION  
PURCHASING DIVISION  
2019 WASHINGTON ST E  
CHARLESTON WV 25305  
US

**VENDOR**

**Vendor Customer Code:** 000000184564

**Vendor Name :** ConvergeOne, Inc.

**Address :**

**Street :** 10900 Nesbitt Avenue, South

**City :** Bloomington

**State :** MN

**Country :** USA

**Zip :** 55437

**Principal Contact :** Lynne' C. Fosson, National Account Manager

**Vendor Contact Phone:** 502.558.7331

**Extension:**

**FOR INFORMATION CONTACT THE BUYER**

Toby L Welch  
(304) 558-8802  
toby.l.welch@wv.gov

**Vendor  
Signature X**

**FEIN#** 41-1763228

**DATE** November 29, 2022

All offers subject to all terms and conditions contained in this solicitation

**ADDITIONAL INFORMATION**

Addendum No. 1 is published for the following reasons:

- 1) To publish the questions and answers
  - 2) To modify the bid opening date from 11/22/22 to 11/29/22
- no other changes--

INVOICE TO		SHIP TO	
DIVISION OF CULTURE & HISTORY CULTURAL CENTER 1900 KANAWHA BLVD E CHARLESTON WV US		DIVISION OF CULTURE & HISTORY CULTURAL CENTER 1900 KANAWHA BLVD E CHARLESTON WV US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Network Switches				

Comm Code	Manufacturer	Specification	Model #
43222612			

**Extended Description:**

Vendor must enter a price on each line of Exhibit A pricing page and return the pricing page with their bid. Vendors should enter the grand total amount into the contract amount on the commodity line. the total cost must be a lump sum amount including all incidentals including freight charges.

**SCHEDULE OF EVENTS**

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Questions are due by 4:00 p.m.	2022-11-15



**SOLICITATION NUMBER: CRFQ DCH2200000002**

**Addendum Number: 1**

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The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- ☒ Modify bid opening date and time
- ☐ Modify specifications of product or service being sought
- ☒ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☐ Correction of error
- ☐ Other

**Description of Modification to Solicitation:**

Addendum No. 1 is published for the following reasons:

- 1) To publish the questions and answers
- 2) To modify the bid opening date from 11/22/22 to 11/29/22
- no other changes--

**Additional Documentation:** Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

**Terms and Conditions:**

- 1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
- 2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

## ATTACHMENT A

## **CRFQ DCH2300000002**

### **Culture Center Networking Equipment**

**Q1: Will the State of West Virginia accept a response with Extreme switching and wireless and an alternate manufacturer for wireless on the same response?**

**A:1 Yes. Vendors submitting an alternate brand must include documentation confirming interoperability with Aerohive hardware with their bid. Vendor must include alternate brand information with alternative part numbers on the Pricing Sheet.**

**Q:2 From the excel document that you have provided, sheet 2 shows some hardware equipment that is not listed in the required specifications. Could you please let me know if I should include them or not? \***  
**SEE ATTACHED**

**A:2 No. Sheet 2 was attached in error. The other components will be bid out in separate solicitations.**

**Q:3 Is this solicitation just for the Cultural Center in downtown Charleston, or are there additional network needs at the other museum sites?**

**A:3 This solicitation is just for the Culture Center in Charleston. There may be a need in the future for networking equipment at the other museum sites and public libraries.**

**Q:4 Does the Cultural Center seek just wired network hardware, or do they also need a wireless network to go with their new wired network?**

**A:4 The Culture Center is just seeking wired network hardware. The wireless network operates off the Aerohive cloud established by the WV State Office of Technology.**

**Q:5 How many wiring closets does the Cultural Center have?**

**A:5 Eleven.**

## **CRFQ DCH2300000002**

### **Culture Center Networking Equipment**

**Q:6 How many wired network connections does the Cultural Center need?**

**A:6 The Culture Center has acquired 922 jacks.**

**Q:7 Do they have a data center?**

**A:7 The WV Office of Technology.**

**Q:8 Is there a need for network security with this network equipment?**

**A:8 No.**

**Q:9 Does the Cultural Center plan to do their own network equipment installation and configuration, or do they need an installed-and-configured new network?**

**A:9 The Culture Center Technical Services Unit will be installing the cabling and the Office of Technology will be installing the network equipment.**

**Q:10 What type of network equipment are they replacing?**

**A:10 The entire network infrastructure of the building needs replaced in order to install and use VoIP phones (i.e., cabling, patch panels, racks, wireless access points, switches, etc.).**

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: CRFQ DCH22\*002**

**Instructions:** Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

**Acknowledgment:** I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

**Addendum Numbers Received:**

(Check the box next to each addendum received)

<input checked="" type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

ConvergeOne, Inc.

Company



Authorized Signature

November 28, 2022

Date

**NOTE:** This addendum acknowledgment should be submitted with the bid to expedite document processing.

Revised 6/8/2012

# End User License Agreement

**PLEASE READ ALL OF THE FOLLOWING TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT.** This End User License 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 Software (defined below) licensed by Extreme or its licensors.

**By downloading, installing, copying, accessing, or using the Software, or activating a Software license key, or by clicking an “I Agree” or similar button, or by opening the Software media, You agree to the terms and conditions of this Agreement as a condition of Your use of, and right to use, the Software.**

**If You do not agree to all the terms and conditions in this Agreement, do not download, install or use the Software. If the Software was delivered to You embedded in an Extreme Hardware Product, do not install or use that Extreme Hardware Product.**

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 Software after such changes have been posted will signify your assent to acceptance of the revised terms.

If You and Extreme have signed a separate written agreement covering Your rights and duties with respect to the Software, then that written agreement take precedence over any conflicting terms in this Agreement.

**Your privacy is important to Extreme.** Extreme’s Privacy Policy is located at <https://www.extremenetworks.com/company/legal/privacy/>. Please read our Privacy Policy for information related to Extreme’s collection, use and disclosure of Your personal information. By agreeing to the terms of this Agreement, You are also accepting the terms of Extreme’s Privacy Policy.

**1. DEFINITIONS.** Capitalized terms used in this Agreement are defined in Section 18 below.

## **2. LIMITED LICENSE GRANT.**

Subject to Your compliance with all the terms and restrictions set forth in this Agreement and payment of the applicable license fees, Extreme grants You, the end user of the Software, a non-transferable (except as expressly permitted below), non-sublicensable, non-exclusive license to download, install and use object code versions of the Software for Your personal or internal business purposes as permitted by the Type of License You have purchased.

If multiple Software is licensed together as a single license, such bundled Software is licensed to be used as a bundle and no component of the bundle may be used on a standalone basis unless specified in Your Ordering Documentation. If the Software is provided as Embedded Software, that Software may not be used in combination with a standalone Extreme Hardware Product other than the Extreme Hardware Product on which the Software is embedded, unless specified in Your Ordering Documentation.

### **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 party, 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;
- (iv) introduce any virus or harmful code onto the Software or Extreme's systems which enable the Software; or
- (v) 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.

You shall have no right or license in the Software unless You rightfully acquire the Software license from an Authorized Source.

**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.

### **3. PROPRIETARY NOTICES.**

You agree to maintain and reproduce all Extreme Markings on all copies, in any form, of the Software, in the same form and manner that such Extreme Markings are included on the Software. You may make one back up/archival copy of the Software (in machine-readable form only), as necessary for Your lawful use, provided that You retain all Extreme Markings on the copy that appeared on the original. You also agree to maintain appropriate records of all copies of the Software You make.

### **4. MAINTENANCE SERVICES.**

If You have purchased Maintenance Services, then Software provided pursuant to such services agreement is licensed to You in accordance with the terms of this Agreement. If You have purchased Software on a Subscription basis, then during the Subscription term, Extreme shall provide Maintenance Services for the applicable Software identified in Your Ordering Documentation, at no additional charge.

### **5. OWNERSHIP AND RESERVATION OF RIGHTS.**

Extreme and its third-party licensors own all right, title and interest, including, without limitation, all intellectual property rights, in and to the Software (including all modifications and derivatives

thereto, and associated Documentation). You are not granted any rights in the Software other than the license rights expressly set forth above. All Software is licensed to You, not sold. The Software in source code form is and will always remain a confidential trade secret of Extreme and its third-party licensors. The Software and Documentation are protected by the copyright, patent, trademark, and trade secret laws of the United States and other jurisdictions, international treaties and conventions, and all other relevant intellectual property and proprietary rights and applicable laws. Extreme reserves all rights not expressly granted in this Agreement, and no rights or licenses shall be deemed or inferred to be granted or transferred hereunder, whether by implication, estoppel, or otherwise.

### **6. FEEDBACK.**

All right, title, and interest to any questions, comments, or feedback provided by You to Extreme regarding the Software, Documentation, or any other products, services, or materials provided by Extreme (collectively "Feedback") are retained by Extreme. You hereby assign to Extreme all right, title, and interest in all Feedback and in any intellectual property rights in the Feedback. Where the foregoing assignment is prohibited by law, You hereby grant Extreme an exclusive, transferable, worldwide, royalty-free, fully paid up license (with rights to sublicense through multiple tiers of sublicensees) to use and exploit all Feedback. If the foregoing assignment and license are not enforceable, You agree to waive and never assert against Extreme those non-assignable and non-licensable rights, title and interest.

### **7. TERM, TERMINATION AND SURVIVAL.**

This Agreement is effective until terminated or until the expiration of the term applicable to the Type of License. You can terminate this Agreement at any time by ceasing use of and destroying all copies of the Software and associated Documentation.

**Termination for Breach.** Your license rights under this Agreement will terminate immediately if You breach this Agreement, or if You fail to pay any portion of the applicable license fees and You fail to cure such payment breach within thirty (30) days of notice.

**Effect of Termination or Expiration.** Immediately after any termination of this Agreement, or the expiration of a Subscription license (without renewal or reinstatement), You must cease use of the Software and associated Documentation, and as applicable, promptly delete, destroy or return to Extreme, the original and all copies of the Software and associated Documentation, and other Confidential Information in Your possession or control, and remove the Software from any Network Devices. Extreme may require Your authorized representative to certify in writing that such Software, Documentation and Confidential Information were deleted and/or destroyed, and You shall promptly comply with such requirement.

**Survival.** Sections 3 (Proprietary Notices), 5 (Ownership and Reservation of Rights), 6 (Feedback), 7 (Term, Termination and Survival), 8 (Limited Software Warranty and Disclaimer), 10 (Limitation of Liability), 11 (Audit), 12 (Confidential Information), 13 (Export and Compliance with Laws), 14 (Free and Open Source Software), 15 (U.S. Government Restricted Rights), 16 (Third-Party Software), 17 (General Provisions) and 18 (Definitions), shall survive the expiration or termination of this Agreement, or any licenses granted hereunder.

### **8. LIMITED SOFTWARE WARRANTY AND DISCLAIMER.**

**Limited Warranty.** Extreme warrants that the Software licensed under this Agreement will perform substantially in accordance with the Documentation for a period of ninety (90) days from



the Start Date or the date of Your initial download of the Software from Extreme's website, as applicable, or such other minimum period required under applicable law. THIS LIMITED WARRANTY APPLIES ONLY TO THE ORIGINAL END USER PURCHASE AND NOT TO AN SUBSEQUENT PURCHASER OR USER.

**Exclusive remedy.** If the Software does not operate as warranted above, at Extreme's option and expense, Extreme shall repair, replace or cause the refund of the license fees paid for the non-conforming Software. This remedy is conditioned on Your reporting the non-conformance in writing to Your Authorized Source within the warranty period. Any replacement Software will substantially conform to the accompany Documentation and be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. This remedy set forth in this limited warranty section is Your exclusive remedy under the warranty.

This limited warranty does not apply if:

- (a) the Software is not used in accordance with this Agreement or the Documentation;
- (b) the Software or any part of the Software has been modified by any entity other than Extreme or its authorized representative;
- (c) a malfunction in the Software was caused by equipment or software not supplied by Extreme, or was caused by Your or a third-party's misuse, neglect, improper installation or testing, or other causes beyond the Software's intended use or by accident, fire, lightning, power cuts or outages, other hazards or acts of God, or other unusual physical or electric stress or accidents.
- (d) the Software was not provided by an Authorized Source; or
- (e) the Software is provided under an Evaluation License for beta, trial, evaluation, test, or demonstration purposes, and in such cases, to the fullest extent not prohibited by law, the Software is furnished "AS IS" WITH ALL FAULTS AND WITHOUT EXPRESS OR IMPLIED WARRANTIES, CONDITIONS OR REMEDIES.

**DISCLAIMER.**

EXCEPT AS SPECIFIED IN THE ABOVE, EXTREME AND ITS LICENSORS PROVIDE THE SOFTWARE, MAINTENANCE SERVICES, AND THIRD-PARTY SOFTWARE "AS IS" AND EXPRESSLY DISCLAIM AND EXCLUDE ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR MEETING CUSTOMER'S REQUIREMENTS OR USAGE OF TRADE, COMPATIBILITY, OR INTEROPERABILITY WITH ANY HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY EXTREME, SATISFACTORY QUALITY, NONINFRINGEMENT OF ANY THIRD-PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR FREEDOM FROM INTERRUPTION OR ERROR, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXTREME DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF INACCURACIES, ERRORS, BUGS, VIRUSES, INTERRUPTIONS OR OTHER HARMFUL COMPONENTS OR PROGRAM LIMITATIONS OR THAT ALL ERRORS WILL BE CORRECTED. TO THE EXTENT THAT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE NINETY (90) DAY WARRANTY PERIOD OR OTHERWISE TO THE MAXIM EXTENT PERMITTED BY LAW.

BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

EXTREME ALSO DOES NOT WARRANT THAT THE SOFTWARE WILL PROTECT AGAINST ALL POSSIBLE THREATS OR THAT THE SOFTWARE OR ANY EQUIPMENT, SYSTEM OR NETWORK ON WHICH THE SOFTWARE IS USED, WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. EXTREME IS NOT RESPONSIBLE FOR ANY DELAYS, FAILURES OR ANY LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND YOU ACKNOWLEDGE THAT THE SOFTWARE AND DOCUMENTATION MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATION FACILITIES.

**9. MUTUAL REPRESENTATIONS AND WARRANTIES.**

Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (b) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third-party or any obligation owed by it to any third-party to keep any information or materials in confidence or in trust.

**10. 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 ANY AUTHORIZED SOURCE FOR THE SOFTWARE THAT GAVE RISE TO THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

THE TERMS IN THIS SECTION 10 (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.

**11. AUDIT.**

During the license term of the Software, and for a period of three (3) years after its expiration or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Software to verify Your compliance with this Agreement. Some Software may provide information to Extreme about Your use of the Software to verify that the Software is being used in accordance with a valid license and/or entitlement. By using the Software, You consent to the transmission of such information.

You will allow Extreme, at Extreme's expense, to audit Your use of the Software for compliance with this Agreement no more than once per twelve (12) month period. Extreme will provide You with reasonable advanced written notice of the audit. The audit will occur during Your normal business hours, and shall not unreasonably interfere with Your business. If an audit discloses underpayment of license fees, You will pay such license fees, plus the reasonable cost of the audit, within thirty (30) days of receipt of written notice. Extreme is not responsible for any of Your costs incurred in cooperating with the audit. Extreme's knowledge of Your use of the Software beyond the scope of the license shall not operate as a waiver of Extreme's rights to enforce the terms of this Agreement under any legal or equitable doctrine.

**12. CONFIDENTIAL INFORMATION.**

"Confidential Information" includes the Software, any information disclosed by Extreme to You relating to the Software, which may include, but is not limited to, information relating to the performance, reliability or stability of the Software, the operation of the Software, software design and architecture, and any other information that a reasonable person would deem to be of a confidential nature given the nature of such information and/or the circumstances under which such information is disclosed.

Confidential Information does not include information that: (a) is or becomes generally known through no fault of Yours; (b) is known to You at the time of disclosure, as evidenced by its records; (c) is hereafter furnished to You by a third-party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without any breach of this Agreement. Nothing in this Agreement shall prevent You from disclosing Confidential Information in response to a valid order of a court or other governmental body or is otherwise required by law to be disclosed, provided You give prompt and sufficient written notice to Extreme to enable it to take protective measures prior to disclosure.

You shall use a reasonable degree of care to maintain all Confidential Information in confidence and shall not disclose to any third-party nor use Confidential Information of Extreme for any unauthorized purpose. You may only disclose Confidential Information to those of Your employees and representatives that have both (i) a need to know for Your internal purposes in configuring, installing, using and supporting the Software and (ii) are legally bound by confidentiality obligations no less stringent than those of this Agreement.

**13. EXPORT AND COMPLIANCE WITH LAWS.**

You shall comply with all applicable laws and regulations in connection with Your use of the Software, as well as technical information and data. You acknowledge that the Software 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 Software to certain countries and persons. You further acknowledge that the

Software 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 Software, in the United States and in any foreign jurisdiction into which the Software is downloaded or used.

Without limiting the foregoing, the Software may not be downloaded or otherwise 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 downloading or using the Software, 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 Software 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. FREE AND OPEN SOURCE SOFTWARE.**

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

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

**15. U.S. GOVERNMENT RESTRICTED RIGHTS.**

The Software and associated Documentation licensed under this Agreement are “commercial items” as defined at FAR 2.101, comprised of “commercial computer software” and “commercial computer software documentation” as those terms are used in FAR 12.212. Consequently, regardless of whether You are the U.S. Government, or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement.

**16. THIRD-PARTY SOFTWARE.**

In addition to any Open Source Licenses, the Software may be distributed with other software governed by licenses from third-parties (“Third-Party Software” and “Third-Party License”). Any Third-Party Software is licensed to You subject to the terms and conditions of this Agreement, notwithstanding anything to the contrary in this Agreement or in the corresponding Third-Party License. Extreme makes no separate representations or warranty concerning Third-Party Software.

**17. GENERAL PROVISIONS.**

**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.

**Entire Agreement, Order of Precedence and Amendments.** This Agreement is the entire agreement between Extreme and You with respect to the subject matter hereof, and all prior agreements, representations, statements, and undertakings, oral or written, are expressly superseded and canceled. This Agreement shall supersede 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 Software, then that written agreement shall control in the event of a conflict between that agreement and this Agreement.

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

**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.

**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.

**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.



**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.

### **18. DEFINED TERMS.**

Terms that are capitalized in this Agreement have the following meaning(s):

**“Affiliates”** means, with respect to a party, any person, partnership, corporation, limited liability company, or other form of enterprise that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such party.

**“Authorized Source”** means Extreme or a reseller, distributor or channel partner who is authorized by Extreme to resell Software licenses to You, as the end user customer of the license.

**“Business Days”** means any day other than a Saturday, Sunday, or U.S. statutory or public holiday.

**“Client Application”** - the application to access the Server Application.

**“Concurrent User”** means any of Your individual employees who You provide access to the Server Application at any one time.

**“Documentation”** means the then-current published documentation regarding performance of the Software and/or Hardware Product (in the form of datasheets, available on [extremenetworks.com](http://extremenetworks.com)).

**“Extreme Hardware Product”** means the Extreme hardware product on which Software is embedded or operates.

**“Firmware”** means any software program or code embedded in chips or other media.

**“Maintenance Services”** means Extreme’s then-current service offerings for Extreme Hardware and Software, which may include updates, new releases, and enhancements in accordance with Extreme’s then-current support and maintenance services (described at: <https://www.extremenetworks.com/services/>) and service terms (available at: <https://www.extremenetworks.com/company/legal/terms-of-support/>).

**“Network Device”** means a physical computer device, appliance, appliance component, controller, wireless access point, or virtual appliance as described within the applicable product documentation.

**“ODM Network Device”** means a Network Device purchased by You from a Specified ODM as identified in the Ordering Documentation.

**“Open Source Software”** means any software code or component that is distributed as open source software or freeware or is otherwise distributed publicly or made generally available in source code form under terms that permit modification and redistribution on one or more triggering conditions.

**“Ordering Documentation”** means the applicable price quotation, corresponding purchase order, relevant invoice, order acknowledgement, and accompanying documentation or specifications for the Products and Services purchased, acquired or licensed hereunder from an Authorized Source.

**“Parties”** means Extreme Networks, Inc. and/or its Affiliates, and You.

**“Product(s)”** means an Extreme Hardware Product and/or Software that Extreme makes commercially available for purchase and/or license (in the case of Software).

**“Server Application”** means the software application associated with software authorized for installation (per a License Key, if applicable) on one or more of Your servers as defined in the Ordering Documentation.

**“Software”** means all Extreme and third-party software programs (in object code form only), including, without limitation, Standalone Software, Firmware, Server Application, Client Application (as further defined below), and accompanying Documentation, and any updates to the Software that Extreme may provide at any time.

**“Specified ODM”** means an original device manufacturer as identified in the Ordering Documentation.

**“Standalone Software”** means software licensed for use independent of any hardware purchase, as identified in the Ordering Documentation.

**“Start Date”** means the date of shipment from either Extreme or an Extreme-authorized distributor.

**“Type of License” or “License Type”** means the particular type of license purchased, as specified in Your Ordering Documentation, which may include, without limitation, one or more of the license types described below:

- **Capacity.** Under the terms of this license, the license granted to You by Extreme authorizes You to use the Software up to the amount of capacity or usage as defined in the Ordering Documentation.
- **Client License.** Under this license, You are authorized to install the License Key for the Software on Your server and to allow the specific number of Concurrent Users as ordered by You and is set forth in Your Ordering Documentation. A separate license is required for each additional Concurrent User.
- **Evaluation License.** Extreme may make certain Licensed Materials available to You in object code solely for evaluation, training or other non-commercial purposes without charging a fee, during a limited (e.g., 30 day) time period (“Evaluation License”). All the terms of this Agreement shall apply to an Evaluation License, except that (i) Extreme does not assume any liability arising from Your use of an Evaluation License and (ii) You may not publish any results of benchmark tests run under an Evaluation License without first obtaining Extreme’s written approval.
- **Perpetual License.** Under this license, You are authorized to use the Software identified in Your Ordering Documentation, for an indefinite period of time (but subject to the termination terms set forth in this Agreement).

## Extreme Networks End User License Agreement

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- ***Single User, Multiple Network Devices License.*** Under this license, You are authorized to use the Software with a defined amount of Network Devices as identified in the Ordering Documentation.
- ***Single User, Single Network Device License.*** Under this license, You are authorized to use for Your internal use only, the Software as bundled with a single Network Device (identified by a unique serial number) for the applicable term, if and as, specified in Your Ordering Documentation, or any replacement for that Network Device for that same term. A separate license, under a separate license agreement, is required for any other Network Device on which You or another individual, employee or other third-party intend to use the Software. A separate license under a separate license agreement is also required if You wish to use a Client License.
- ***Standalone License.*** Software licensed to You for Your use, independent of any Network Device.
- ***Subscription License.*** Software licensed to You for Your use during a subscription period as defined in Your Ordering Documentation.

**“You” or “Your”** means the first end user purchaser of one or more Software license(s) from an Authorized Source.

-End-



## **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 EXREME 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 **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.
- 14.2 **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.
- 14.3 **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. 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.
- 14.4 You agree that, when applicable, Your electronic signature (including clicking an "I Accept" button, constitutes a valid method of contract formation.
- 14.5 **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.
- 14.6 **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.
- 14.7 **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.
- 14.8 **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.
- 14.9 **Compliance with Laws.** Each party must each comply with all laws applicable to the

actions contemplated by this Agreement.

- 14.10 **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.

- 14.11 **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.
- 14.12 **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.
- 14.13 **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](https://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 1-*

*-End of Agreement-*

## Terms of Support

NOTICE TO ALL USERS: PLEASE READ THESE TERMS OF SUPPORT (THE "AGREEMENT") CAREFULLY. EXTREME RESERVES THE RIGHT, AT ITS SOLE DISCRETION, TO CHANGE, MODIFY, ADD OR DELETE PORTIONS OF THIS AGREEMENT AT ANY TIME WITHOUT FURTHER NOTICE BUT WILL POST THE REVISED AGREEMENT ON EXTREME'S WEBSITE. YOUR CONTINUED USE OF THE SERVICES AFTER ANY SUCH REVISIONS CONSTITUTES YOUR ACCEPTANCE OF THE NEW AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT OR ANY FUTURE REVISED AGREEMENT, DO NOT USE OR CONTINUE TO USE THE SERVICES. IT IS YOUR RESPONSIBILITY TO REGULARLY CHECK THE EXTREME WEBSITE TO DETERMINE IF THERE HAVE BEEN ANY CHANGES TO THIS AGREEMENT AND TO REVIEW SUCH CHANGES.

Extreme Networks, Inc. ("Extreme") agrees to provide the ExtremeWorks Support Program and related Support Plans to You pursuant to the following terms and conditions. If You do not accept these terms, do not purchase or use the ExtremeWorks Support Program or related Support Plans.

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

1.1 "Authorized Resellers" means those companies (a) authorized by Extreme to resell, promote or deliver the ExtremeWorks Support Program to the marketplace, and (b) through which Customer has purchased the ExtremeWorks Support Program.

1.2 "Customer" or "You" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.3 "Customer Documentation" means Product documentation, Product specifications and other related materials.

1.4 "Customer Personal Data" means all personal data (as defined in the Data Protection Law) which is processed by Extreme on Your behalf, or on behalf of an End User, 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 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.7 "Intellectual Property Rights" means any and all current and future (i) rights associated with works of authorship; including but not limited to copyrights, moral rights, and mask-work rights; (ii) patent rights, rights of priority, and design rights; (iii) trade secret rights, (iv) trademark rights (including service mark rights) and trade dress rights; (v) all other intellectual and industrial property rights of every kind and nature which may exist anywhere in the world, whether registered or unregistered; and (vi) any and all applications and registrations, renewals, extensions, provisionals, continuations, continuations-in-part, divisions, reissues or reexaminations of any of the foregoing.

1.8 "Price List" means Extreme's suggested retail price list applicable to the delivery location in effect at the time of order acceptance by Extreme, which price list is subject to revision from time to time in Extreme's sole discretion.



1.9 “Products” mean Extreme commercial networking products as identified in the Price List, including (i) hardware products with embedded Software, (ii) Software Products in object code form, (iii) End User Documentation, and (iv) other materials related to the foregoing, if any, supplied to You in a commercial package.

1.10 “Releases” mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.11 “Services Environment” refers to the combination of hardware and software components owned, licensed or managed by Extreme to which Extreme may establish a data communication link between You and Extreme, and from which Extreme may access Your Products, as part of, and in order to, provide the Services You have ordered. You may be required to provide systems passwords so that problems may be diagnosed and, where possible, corrected remotely.

1.12 “Service Specification” means the Extreme document that sets forth the description of the Extreme service or solution-offering that You are purchasing.

1.13 “Services” mean the services provided by Extreme under the ExtremeWorks Support Program (or similar support arrangement), the Premier Services Program (PSP) Foundation Services, and Extreme Managed Services, or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide, and as further described in the Service Specification.

1.14 “Software” or “Software Products” mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products. Software Products are licensed to You under the then-current software license terms for the Software Product in effect at the time of order acknowledgement by Extreme.

1.15 “Trademarks” mean “Extreme Networks” and the applicable Product trademarks as listed in Extreme’s usage guidelines, subject to revision from time to time in Extreme’s sole discretion.

1.16 “Update” means a new version of a Software Product that includes defect corrections, bug fixes and/or minor enhancements that operate within the framework of the specifications for the current Upgrade of the Software Product, but does not include substantive features or functions not performed by the prior Release of the Software Product.

1.17 “Upgrade” means a new version of a Software Product that includes substantive features or functions not performed by the prior Release of the Software Product.

1.18 “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, in any format, provided by You or on behalf of any End User that reside in, or run on or through, the Service.

2. **Services.** The scope of the Services provided to Customer hereunder is based on the support plan purchased by Customer for each unit of the Product purchased. Service Descriptions of the available Extreme support plans, including Extreme’s obligations and End User entitlements, are set forth at, <http://www.extremenetworks.com/support/maintenance-services> (together, the “Support Plans”). Certain on-site Services may not be available in some geographic regions or may require a “phase-in” period before they can be made available to Customer. Extreme shall have the right to use subcontractors to perform all or part of the Service(s), as it deems appropriate. To be eligible for the PSP Foundation Service, Customer must have Extreme equipment with current maintenance support entitlements. Future Services are deemed added to this Agreement at such time as they are added to the Price List, unless otherwise specified by Extreme in writing. Extreme has the right to discontinue the distribution or availability of any Service at any time upon sixty (60) days’ prior notice to Customer by email, notification on Extreme’s website, or any other method permitted under this Agreement. In accordance with the Support Plan purchased for the applicable Product, the Services may include the following:

**2.1 Releases.** Extreme or its authorized representatives will make available to Customer all Releases made generally available by Extreme only for Products for which Customer has an active contract for Services. The content of all Releases shall be decided upon by Extreme in its sole discretion. Updates for Products for which Customer has an active contract for Services shall be provided to Customer at no additional charge during the term of this Agreement. Extreme shall impose additional charges for Upgrades. Customer shall install only one (1) copy of a Release for each Product under an active contract for Services, and Customer is prohibited from installing Releases on any Product which is not covered under an active contract for Services.

**2.2 Corrections.** Extreme shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in any Product for which Services have been purchased with a level of effort commensurate with the severity level; provided that Extreme shall have no obligation to correct all Defects in the Products. Customer shall notify Extreme TAC of the nature and severity of such Defect and the specific serial number of the applicable Product, and provide Extreme with enough information to locate and reproduce the Defect. Extreme shall not be responsible for correcting any Defect not attributable to Products or any Defect listed under Section 3 ("Exclusions").

**3. Exclusions.** The Services provided by Extreme hereunder will not include support and maintenance of any third-party software or hardware not provided by Extreme. Extreme is not required to provide any services for problems arising out of: (i) Customer's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas, GBICs and miniGBICs. Extreme shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the Services may be obtained at Extreme's then-current rates for special technical services and on Extreme's then-current terms and conditions for such services, subject to acceptance by Extreme at its sole discretion.

#### **4. Customer Obligations.**

**4.1 Customer Assistance.** Customer agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Customer information services, technical personnel, facilities, and premises as required in connection with the performance of the Services. To efficiently resolve problems and perform local hardware diagnostics, Customer shall provide modem level access for all Customer sites. Customer may provide passwords and/or activate the modem when needed. Customer shall be responsible for any and all cables, hardware or software not provided by Extreme. Customer's failure to provide such access or information may delay the Services and/or result in Extreme's inability to perform the Services; in such cases, Extreme shall not be liable for any consequences relating to or resulting from such delay or failure to perform.

**4.2 Contact People.** Customer shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Customer's organization to serve as the primary contacts between Customer and Extreme and to receive support as provided herein. Customer shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Customer's support inquiries shall be initiated through these primary contacts.



**4.3 Restrictions on Copying and Reverse Engineering.** As a material consideration for this Agreement, Customer expressly agrees not to translate, disassemble, reverse compile or reverse engineer the Products, including the Software Products, in whole or in part, except to the extent such prohibition is restricted by applicable law. Customer will not copy, modify, create derivative works, rent, lease, loan or use for timesharing or service bureau purposes any Products, including Software Products, in whole or in part without the prior written approval of Extreme, which approval may be withheld in Extreme's sole discretion.

**4.4 No Removal of Markings.** Customer agrees to comply with all legends that appear on or in the Products and not to remove or destroy any patent, copyright, logo, trademark, trade name, proprietary marking, or confidentiality legend placed upon or contained within Products, containers or End User Documentation supplied by Extreme.

## **5. Ordering and Payment Terms.**

### **5.1 Orders.**

**5.1.1** The terms and conditions of this Agreement will apply to any and all purchase orders submitted by Customer and will supersede any different or additional terms on Customer's purchase orders.

**5.1.2** Each purchase order must be acknowledged and accepted by Extreme in writing prior to Extreme incurring any obligation under such purchase order. Extreme reserves the right to reject any order.

**5.1.3** In countries where Services are available from Extreme, Customer may purchase a Support Plan set forth on Extreme's then-current Price List by submitting an order for such Support Plan either at the time of the purchase of the Product to which it relates or at any time thereafter, subject to Section 5.2 ("Reinstatement and Inspection"), Section 6 ("Support for End of Life") and Extreme's acceptance of such order at its sole discretion. Customer shall be responsible for any other travel and living expenses incurred in connection with the Services or on-site Service calls that are not expressly included in Customer's applicable Support Plan.

**5.1.4** Each order of one Support Plan is only valid for a single unit or units of the Product for which Service is purchased and paid for. All orders for Services must include the location where the Services will be provided, the Support Plan being purchased and the model number and serial number of the Product to be supported or such information must be provided to Extreme in writing promptly following the purchase of the Services. Extreme will not be obligated to provide Services for a Product unless Extreme has received such information.

**5.1.5** All orders for Services placed with Extreme will be non-cancelable, and all support fees and training fees, if applicable, paid to Extreme shall be non-refundable.

**5.2 Reinstatement and Inspection.** If Services are not ordered concurrently with any Product orders or are not promptly renewed each year, Extreme may, at its option, commence such Services upon payment of the applicable support fee and a reinstatement fee. If a Product is purchased in used condition, Extreme may, at its option, inspect the Product and commence Services for such Product upon payment of the applicable support fee, a reinstatement fee and Extreme's inspection fee.

**5.3 Purchases from Extreme.** If Customer is purchasing the Services directly from Extreme, Extreme's terms and conditions of sale and service shall apply to such purchase. These terms and conditions can be found at <http://extremenetworks.com/company/legal/terms-of-sales>.

5.4 Purchases from Authorized Reseller. If Customer is purchasing the Services from an Authorized Reseller, notwithstanding the above, the payment terms set forth in Customer's agreement with the Authorized Reseller shall govern; provided, however, in the event the Customer's Authorized Reseller defaults on its payment obligations to Extreme for the Services, then You or Customer's Use of the Services may be suspended without notice, until such time as the Authorized Reseller cures the breach, or the Customer elects to contract for Services directly with Extreme. All other terms of this Agreement shall remain in full force and effect, and any other conflicting, additional or different terms set forth in an agreement between the Customer and an Authorized Reseller are superseded by this Agreement and shall be entirely unenforceable against Extreme.

## 6. Support for End of Life.

6.1 Product End of Life. In the event Extreme discontinues or otherwise ceases to make available to its customers a particular Product model number, Extreme will continue to offer Services for such Product in accordance with its then-current End of Life Policy available at <https://www.extremenetworks.com/support/end-of-sale-and-end-of-support-products/>. The Services shall remain in effect with respect to other Products, if any, then covered.

6.2 Support Plan End of Life. Extreme reserves the right to discontinue any Support Plan in its sole discretion upon sixty (60) days' notice, by email, notification on Extreme's website, or any other method permitted under this Agreement, to Customer; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period so long as You and/or the Customer is not in breach of any of its obligations under this Agreement.

7. Records and Audit. Customer agrees to maintain complete, clear and accurate records relating to its activities under this Agreement, including, without limitation, its inventory and sales of each Product and Service (including reseller and end user information) (the "Records"), and retain such Records for such time period as may be required by law and commercially reasonable prudent practices, but not less than two (2) years. Such Records will be maintained in accordance with standard business practices and Generally Accepted Accounting Principles. Customer will permit Extreme, or persons designated by Extreme, at Extreme's cost, to audit the Records to ensure compliance by Customer with its obligations to Extreme. Any such audit shall be conducted during regular business hours and in such a manner as to not unduly interfere with normal business activities of Customer. If the audit reveals an underpayment of amounts owed to Extreme, Customer will promptly pay any such shortfall, and if such underpayment is more than 5% for the audited period, Customer will further pay, or reimburse Extreme for, the cost of the audit, including professional fees.

8. Return Process. If Customer is returning a Product to Extreme, Customer must first obtain a Return Material Authorization ("RMA") number from Extreme. Customer must return the entire contents of the defective Product and dated End User proof of purchase for the defective Product, if requested by Extreme, marked with the RMA number, to a receiving point designated by Extreme. Shipping cartons that are not marked with RMA numbers will be rejected by Extreme and returned to Customer via collect freight. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Customer retains sole responsibility for risk of loss or damage to Products during shipment to and from Extreme. Products returned to Extreme may be repaired or replaced by Extreme at Extreme's sole discretion. Replacement Products may be new or refurbished Products. In the event that Extreme evaluates and determines there is "no trouble found" in greater than twenty-five percent (25%) of the Products or parts returned in a ninety (90) day period, Extreme reserves the right to charge Customer a service charge of twenty percent (20%) of the List Price per unit.

**9. Ownership of Intellectual Property Rights; License; Non-Disclosure.**

**9.1 Intellectual Property Rights.** Customer acknowledges that the Products are proprietary to Extreme and its suppliers, and that Extreme and its suppliers retain exclusive ownership of all Intellectual Property Rights in and to the Products, including in and to any Software Products and Trademarks. You and Customer will take all reasonable measures to protect Extreme's Intellectual Property Rights in any Product. Except as expressly provided herein, Customer is not granted any right to any Intellectual Property Rights with respect to any Product.

**9.2 License.** All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

**9.3 Non-Disclosure.** You and/or the Customer may be exposed to certain confidential information of Extreme including but not limited to information concerning the business, technology, and customers of Extreme, which You know or should know is Extreme's confidential and proprietary information (herein "Confidential Information"). You agree that while this Agreement is in effect and for a period of three (3) years thereafter, You/it will not: (i) use the Confidential Information for any purpose other than to perform under this Agreement; or (ii) disclose to any third party any Confidential Information without the prior written consent of Extreme. Customer may disclose Confidential Information only to its employees or contractors on a need to know basis and as is reasonably necessary to allow the party to perform under this Agreement; provided that each such employee or contractor is under a written obligation of nondisclosure which protects the Confidential Information under terms at least as stringent as these terms. This Section will not apply to Confidential Information after such information is made public by Extreme. If any Confidential Information is required to be disclosed by Customer as a matter of law or by order of a court or other legal process, Customer will promptly notify Extreme of such obligation to disclose and reasonably assist Extreme in obtaining a protective order or otherwise limiting such disclosure.

**10. Warranty.** All Updates provided hereunder are warranted for the remaining warranty period of the original Software Product, if any, as specified in the warranty card which shipped with the original Software Product. All Upgrades are warranted as set forth in the warranty card for such Upgrade. Replacement Products provided under the Services are warranted for the remaining warranty period of the original Product, if any, as specified in the warranty card which shipped with the original Product. Nothing in the Services shall be construed as expanding or adding to the warranty set forth on the warranty card. Extreme will use all reasonable commercial efforts to provide the support requested by You under this Agreement in a professional and workmanlike manner. In the event that Extreme fails to meet this warranty, Extreme may reperform the Services, but Extreme cannot guarantee that every question or problem raised by You or the Customer will be resolved. EXTREME WARRANTS THE SERVICES ONLY TO YOU PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND YOU RECEIVE, NO OTHER WARRANTIES OF ANY KIND. EXTREME EXPRESSLY DISCLAIMS ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER EXPRESS, IMPLIED (in fact or by operation of law), STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, TERM OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CORRESPONDENCE WITH DESCRIPTION, ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY, TERM OR CONDITION THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR COURSE OF PERFORMANCE.

## 11. Term and Termination.

**11.1 Services Term.** The Services start date shall be determined as follows: (a) for the initial purchase of Service, the Service start date shall be the original shipment date of the covered Product from Extreme, and (b) for Service renewals, the Service start date shall be the date on which the prior Service period ended. Customer shall be responsible for the Service Fees from such Service start date. The Service end date will be 12 months from the Service start date, unless otherwise specified in writing by Extreme. Unless Customer or Extreme provides notice at least sixty (60) days prior to the end of the Support Plan term of its intent not to renew the Support Plan, the Support Plan term will automatically renew for one (1) year subject to payment being received by Extreme for such Support Plan. If Customer fails to pay the annual Support Plan fees in accordance with Extreme's invoice, the applicable ExtremeWorks Support Plan will automatically terminate without notice.

**11.2 Agreement Term.** All Releases provided under the Services are licensed subject to the terms and conditions of the then-current Software license agreement for such Software Product in effect at the time the Release is provided.

**11.3 Termination.** This Agreement shall be terminated immediately upon the expiration of all prepaid support periods for the Support Plans purchased by You. This Agreement may also be terminated by Extreme (i) for its convenience, upon sixty (60) days' prior written notice to the Customer; provided, however, that Extreme will continue to provide Services during any prepaid support period so long as this Agreement was not terminated for Your or Customer's breach, (ii) immediately upon written notice to Customer, if Customer breaches or violates any provision of Sections 4.3 ("Restrictions on Copying and Reverse Engineering"), 4.4 ("No Removal of Markings"), and 9 ("Ownership of Intellectual Property Rights; License; Non-Disclosure"); (iii) immediately upon written notice to Customer, if Customer fails to perform or otherwise defaults in any of its obligations (other than those covered by Section 11.3(ii) above) under this Agreement and fails to cure such failure or default within thirty (30) days after written notice thereof, or (iv) , immediately upon written notice to the Customer, if the Customer is insolvent or makes any arrangement with its creditors generally, or has a receiver appointed for all or a substantial part of its business or properties, or an insolvency, bankruptcy or similar proceeding is brought by or against Customer and involving Customer as debtor, and if brought against Customer is not dismissed within sixty (60) days from its institution, or if Customer goes into liquidation or otherwise ceases to function as a going concern.

**11.4 Effect of Termination.** Upon the expiration or termination of this Agreement for whatever reason, You shall no longer be entitled to receive Services from Extreme pursuant to this Agreement, all support fees and training fees paid prior to the effective date of termination shall be non-refundable, and Extreme will no longer have any obligation to provide Services to You for the Products pursuant to this Agreement. In addition, Extreme will be entitled to reject all or part of any orders received from Customer after notice but prior to the effective date of termination. By thirty (30) days from the effective date of termination, Customer will return or destroy all copies of the Confidential Information. At the request of Extreme, the president or the equivalent officer of Customer will certify in writing that Customer has complied with its obligations hereunder.

**11.5 Survival of Terms.** The following Sections will survive any expiration or termination of this Agreement for whatever reason: Sections 4.3 ("Restrictions on Copying and Reverse Engineering"), 4.4 ("No Removal of Markings"), 6 ("Support for End of Life"), 7 ("Records and Audit"), 8 ("Return Process"), 9 ("Ownership of Intellectual Property Rights; License; Non-Disclosure"), , 11.4 ("Effect of Termination"), 11.5 ("Survival of Terms"), 12 ("No Consequential Damages"), 13 ("Limitation on Liability"), 14 ("Data Protection").



12. **No Consequential Damages.** Except in case of bodily injury or death where, and then only to the extent that, applicable law requires such liability, UNDER NO CIRCUMSTANCES WILL EXTREME BE LIABLE FOR (i) ANY LOST PROFITS (even if they arise as a direct or immediate consequence of the event that generated the damages), OR (ii) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS, LOST REVENUE OR LOST SAVINGS, LOSS OF USE, LOSS OR DAMAGE TO DATA OR GOODS OR INTERRUPTION OF BUSINESS, IN EACH CASE HOWEVER CAUSED, AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, EVEN IF EXTREME HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY EXCLUSIVE REMEDY PROVIDED HEREIN. IN NO EVENT WILL EXTREME BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

13. **Limitation on Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT IN CASE OF BODILY INJURY OR DEATH WHERE, AND THEN ONLY TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY, EXTREME'S AGGREGATE LIABILITY FROM OR IN RELATION TO THIS AGREEMENT AND THE SERVICES, WHETHER ARISING IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY COMPANY TO EXTREME FOR THE SERVICES GIVING RISE TO THE CLAIM IN THE MOST RECENT FULL CALENDAR YEAR PRECEDING COMPANY'S INITIAL NOTICE OF ANY CLAIM OR POTENTIAL CLAIM HEREUNDER. THIS LIMITATION SHALL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE.

#### 14. Data Protection.

14.1 Subject to Section 14.2, 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](http://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 Customer Personal Data provided during the term Your order.

14.2 This Section 14.2 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 14.1 and Section 14.2, this Section 14.2 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.

14.3 The Service Specifications applicable to Your order 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.

14.4 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.

**15 Miscellaneous.**

**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 Notices.** Any notices permitted or required under this Agreement will be in writing and will be deemed given when delivered in person, by overnight courier upon written verification of receipt, by confirmed facsimile, or by certified or registered mail, return receipt requested, five (5) days after deposit in the mail. Either party may change its address by giving written notice of such change in the manner provided. Notices to Extreme shall be sent to: Extreme Networks, Inc., 6480 Via del Oro, San Jose, California 95119, Attention: Legal Department, Fax: (408) 579-3000.

**15.3 Assignment.** This Agreement may not be assigned by Customer by operation of law or otherwise without the prior written approval of Extreme. Extreme's rights and obligations, in whole or in part, under this Agreement may be assigned or delegated by Extreme to any affiliated company or subsidiary or in connection with a merger, reorganization, consolidation or sale of all or substantially all of Extreme's assets. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns.

**15.4 Waiver; Severability.** The waiver by either party of a breach of any provisions contained herein shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law or applicable court decisions.

**15.5 Injunctive Relief.** It is expressly agreed that a violation of Sections 4.3 ("Restrictions on Copying and Reverse Engineering"), 4.4 ("No Removal of Markings"), or 9 ("Ownership of Intellectual Property Rights; License; Non-Disclosure") of this Agreement could cause irreparable harm to Extreme and that a remedy at law could be inadequate. Therefore, in addition to any and all remedies available at law, Extreme will be entitled to seek injunctive relief or other equitable remedies in the event of any threatened or actual violation of any or all of the provisions hereof.

**15.6 Controlling Law; Venue.** This Agreement shall be governed in all respects exclusively by the laws of the State of California and the United States of America without regard to conflicts of law principles. The United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to this Agreement. All disputes arising under this Agreement shall be brought in Superior Court of the State of California in Santa Clara County or the Federal District Court of San Jose, as permitted by law, and Customer consents to personal jurisdiction in such courts.

**15.7 Timing of Disputes.** All disagreements or controversies of any kind whether claimed in tort, contract or otherwise concerning this Agreement shall be brought within one (1) year after the occurrence of the event giving rise to the disagreement or controversy.

**15.8 No Agency.** Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

15.9 Export. Customer acknowledges that it must comply with all applicable laws and regulations of the United States that may restrict the export, re-export, or transshipment of certain commodities and technical information, including the Products, the Services and technical information relating thereto, in any medium. Customer will obtain and maintain all approvals and licenses, including export licenses, permits and authorizations, from the appropriate governmental authorities as may be required to enable Customer to fulfill its obligations under this Agreement and shall comply with all applicable laws, rules, policies and procedures of the United States government. Customer acknowledges that, unless prior written authorization is obtained from the relevant authorities in the United States, it will not export, re-export, or transship, directly or indirectly, any Products, Services or technical information relating thereto, in any medium, that would be in contravention to any applicable laws and regulations of the United States then in effect. Customer shall indemnify and hold harmless Extreme for any violation or alleged violation by Customer of such laws or regulations. Customer's obligations pursuant to this Section shall survive and continue after any termination of rights under this Agreement.

15.10 Force Majeure. Neither party will have the right to claim damages if this Agreement is terminated as a result of the other party's failure or delay in performance due to circumstances beyond its reasonable control (except for obligations relating to fees payable under this Agreement), including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, components, raw materials or supplies, war, riot, insurrection, epidemic, natural disasters, governmental action or terrorism.

15.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes, and its terms govern, all prior and all contemporaneous proposals, negotiations, commitments, understandings, agreements or other communications between the parties, oral or written, regarding such subject matter, including any prior click through agreements.

# ExtremeWorks® AHR Service

**Service:** ExtremeWorks Advanced Hardware Replacement Service (Next Business Day and 4 Hour Response)

**Version:** 2.1

**Date:** July 2018

**Availability:** Global

**Order Code:** 97004 and 97007

## 1.0 Service Overview

Extreme Networks Advanced Hardware Replacement Services offerings provide technical support, update and/or upgrade support, and advanced parts replacement for Covered Products (as defined herein) according to particular levels of purchase. Upon diagnosis of a reported failure, service offerings cover the replacement part arrival within the response time specified for the service level purchased, subject to the conditions defined herein.

Extreme service offerings further grant Customers telephone and web access to Extreme Networks Global Technical Assistance Center ("GTAC") 24 hours a day, 365 days a year (24x7) to report problems, ask product-related questions and receive assistance for Extreme Networks hardware and Operational Software.

## 2.0 Service Levels

ExtremeWorks Advanced Hardware Replacement Services are available with the following response times depending upon the offering purchased:

Service Order Code	Service Levels	FRU Response Time*
97004	ExtremeWorks NBD Advanced Hardware Replacement	Next Business Day
97007	ExtremeWorks 4 Hour Advanced Hardware Replacement	24x7 - 4 Hours

\*Diagnosis and troubleshooting required to identify the faulty Field Replaceable Unit ("FRU") to be replaced must be completed prior to requesting the replacement FRU. The response time interval starts after the GTAC validates the customer's request for a replacement FRU and assigns an RMA number.

## 3.0 Availability

ExtremeWorks Advanced Hardware Replacement Services, contracted for a defined period, are available globally from key business locations, subject to the conditions herein. Please refer to Appendix A for additional information on availability and restrictions by geography.

## 4.0 Deliverables

Each ExtremeWorks Advanced Hardware Replacement Service offer includes the following:

- **GTAC Technical Support** – 24x7 telephone support that provides technical assistance with diagnosis of defect or failures in the Extreme Networks hardware and Operational Software to conform to published documentation on Covered Products.
- **Escalation Management** – The GTAC is the escalation point for the customer for raising unsatisfactory conditions or immediate concerns associated with the service quality on Covered Products. Please see Appendix B for additional detail.
- **Advanced Shipment** – Extreme Networks provides for the advanced shipment of FRUs to the customer's contracted sites within the contract response time on Covered Products. A request for a replacement FRU is validated by GTAC and a Return Material Authorization (RMA) number is assigned. Extreme Networks will pick, pack and dispatch the replacement FRU using a commercial delivery service to make the delivery to the customer's contracted site. The replacement FRU will be delivered within the contracted response time, subject to the regional restrictions, response times, and diagnostic requirements identified in Appendix A.



- **Operational Software Updates and Upgrades –** Customer is entitled to receive any Operational Software or Operational Software upgrades that Extreme Networks may develop and generally release on Covered Products. Operational Software is defined as embedded software that is required to operate an Extreme Networks network device and is offered for sale as an inclusive component of such hardware network device product as described in Extreme Networks' published price list applicable to such hardware product ( "Covered Product"). Operational Software updates and upgrades may be obtained through Extreme Networks' Website after establishing a web account and are only available for Covered Product that is registered and subject to Extreme's standard published product documentation and support/ maintenance entitlements. Use of Operational Software updates and upgrades shall be subject to the ExtremeWorks Support Program Terms and Conditions, in addition to your applicable product license agreement and purchasing terms and conditions.

NOTE: Support for Application Software products, including subscription to include entitlement to major and minor releases of the Application Software products, if available, are not included with the ExtremeWorks Advanced Hardware Replacement Services. Subscription and support for Application Software must be ordered separately via ExtremeWorks Software Subscription services offerings as further published for availability in accordance with Extreme Networks' then-current Price List (currently categorized as order code 97003).

- **Access to Extreme Networks' Customer Support Website –** which may include, but is not limited to (i) status review of known hardware and software problems (ii) access to technical documentation (iii) ability to log a case (iv) status view of outstanding RMAs.

## 5.0 Extreme Networks Responsibilities

Extreme Networks is responsible for:

- Assisting with fault diagnosis required to identify the FRU to be replaced and to occur prior to assignment of the RMA number.
- Assigning an RMA number to each FRU to be replaced and notifying the customer of the relevant RMA numbers.
- Shipping an replacement FRU on an advance exchange basis to the customer's location per the applicable availability and restrictions in Appendix A.

- Extreme Networks will measure and categorize the case priority level of software problems reported by the customer based on the impact on the network and in accordance with the classification definitions contained in Appendix B. If it is not clear which priority level applies, then the priority level assigned by the customer will be used. However, if a problem clearly belongs in a given priority level, then that level will be used. Case severity and level assignment will be determined in Extreme's sole discretion.
- If Extreme Networks diagnoses that a reported problem is due to non-conformance to published specifications of a supported Operational Software version, then Extreme Networks will provide any Operational Software fix for the reported non-conformance available at the time the problem is reported, provided that customer is running on a version of Operational Software that is currently supported, as identified in the Extreme Networks Product End of Life Policy.

## 6.0 Customer Responsibilities

The Customer is responsible for:

- Advising Extreme Networks, in writing, of any change of location for Covered Products to ensure proper dispatch and delivery.
- Ensuring that all covered hardware is operational and up to the currently supported revision level before this service plan goes into effect. Failure to do so will exclude that hardware from coverage.
- Ensuring that the products are used and maintained in accordance with the applicable product documentation.
- Returning the defective FRU to an authorized Extreme Networks repair facility. In the event that you fail to return the defective FRU within ten (10) business days of receipt of the replacement FRU, Extreme Networks reserves the right to invoice you for such product or product component based on the current list price. Failure to return defective parts in a timely manner may result in the suspension of future advance hardware replacement service delivery from Extreme Networks.
- Providing, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Extreme Networks GTAC engineer. In addition, customer must provide systems' passwords so that problems may be diagnosed and, where possible, corrected remotely.

- Using all reasonable efforts to maintain software products major releases installed at sites at the most current release level.
- Using the versions of Operational Software currently supported by Extreme Networks. If the Operational Software is a version other than that which is currently supported, as identified in the Extreme Networks Product End of Life and Support Plan End of Life Policy, the customer is required to purchase the required versions of the product to obtain support. Support for Application Software must be purchased separately under Software Subscription as defined in Extreme's then-current Price List, if available.

## 7.0 Assumptions

The following assumptions govern the delivery of ExtremeWorks Advance Hardware Replacement Service:

- Extreme Networks will make commercially reasonable efforts to ship, at its expense, a replaceable hardware FRU to arrive at the customer's designated location within the specified time frame and based on the parameters indicated in Appendix A. In certain geographies, the customer may be responsible for the cost of importing replacement product, including customs and duty fees. Please consult with Extreme Networks or your authorized Extreme Networks Services Partner to learn whether your location is included.
- For the purpose of providing support services, Extreme Networks will have the right at any time to audit a contracted site through software, remote polling or other reasonable means to verify the site's in-service inventory against the contracted equipment, to conform to the customer's network size and/or to verify the software eligibility status, except as otherwise may be prohibited by applicable law.
- FRU delivery is subject to the hours of coverage and response times as identified in Appendix A.
- If the customer's Operational Software is a version that is not currently supported, and the non-conformance is corrected in a supported version, then the customer will be advised to upgrade to obtain assistance. Extreme Networks will not incorporate software fixes or corrections into versions of Operational Software other than those currently supported in accordance with Extreme Networks' Product
- End of Life and Support Plan End of Life Policy. Extreme Networks does not represent or warrant that all nonconformance of the Operational Software can be corrected.

- Operational Software upgrades may be obtained through Extreme Networks' Web site after establishing a web account and are only available for the Covered Product that is registered. Use of Operational Software upgrades shall be subject to the terms and conditions of said software.
- Customer will maintain and backup all configuration data.
- The terms and conditions of Extreme's performance of support and services are as posted here. In the event of any conflict between the language in this Service Description Document and Extreme Networks published terms and conditions, Extreme Networks published terms and conditions shall govern.
- Unless required for operational reasons and elsewhere agreed between the customer and Extreme Networks, the replacement FRU will be at the then-current minimum hardware, software and software release levels as published by Extreme Networks.
- When the hardware or software is part of the same system, it must carry consistent service level coverage. This includes the chassis, modules, circuit packs, software and all other supportable components within the system configuration.

## 8.0 Exclusions

The following are completely out of the scope of ExtremeWorks Advance Hardware Replacement Services entitlements and are not included herein. Professional Services offerings may be available for purchase and Extreme reserves the right to charge for any costs incurred with performance of services affected by any of the following factors below.

- Extreme Networks is not required to provide any services for problems arising out of: (i) Company's failure to implement all Updates issued under the Services; (ii) alterations of or additions to the Products performed by parties other than Extreme; (iii) accident, natural disasters, terrorism, negligence, or misuse of the Products (such as, without limitation, fire, flood, water, wind, lightening or other acts of God, operation outside of environmental specifications or in a manner for which the Products were not designed); (iv) interconnection of the Products with other products not supplied by Extreme, or (v) certain components, including but not limited to the following: spare fan trays, blank panels, cables, cable kits, rack mount kits, brackets, antennas and consumable items.

- Extreme Networks shall only be obligated to support the then-current revision of the Products and the immediately prior revision. Support for any earlier versions or for other problems not covered under the Services may be obtained at then-current rates for special technical services and on Extreme Networks then-current terms and conditions for such services, subject to acceptance by Extreme Networks.
- Extreme Networks will have no liability or obligations for failure of the products to conform to published specifications resulting from the combination of the products with any third-party hardware or software not authorized in Extreme Networks published documentation or when caused by customer's inability to use the products if the products are operating substantially in accordance with published specifications.
- Service availability is subject to geographical limitations, as advised by Extreme Networks upon request. Extreme Networks will have no obligation to meet the response times outlined in the Appendix A if the customer's site is outside of the geographical zone of service availability. If the customer purchases this service for locations outside Extreme Networks advised geographical limitations, Extreme Networks will be required only to use commercially reasonable efforts to replace FRUs as soon as practical after receipt of a request from the customer.
- Services such as upgrades to hardware are excluded from the scope of this SDD and should be ordered separately.
- Labor charges for reinstalling the customer's system Operational Software (operational or application) or end user configuration software, other than what is provided in the customer's backup copy, are not included within the scope of this service. This is a separately charged and scheduled activity.
- This service does not include support and maintenance of any third party software or hardware not provided by Extreme Networks.
- This service offering and any subsequent service renewals are subject to the terms and conditions of Extreme Networks Product End of Life and Support Plan End of Life policy.
- New releases and upgrades for Application Software, or software releases, updates or upgrades otherwise out-of-scope as defined herein.
- Unless elsewhere agreed in writing between the customer and Extreme Networks in a separate contract, this service does not include root-cause analysis, the provision of fault reports or lead-time/performance metrics.

## Appendix A

### ExtremeWorks Advance Hardware Replacement Services Deliverables

Extreme Networks will make commercially reasonable efforts, at its expense (excluding any and all duties, taxes or government imposed fees if applicable) to see that the replacement hardware FRU arrives at the customer's designated location within the specified time period based upon the system's Response Service Level following completion of diagnostics and the assignment of an RMA Number. Extreme Networks will have no obligation to meet the response times outlined in the appropriate ExtremeWorks Service Description if the customer's site is outside the geographical zone of service availability. Extreme Networks is not responsible for any delays related to import/export or customs regulations or processes, or uncontrollable transportation issues including inability of the customer to allow the actual delivery of services. Delivery targets for RMA's including but not limited to oversized/heavy weight items may fall outside the posted SLA. A current list of Extreme authorized servicing depots that correspond to the defined ExtremeWorks services offerings, including expected delivery response, defined herein is available [here](#).

#### Next Business Day

Where Next Business Day Advanced Hardware Replacement Services is available, Extreme Networks must process the RMA relating to the defective product per the Advanced Exchange RMA Times section of the Extreme Networks Service Availability Matrix, Monday through Friday, in order to deliver the replacement product to your site, by the end of day of the Next Business Day. Otherwise Second Business Day delivery will be provided for RMA's approved after the time indicated.

Next Business Day delivery is generally available in these geographical locations:

- North America: United State and Canada
- EMEA: Most European Union Countries, Switzerland and South Africa
- LATAM: Argentina, Brazil, Columbia, Mexico
- APJC: Australia, China, India, Japan, Philippines

NOTE: Please check the Extreme Networks Service Availability Matrix for locations that may be excluded.

Where Next Business Day delivery of the part is not available, Advanced Hardware Replacement will ship on the same business day provided Extreme Networks processed the RMA relating to the defective product per the Advanced Exchange RMA Times section of the Extreme Networks Service Availability Matrix, Monday through Friday in order to ship the replacement product to your site, otherwise Next Business Day shipment will be provided for RMA's processed after the time indicated. Estimated delivery times to country are available via the Extreme Networks [Service Availability Matrix](#).

#### 4 Hour

4 Hour Advanced Hardware Replacement Service is only available to you within one hundred (100) miles (160 kilometers) of an Extreme Networks parts depot. All 4 Hour support contracts require customer site location pre approval from Extreme Networks before Extreme Networks will accept a purchase order for the applicable 4 Hour support plan.

Email [4houravailability@extremenetworks.com](mailto:4houravailability@extremenetworks.com) for confirmation of service delivery availability.

Extreme Networks provides parts at customer's designated location provided that Extreme Networks has validated a Hardware failure and a Return Material Authorization (RMA) number has been assigned. Four-Hour Advanced Hardware Replacement response is available twenty-four (24) hours per day, seven (7) days per week, including Extreme Networks observed holidays.

Please work with your regional service sales manager to determine coverage.



## Appendix B

### Case Severity and Escalation Guidelines

Extreme Networks will measure and categorize the case priority level of hardware/software problems reported by the customer based on the impact on the network and in accordance with the classification in the table below. If it is not clear which case priority level applies, then the case

priority level assigned by the customer will initially be used. However, if a problem clearly belongs in a given case priority level as defined below, then that level will be used. Notwithstanding the foregoing, case severity and level assignment will be determined in Extreme's sole discretion.

Case Priority	Response Time	Restore time (Software fix or workaround)	Update Frequency
C1: Customer's network segment or management application is down or experiencing a consistent, measurable performance impact with no immediate resolution available	15 minutes	4 hours	Up to 4 hours
C2: Customer's network is experiencing intermittent failure or degradation of network or management application.	1 hour	1 day	Daily
C3: Customer has issues that do not affect normal network or management application operation and/or questions concerning product function or use.	8 hours	10 days	5 days
C4: Submission of a product enhancement /new feature request	Immediate Acknowledgment	N/A	N/A

If you do not believe that your support issue is being addressed to meet your business needs you may escalate your request by asking for the GTAC manager on duty.

Additional information on GTAC processes and procedures can be found at the Services tab from the Extreme Networks home page.

### Support Life Cycle Communication Matrix

Notification Levels	C1 – Critical	C2 – High Priority	C3 – Medium Priority
Support Engineer	Immediate	Immediate	Immediate
GTAC Manager	Immediate	Immediate	10 days
Director, Global Technical Services	Immediate	48 hours	10 days
Vice President, Global Technical Services	2 hours	72 hours	20 days
Executive Management (CTO/EVP Eng)	4 hours	None	None

# **Main Proposal - Extreme Solution**

## **EXHIBIT A - PRICING PAGE**

Specification Reference	Contract Item Number	Description	Part Number or Equal	Alternate Part # and Description of or Equal Products	Quantity	Unit of Measure	Unit Price	Extended Price Total
3.1.1	#1	Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-48P-8XE), or Equal	5320-48P-8XE		10	ea	\$3,260.52	\$32,605.20
3.1.2	#2	Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-16P-4XE), or Equal	5320-16P-8XE		3	ea	\$1,765.72	\$5,297.16
3.1.3	#3	Extreme Networks® ExtremeSwitching 5320 Universal Switch (5320-24P-8XE), or Equal	5320-24P-8XE		5	ea	\$1,944.56	\$9,722.80
3.1.4	#4	Extreme Networks® ExtremeCloud IQ (AP 305C-FCC), or Equal	AP 305C-FCC		29	ea	\$291.48	\$8,452.92
3.1.5	#5	Extreme Networks® Advanced Hardware Support (97000-AP305C-FCC), or Equal	97000-AP305C-FCC		29	ea	\$23.16	\$671.64
3.1.6	#6	Extreme Networks® ExtremeCloud IQ Support and Management Subscription for Access Points (XIQ-PIL-S-C-EW), or Equal	XIQ-PIL-S-C-EW		29	ea	\$95.49	\$2,769.21
3.1.7	#7	Extreme Networks® Advanced Hardware Support (97004-5320-48P-8XE), or Equal	97004-5320-48P-8XE		10	ea	\$360.19	\$3,601.90
3.1.8	#8	Extreme Networks® Advanced Hardware Support (97004-5320-16P-4XE), or Equal	97004-5320-16P-8XE		3	ea	\$195.37	\$586.11
3.1.9	#9	Extreme Networks® Advanced Hardware Support (97004-5320-24P-8XE), or Equal	97004-5320-24P-8XE		5	ea	\$224.08	\$1,120.40

**TOTAL:**

\$64,827.34

**Freight Charges (Ground):**

\$0.00

**TOTAL (with Freight Charges):**

\$64,827.34

Vendors should complete the contract coordinator information below:

VENDOR NAME:	ConvergeOne, Inc.
CONTRACT MANAGER:	Lynne' C. Fosson, National Account Manager
PHONE:	502.558.7331
FAX:	None
EMAIL:	LFosson@ConvergeOne.com

**AUTHORIZED REPRESENTATIVE:**



November 28, 2011

(Signature)/(Date)