



### SOLE SOURCE / BEST SOURCE JUSTIFICATION

To be completed by Unit or Area and include additional details on separate sheets if necessary.

Vendor/Source & Amount (\$) Amerinet / \$45,320.62

Unit or Area ITSU Date 11/7/19

Sole Source – A single vendor is uniquely qualified to meet the City's procurement objective.

Provide an explanation of the "need" that has to be fulfilled, focusing on the requirements (not a description of the product or service, which satisfies that need). Why is this vendor the only one that can fulfill the need identified?

Describe the unique aspects of their product or service and/or attach letter from vendor:

Check appropriate reason below:

- This is a product manufactured by a single vendor.
- This product or service is sold only through this single distributor.
- This service is unique to a single organization.
- An unusual or compelling urgency exists (explain below).

Best Source – Does the need meet one of the following “best source” definitions instead of the sole source definition referenced above (explain below):


- The product or service must match or be compatible with current equipment or services; or
- It would not be economically feasible for another vendor to provide the product or service needed; or
- A single vendor is uniquely qualified to fulfill the City’s need; or
- An unusual or compelling urgency exists.

To obtain quotes for Extreme Networks, all resellers go through the local Extreme Networks Territory Manager. Amerinet holds preferred status with Extreme Networks as its preferred reseller in the State of Michigan and is therefore provided the lowest pricing. This procurement will allow the WTP to purchase the hardware required to segment their remote locations onto their own fiber ring. This will reduce the chance of any communication issues with remote locations if the City's fiber ring is experiencing issues. This purchase will be under GSA contract (GS-35F-0511T).

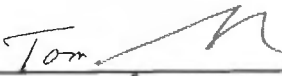
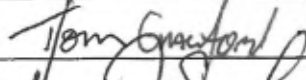

What activities have already occurred prior to submitting this request? Discuss what other products and services in the market were reviewed and why they didn't fulfill the need. Have you already evaluated products or services available on the market and then made a determination that this product or service is the only one that meets your need? Has the vendor already done any work related to this project or purchase?

See attached sheets.

**REQUESTED BY:**

Signature  Date 11/12/19  
(Typed Name) David Harris

**APPROVALS:**

Unit Manager  Date 11/14/19  
Service Area Admin.  Date 11/14/19  
City Administrator  Date 11/18/19



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November 7, 2019

Dave Harris  
City of Ann Arbor  
301 E. Huron Street  
Ann Arbor, MI 48104

Dear Mr. Harris,

AmeriNet has been providing Extreme Network's products and support to the City of Ann Arbor for many years. We appreciate your business. AmeriNet strives to provide ideal solutions with the best service at the lowest price. The current pricing structure provided to the city is matching the contract that Extreme Networks holds under the GSA Schedules (also referred to as Multiple Award Schedules and Federal Supply Schedules) Program under contract GS-35F-0511T. AmeriNet matches these prices for educational and government customers in Michigan through an agreement with Extreme Networks. Our Territory Manager Mike Fortenberry works closely with us to provide the best pricing possible using this contract as the vehicle. Please let me know if you have any questions about the products, solutions, service offerings and pricing offered by AmeriNet.

Thank you,

A handwritten signature in black ink that reads "Tobi Sickelsteel". The signature is written in a cursive style and is followed by a long horizontal line.

Tobi Sickelsteel  
Director of Sales

Extreme Networks, Inc.  
145 Rio Robles  
San Jose, CA 95134

## EC America Rider to Product Specific License Terms and Conditions (for U.S. Government End Users)

1. **Scope.** This Rider and the attached **Extreme Networks, Inc.** ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS IT70 contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with federal law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341), the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the Prompt Payment Act (31 U.S.C. §§ 3901 *et seq.*), the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. § 15), DOJ's jurisdictional statute 28 U.S.C. § 516 (Conduct of Litigation Reserved to the Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent any Attachment A Terms are inconsistent with federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA ORDER ADM 4800.2G (Feb 2011), as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 2000) (Deviation I – SEPT 2010), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination, suspension and/ or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 *et seq.*), the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent an express statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
  - i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
  - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

# EC America, Inc.

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- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The FAR 12.216 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Notwithstanding the foregoing, Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.). The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contracts Disputes Act of 1978 (41 U.S.C. §§ 7101 et seq.).
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- v) **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded. Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the GSA Customer shall receive unlimited rights to use such derivative works at no further cost.

**3. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

## ATTACHMENT A CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

**EXTREME NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

1. **DEFINITIONS.** "Affiliates" means 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 the party specified. "Server Application" shall refer to the License Key for software installed on one or more of Your servers. "Client Application" shall refer to the application to access the Server Application. "Licensed Materials" shall collectively refer to the licensed software (including the Server Application and Client Application), Firmware, media embodying the software, and the documentation. "Concurrent User" shall refer to any of Your individual employees who You provide access to the Server Application at any one time. "Firmware" refers to any software program or code imbedded in chips or other media. "Licensed Software" refers to the Software and Firmware collectively.

2. RESERVED.

3. **GRANT OF SOFTWARE LICENSE.** Extreme will grant You a non-transferable, non-exclusive license to use the machine-readable form of the Licensed Software and the accompanying documentation if You agree to the terms and conditions of this Agreement. You may install and use the Licensed Software as permitted by the license type purchased as described below in License Types. YOU MAY NOT USE, COPY, OR MODIFY THE LICENSED MATERIALS, IN WHOLE OR IN PART, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

4. **LICENSE TYPES.**

- Single User, Single Computer. Under the terms of the Single User, Single Computer license, the license granted to You by Extreme when You install the License Key authorizes You to use the Licensed Software on any one, single computer only, or any replacement for that computer, for internal use only. A separate license, under a separate Software License Agreement, is required for any other computer on which You or another individual or employee intend to use the Licensed Software. A separate license under a separate Software License Agreement is also required if You wish to use a Client license (as described below).
- Client. Under the terms of the Client license, the license granted to You by Extreme will authorize You to install the License Key for the Licensed Software on your server and allow the specific number of Concurrent Users shown on the relevant invoice issued to You for each Concurrent User that You order from Extreme or Your dealer, if any, to access the Server Application. A separate license is required for each additional Concurrent User.

5. **RESERVED. RESTRICTION AGAINST COPYING OR MODIFYING LICENSED MATERIALS.** Except as expressly permitted in this Agreement, You may not copy or otherwise reproduce the Licensed Materials. In no event does the limited copying or reproduction permitted under this Agreement include the right to decompile, disassemble, electronically transfer, or reverse engineer the Licensed Software, or to translate the Licensed Software into another computer language. The media embodying the Licensed Software may be copied by You, in whole or in part, into printed or machine readable form, in sufficient numbers only for backup or archival purposes, or to replace a worn or defective copy. However, You agree not to have more than two (2) copies of the Licensed Software in whole or in part, including the original media, in your possession for said purposes without Extreme' prior written consent, and in no event shall You operate more copies of the Licensed Software than the specific licenses granted to You. You may not copy or reproduce the documentation, You agree to maintain appropriate records of the location of the original media and all copies of the Licensed Software, in whole or in part, made by You. You may modify the machine-readable form of the Licensed Software for (1) your own internal use or (2) to merge the Licensed Software into other program material to form a modular work for your own use, provided that such work remains modular, but on termination of this Agreement, You are required to completely remove the Licensed Software from any such modular work. Any portion of the Licensed Software included in any such modular work shall be used only on a single computer for internal purposes and shall remain subject to all the terms and conditions of this Agreement. You agree to include any copyright or other proprietary notice set forth on the label of the media embodying the Licensed Software on any copy of the Licensed Software in any form, in whole or in part, or on any modification of the Licensed Software or any such modular work containing the Licensed Software or any part thereof.

6. **TITLE AND PROPRIETARY RIGHTS**

(a) The Licensed Materials are copyrighted works and are the sole and exclusive property of Extreme, any company or a division thereof which Extreme controls or is controlled by, or which may result from the merger or consolidation with Extreme (its "Affiliates"), and/or their suppliers. This Agreement conveys a limited right to operate the Licensed Materials and shall not be construed to convey title to the Licensed Materials to You. There are no implied rights. You shall not sell, lease, transfer, sublicense, dispose of, or otherwise make available the Licensed Materials or any portion thereof, to any other party.

7. **PROTECTION AND SECURITY.**

You agree not to deliver or otherwise make available the Licensed Materials or any part thereof, including without limitation the object or source code (if provided) of the Licensed Software, to any party other than Extreme or its employees, except for purposes specifically related to your use of the Licensed Software on a single computer as expressly provided in this Agreement, without the prior written consent of Extreme. You agree to use your best efforts and take all reasonable steps to safeguard the Licensed Materials to ensure that no unauthorized personnel shall have access thereto and that no unauthorized copy, publication, disclosure, or distribution, in whole or in part, in any form shall be made, and You agree to notify Extreme of any unauthorized use thereof. You acknowledge that the Licensed Materials contain valuable confidential information and trade secrets, and that unauthorized use, copying and/or disclosure thereof are harmful to Extreme or its Affiliates and/or its/their software suppliers.

8. **MAINTENANCE AND UPDATES.** Updates and certain maintenance and support services, if any, shall be provided to You pursuant to the terms of an Extreme Service and Maintenance Agreement (Exhibit A). Except as specifically set forth in such agreement, Extreme shall not be under any obligation to provide Software Updates, modifications, or enhancements, or Software maintenance and support services to You.

9. RESERVED.

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10. **EXPORT REQUIREMENTS.** You are advised that the Software is of United States origin and subject to United States Export Administration Regulations; diversion contrary to United States law and regulation is prohibited. You agree not to directly or indirectly export, import or transmit the Software to any country, end user or for any Use that is prohibited by applicable United States regulation or statute (including but not limited to those countries embargoed from time to time by the United States government); or contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or Use.

11. **UNITED STATES GOVERNMENT RESTRICTED RIGHTS.** The Licensed Materials (i) were developed solely at private expense; (ii) contain "restricted computer software" submitted with restricted rights in accordance with section 52.227- 14 RESTRICTED RIGHTS and its successors, and (iii) in all respects is proprietary data belonging to Extreme and/or its suppliers. For Department of Defense units, the Licensed Materials are considered commercial computer software in accordance with DFARS section 227.7202-3 and its successors, and use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth herein.

12. **LIMITED WARRANTY AND LIMITATION OF LIABILITY.** The only warranty Extreme makes to You in connection with this license of the Licensed Materials is that if the media on which the Licensed Software is recorded is defective, it will be replaced without charge, if Extreme in good faith determines that the media and proof of payment of the license fee are returned to Extreme or the dealer from whom it was obtained within ninety (90) days of the date of payment of the license fee.

NEITHER EXTREME NOR ITS AFFILIATES MAKE ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED MATERIALS, WHICH ARE LICENSED "AS IS". THE LIMITED WARRANTY AND REMEDY PROVIDED ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED, AND STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR FIRM ARE VOID. ONLY TO THE EXTENT SUCH EXCLUSION OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF SUCH IMPLIED WARRANTY IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE LICENSED MATERIALS. IN NO EVENT WILL EXTREME OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED MATERIALS BE LIABLE FOR SPECIAL, DIRECT, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS OR FOR INABILITY TO USE THE LICENSED MATERIALS, TO ANY PARTY EVEN IF EXTREME OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EXTREME OR SUCH OTHER PARTY'S LIABILITY FOR ANY DAMAGES OR LOSS TO YOU OR ANY OTHER PARTY EXCEED THE LICENSE FEE YOU PAID FOR THE LICENSED MATERIALS.

Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation and exclusion may not apply to You. This limited warranty gives You specific legal rights, and You may also have other rights which vary from state to state. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from Extreme's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13. RESERVED.

14. Reserved.

## EXHIBIT A

### ExtremeWorks Support Program

Extreme Networks, Inc. ("Extreme") agrees to provide the ExtremeWorks Support Program and related Support Plans to you pursuant to the following terms and conditions.

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

1.1 "Authorized Users" means those individuals authorized by Ordering Activity to use the Services on behalf of Ordering Activity.

1.2 "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 Ordering Activity has purchased the ExtremeWorks Support Program.

1.3 "Defect" means a failure of any Product to operate in accordance with Extreme's technical specifications as set forth in the End User Documentation.

1.4 "End User" means a purchaser of the Services who acquires such Services for ordinary business usage and not for purposes of further distribution or resale.

1.5 "End User Documentation" means Product documentation, Product specifications and other related materials.

1.6 "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.

1.7 Reserved.

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1.8 "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.

1.9 "Releases" mean Updates and Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.

1.10 "Services" mean the services provided by Extreme under the ExtremeWorks Support Program, Premier Services Program (PSP) Foundation Services or any other end user services provided by Extreme under this Agreement in accordance with the applicable program guide.

1.11 "Software" or "Software Products" mean Extreme software products in object code form which are either sold separately or embedded into Extreme hardware products.

1.12 "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.

1.13 "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.

1.14 "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.

2. Services. The scope of the Services provided to Ordering Activity hereunder is based on the support plan purchased by Ordering Activity for each unit of the Product purchased. 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 Ordering Activity. 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, Ordering Activity 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 Schedule Contract. Extreme has the right to discontinue the distribution or availability of any Service at any time upon sixty (60) days' prior notice. 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 Ordering Activity all Releases made generally available by Extreme only for Products for which Ordering Activity 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 Ordering Activity has an active contract for Services shall be provided to Ordering Activity at no additional charge during the term of this Agreement. Extreme shall impose additional charges for Upgrades. Ordering Activity shall install only one (1) copy of a Release for each Product under an active contract for Services, and Ordering Activity 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. Ordering Activity 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) Ordering Activity'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.

4. Ordering Activity Obligations.

4.1 Ordering Activity Assistance. Ordering Activity agrees to provide Extreme with reasonable access to the Products for which problems are reported and all back-ups and Ordering Activity Information services, technical personnel, facilities, and premises as required in connection with the performance of the Services as long as Extreme complies with all of Ordering Activity's security requirements. To efficiently resolve problems and perform local hardware diagnostics, Ordering Activity shall provide modem level access for all Ordering Activity sites. Ordering Activity may provide passwords and/or activate the modem when needed. Ordering Activity shall be responsible for any and all cables, hardware or software not provided by Extreme. Ordering Activity'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. Ordering Activity shall appoint at least two (2) individuals who have been trained and are knowledgeable on Extreme products within Ordering Activity's organization to serve as the primary contacts between Ordering Activity and Extreme and to receive support as provided herein. Ordering Activity shall provide and shall update as appropriate contact information for the primary contacts, including address, phone number and email address. All of Ordering Activity'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, Ordering Activity 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. Ordering Activity 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. Ordering Activity 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. Reserved.

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 [www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf](http://www.extremenetworks.com/libraries/services/EndofLifePolicy.pdf). 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 Ordering Activity; however, Extreme will continue to provide services under such discontinued Support Plan through the end of any prepaid support period.

7. RESERVED. 8. Return Process. If Ordering Activity is returning a Product to Extreme, Ordering Activity must first obtain a Return Material Authorization ("RMA") number from Extreme. Ordering Activity 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 Ordering Activity. Extreme will pay the transportation charges (excluding taxes, duties and customs) in accordance with the Support Plan purchased for such Product. Notwithstanding the foregoing, Ordering Activity 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.

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

9.1 Intellectual Property Rights. Ordering Activity 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. Ordering Activity will take all reasonable measures to protect Extreme's Intellectual Property Rights in any Product. Except as expressly provided herein, Ordering Activity 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.

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 Ordering Activity 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 Ordering Activity will be resolved. EXTREME WARRANTS THE SERVICES ONLY TO ORDERING ACTIVITY AS THE END USER PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES, AND ORDERING ACTIVITY 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.