

**WESTERN STATES CONTRACTING ALLIANCE  
PARTICIPATING ADDENDUM #T08-MST-888  
FOR DATA COMMUNICATIONS EQUIPMENT  
BETWEEN  
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES  
AND  
EXTREME NETWORKS, INC.**

This Participating Addendum (“PA”) number T08-MST-888 is entered into between the State of Washington, Department of Information Services (“DIS” or “State”) and Extreme Networks, Inc. (“Contractor” or “Extreme Networks”), under the Western States Contracting Alliance (“WSCA”) Master Price Agreement Number AR-1471 (“Master Agreement”) for data communications equipment and associated maintenance and training. The State is a member of WSCA (a “Participating State”) and, upon Extreme Networks’ acceptance and execution of this PA, will become a Participating Entity (as defined in Attachment 1 to this PA) under the Master Agreement.

The undersigned hereby represent, acknowledge, and agree as follows:

1. **Scope:** This PA is entered into for the purpose of making the data communications equipment and associated maintenance and training under the Master Agreement available to Washington State Purchasers. Services provided hereunder shall be limited to Purchased Services (as defined in Attachment 1 to this PA). All other types of services are expressly excluded from the scope of this PA.
2. Changes to the Master Agreement specific to the State of Washington are specified in the Attachment(s) to this PA, incorporated herein by this reference. In the event of any inconsistency between this PA and the Master Agreement, the inconsistency shall be resolved by giving precedence to the terms and conditions of this PA for all Orders (as defined in Attachment 1) placed under it.
3. **Primary Contact/ Legal Notices:**
  - 3.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a “writing,” such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be “in writing” or “written” to an extent no less than if it were in paper form.
  - 3.2. Notices shall be effective upon receipt or five (5) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
  - 3.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon Extreme Networks or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Extreme Networks, Inc. and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.
  - 3.4. For Participating Entity:

<b>State of Washington Department of Information Services</b>	
<b>Attn: Master Contract Administrator</b>	
<b>Mailing Address:</b>	<b>Street Address:</b>
PO Box 42445	1110 Jefferson Street SE
Olympia, WA 98504	Olympia, WA 98504
Phone: (360) 902-3551	
Fax: (360) 586-1414	
E-mail: <a href="mailto:mcadmin@dis.wa.gov">mcadmin@dis.wa.gov</a>	

3.5. For Extreme Networks:

<b>Extreme Networks , Inc.</b>	
<b>Attn:</b> <b>Manager, Tim Kodyra</b> With a copy to: Legal Department	
<b>Mailing Address:</b> 3585 Monroe Street Santa Clara, CA 95051	
Phone: (217) 553-5569	
Fax: (217) 483-4600	Email: tkodyra@extremenetworks.com

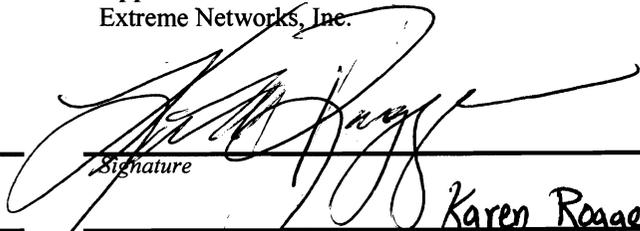
4. This PA together with its Attachment 1 and together with the Master Agreement and its Attachments A, B-1, and B-2 (administered by the State of Utah), sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Additionally, **the following documents and sections of documents are expressly excluded from the terms of this PA:** (1) all paragraphs under the headings of "Professional Services" and "Advanced Services" in Section F.5 of Attachment A to the Master Agreement (also referred to therein as Addendum 1); and (2) Exhibit 1 to Attachment A to the Master Agreement (also referred to therein as Addendum 1). Terms and conditions inconsistent with, contrary to, or in addition to the terms and conditions of this PA and the Master Agreement, shall not be added to or incorporated into this PA or the Master Agreement, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA shall prevail and govern over any and all such inconsistent or additional terms. All Orders (as defined in Attachment 1) issued by Purchasers (as defined in Attachment 1) within the jurisdiction of this PA shall include the terms of this PA and reference the PA Number T08-MST-888.

IN WITNESS WHEREOF, the parties have executed this PA as of the date of execution by both parties below.

**Approved**  
State of Washington  
Department of Information Services

**Approved**  
Extreme Networks, Inc.

  
\_\_\_\_\_  
Signature  
Roland Rivera  
\_\_\_\_\_  
Print or Type Name  
TSD Assistant Director  
\_\_\_\_\_  
Title  
1/11/08  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature  
Karen Rogge  
\_\_\_\_\_  
Print or Type Name  
SVP & CFO  
\_\_\_\_\_  
Title  
12/20/07  
\_\_\_\_\_  
Date

Approved  
Legal

**Approved as to Form**  
State of Washington  
Office of the Attorney General

\_\_\_\_\_  
Signature  
Suzanne Shaw  
\_\_\_\_\_  
Print or Type Name  
Senior Counsel, AGO  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

<b>Contractor Information</b>
Contractor's UBI Number:
Minority or Woman Owned Business Enterprise
Yes No <input checked="" type="checkbox"/> (Certification Number)

**ATTACHMENT 1  
WESTERN STATES CONTRACTING ALLIANCE  
PARTICIPATING ADDENDUM  
FOR  
DATA COMMUNICATIONS PRODUCT  
BETWEEN  
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES  
AND  
EXTREME NETWORKS, INC.**

**1. DEFINITIONS.**

**“Confidential Information”** shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or other information which is marked confidential at the time of disclosure.

**“Contractor/Officer”** shall mean Extreme Networks, Inc., its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

**“Customer”** shall mean the same as “Purchaser.”

**“DIS”** shall mean the State of Washington, Department of Information Services.

**“Effective Date”** shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

**“Order Document”/“Order”** shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

**“Participating Addendum” or “PA”** shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

**“Participating Entity”** shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

**“Procuring Agency(ies)”** shall mean the same as “Purchaser.”

**“Product(s)”** shall mean data communications equipment, specifically, Extreme Networks, Inc. routers, switches, associated components, support, software and documentation.

**“Proprietary Information”** shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws, information concerning products, product roadmaps, business strategies and forecasts, research and development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, and sales and marketing plans, and any other information that is marked “confidential,” “proprietary,” or by similar marking, or if disclosed orally is designated as confidential or proprietary at the time of disclosure.

**“Purchased Services”** means services provided to accomplish routine, continuing and necessary functions as defined in the Revised Code of Washington 39.29.06(9).

“**Purchaser**” shall mean DIS or any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS.

“**Purchasing Entity(ies)**” shall mean the same as “Purchaser”.

“**Service(s)**” shall mean installation, training and maintenance services for eligible Products. Services provided hereunder shall be limited to Purchased Services only. All other types of services are expressly excluded from this PA.

“**Subcontractor**” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**2. ORDER OF PRECEDENCE.** In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (i) Sections of this PA, including this Attachment 1;
- (ii) WSCA Master Agreement, Number AR-1471;
- (iii) Contractor’s Response to Request for Proposal (“RFP”) DG7500 (“Response”);
- (iv) Utah’s Request for Proposal DG7500;
- (v) The terms and conditions contained on Purchaser’s Order Documents.

**3. TITLE.** Title to the Products (other than the Software and Documentation) ordered by the State will pass to the State upon delivery of the Products to the State and receipt of payment therefor by Contractor. Title to and ownership of the Software and Documentation, and any improved, updated, modified or additional parts thereof, and all intellectual property rights embodied in the Products, shall at all times remain the property of Contractor or Contractor’s licensors.

**4. RECORDS ADMINISTRATION.** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made directly by Purchaser to the Contractor for costs authorized by this PA. These records will be retained by the Contractor for at least six (6) years after the PA terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later. Any audits will be in accordance with Section 38 of the WSCA Master Agreement, Number AR-1471.

**5. SURVIVORSHIP.** All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this PA or the Master Agreement shall so survive. In addition, the terms of the sections titled Contractor’s Commitments, Warranties and Representations; Protection of Purchaser’s Confidential Information; Order of Precedence; Publicity; and Disputes shall survive the termination of this PA.

**6. ADVANCE PAYMENT PROHIBITED.** No advance payment shall be made for Products and/or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance Services may be made in advance on an annual basis.

**7. TAXES.** Purchaser will pay sales and use taxes, if any, imposed on the Products and/or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor’s income or gross receipts, or personal property taxes levied or assessed on Contractor’s personal property.

**8. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS.** Any written

commitment by Contractor within the scope of this PA shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this PA. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed in a writing signed by an authorized representative of Contractor to remain in force over a specified period of time, and (ii) any warranty or representation made by Contractor in its Response or contained in the WSCA Master Agreement, Number AR-1471.

**9. PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.**

9.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

9.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.

9.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information of DIS or Purchaser collected, used, or acquired by Contractor through this PA. Any such monitoring, auditing or investigation will be conducted pursuant to reasonable security and confidentiality terms specified by Contractor, upon at least seven (7) days advance written notice to Contractor. Access to Contractor's information technology systems and any Proprietary Information shall be granted only to the degree such access is reasonably necessary for DIS or Purchaser to determine Contractor's compliance with its obligations under this section.

9.3 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.

9.4 The obligations imposed by this PA shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by Contractor; or (b) is or becomes publicly available through no fault of Contractor; or (c) is obtained by Contractor from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the Purchaser; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

**10. PUBLICITY.**

10.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by Purchasers and shall not be so construed by Vendor in any advertising or other publicity materials.

10.2 Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA and Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

- 10.3 Nothing contained in this Section, however, shall be construed to apply to the following:  
Communications among Purchasers or communications between Purchasers and other agencies and branches of the Washington State Government; and posting by DIS of a copy of this contract on its website(s), together with a notation identifying Vendor as a supplier for the Services.

**11. INSURANCE COVERAGE.**

- 11.1. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. [Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington ]
- 11.2. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within thirty (30) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.
- 11.3. The minimum acceptable limits shall be as indicated below:
- Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
  - Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
  - Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
  - Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;
- 11.4. Contractor shall pay premiums on all insurance policies. Such insurance policies certificate(s) shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR-1471 and this PA number, T08-MST-888, and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.
- 11.5. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State subject to the hold harmless/ indemnification agreements under this PA and shall include a severability of interests (cross-liability) provision.
- 11.6. Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.
- 11.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

**12. INDUSTRIAL INSURANCE COVERAGE.** Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for any of its employees covered by Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

**13. WAIVER.** Waiver of any breach of any term or condition of this PA shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this PA shall be held to be waived, modified, or deleted except

by a written instrument signed by the parties.

**14. DISPUTES.**

- 14.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor regarding the commercial terms between the parties (and not terms regarding intellectual property or confidentiality) and it cannot be resolved between the parties, or with the help of the Master Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 14.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within five (5) business days. The initiating party shall have five (5) business days to review the response. If after this review a resolution cannot be reached, both parties shall have five (5) business days to negotiate in good faith to resolve the dispute.
- a) If the dispute cannot be resolved after five (5) business days, a panel (“Dispute Resolution Panel”) may be requested in writing by either party who shall also identify the first panel member. Within five (5) business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next five (5) business days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.
- 14.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 14.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 14.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.
- 14.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

**15. DIS ADMINISTRATIVE FEE.** All purchases made under this PA are subject to a fee (“DIS Administration Fee”), to be collected by Contractor and remitted to DIS. The DIS Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The DIS Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser’s invoice. Contractor shall remit the DIS Administration Fee directly to the Master Contract Administrator, along with the PA Activity Report. The check shall be payable to the Department of Information Services.

**16. DIS NOTIFICATION.** Within ten (10) business days of receipt of any inquiry directly from any other Washington State agency regarding possible purchase under this PA, Contractor shall provide the DIS Master Contract Administrator (see Section 3 of this PA) with notice including details of the inquiry, the name of the agency and the contact person for the agency. No notice to DIS is required for inquiries or Orders received from Washington educational entities or counties, cities or their political subdivisions.

**17. DIS ACTIVITY REPORTING.**

- 17.1. Contractor shall submit to the Master Contract Administrator a quarterly report (“Activity Report”) of all Product and/or Service purchases made under this PA. Quarterly reports are to be

broken down by each month being reported. The Activity Report shall identify:

- a) The Participating Addendum (T08-MST-888);
- b) Each Purchaser making purchases during that quarter;
- c) The total invoice price, excluding sales tax for each Purchaser;
- d) The DIS Administration Fee for each Purchaser;
- e) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
- f) The sum of all DIS Administration Fees.

17.2 The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

<u>For activity in the months:</u>	<u>Report &amp; Fee Due:</u>
January, February, March	April 15 <sup>th</sup>
April, May, June	July 15 <sup>th</sup>
July, August, September	October 15 <sup>th</sup>
October, November, December	January 15 <sup>th</sup>

17.3 This Activity Report may be corrected or modified by the Master Contract Administrator with subsequent written notice to Contractor. Quarterly Activity Reports are required even if no activity occurred. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

**18. FAILURE TO REMIT REPORTS / FEES.** Failure of Contractor to remit the Activity Report together with the DIS Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

**19. INVOICE / PAYMENT.**

18.1. For orders placed directly with Contractor, Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR-1471 and Participating Addendum number, T08-MST-888;
- b) Purchaser's name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of shipment;
- f) Price for each item, or manufacturer's list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges;
- l) Total invoice price; and
- m) Payment terms including any available prompt payment discounts.

19.2. Payment is normally made within thirty (30) days following the date the Order is received or the

date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payments may be made via a Purchasing Entity's "Purchasing Card."

19.3. Payments for maintenance Services may be made in advance on an annual basis. Payment of maintenance Services of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day.

**20. TERMINATION FOR NON-APPROPRIATIONS.** If funds are not allocated to a Purchaser to continue a maintenance agreement, Purchaser may terminate its maintenance agreement upon thirty (30) days' written notice to Contractor without termination charges, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. This section shall not be construed to permit a Purchaser to terminate its maintenance agreement in order to acquire similar Services from a third party.

**21. GOVERNING LAW.** This PA shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this PA or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

**22. VENDOR'S PROPRIETARY INFORMATION.** Contractor acknowledges that DIS and Purchaser are subject to chapter 42.56 RCW and that this PA shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be proprietary ("Proprietary Information") must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.



Washington State Department of  
**Information Services**

**Amendment 10-02  
to  
Contract Number T08-MST-888  
For  
WSCA Data Communications Equipment and Services**

This Amendment 10-02 to Contract T08-MST-888 is entered into between the Department of Information Services (DIS), an agency of the state of Washington, and Extreme Networks, Inc. (Contractor).

The parties agree to amend Contract as follows:

Section 3.5 is deleted in its entirety and replaced with the following new Section 3.5:

3.5 For Extreme Networks

<b>Extreme Networks, Inc.</b>	
<b>attn: Legal Department</b>	
<b><i>Mailing Address:</i></b>	
3585 Monroe St.	
Santa Clara, CA 95051	
Fax: (408) 579-3000	
<b><i>With Copy To:</i></b>	
<b>Extreme Networks, Inc.</b>	
<b>attn: Jo Zack</b>	
<b><i>Mailing Address:</i></b>	
5612 24 <sup>th</sup> Street North	
Arlington, VA 22205	
Fax: (703) 237-1068	Email: <a href="mailto:jzack@extremenetworks.com">jzack@extremenetworks.com</a>

All other terms and conditions of the original Contract, as amended, shall remain in full force and effect.

This Amendment, effective upon the date of DIS' signature is executed by the persons signing below, who warrant, respectively, that they have the authority to execute it on behalf of the party indicated.

**IN WITNESS WHEREOF**, the parties have read and understand this Amendment 10-01, and by their signatures below, agree to each and every particular.

**ACCEPTED**  
**Washington State**  
**Department of Information Services**

**ACCEPTED**  
**Extreme Networks, Inc.**



# STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER AR 1471

1. CONTRACTING PARTIES: This State Cooperative Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

Extreme Networks, Inc.

Name

3585 Monroe Street

Address

Santa Clara

CA

95051

City

State

Zip

## LEGAL STATUS OF CONTRACTOR

- Sole Proprietor  
 Non-Profit Corporation  
 For-Profit Corporation  
 Partnership  
 Government Agency

Contact Person Tim Kodyra Phone # 217-553-5569 Fax # 217-483-4600 Email tkodyra@extremenetworks.com  
Federal Tax ID# 77-0430270 Vendor #94831A Commodity Code #20464, 20623 & 20621

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

WSCA Contract to provide Data Communications Equipment Associated OEM Maintenance and Training per RFP #DG7500.

3. CONTRACT PERIOD: Effective date: July 6 2007 Termination date: May 31, 2010 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): 2 -(2) year.

4. PRICING AS PER THE ATTACHMENT Discounts  
PAYMENT TERMS: Net 30  
DAYS REQUIRED FOR DELIVERY: 30 Days ARO  
MINIMUM ORDER: None  
FREIGHT TERMS: F.O.B. Destination - Freight Prepaid

5. ATTACHMENT A: Addendum 1  
ATTACHMENT B-1: WSCA Terms and Conditions  
ATTACHMENT B-2: Changes to WSCA Terms and Conditions  
ATTACHMENT C: Not applicable

6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:  
a. CONTRACTOR'S response to Bid #DG7500 dated 9/4/06.

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

CONTRACTOR

STATE OF UTAH

Contractor's Signature

Douglas G. Richins

Director, Div. of Purchasing & General Svs.

Karen Rogge, SVP & CFO  
Type or Print Name and Title

Date

Date

**JUL 26 2007**



## **ATTACHMENT A ADDENDUM 1**

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and Extreme Networks, Inc., referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

### **A. Manufacturer Product Line(s)**

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Switches: Extreme  
LAN/WAN Wireless: Extreme  
Security Appliances: Extreme

### **B. State of Utah/WSCA Contract Manager**

Debbie Gundersen  
State of Utah  
Division of Purchasing and General Services  
State Office Building, Capitol Hill  
Room 3150  
Salt Lake City, UT 84114-1061

email: [dgundersen@utah.gov](mailto:dgundersen@utah.gov)  
Voice: (801) 538-3150  
Fax: (801) 538-3882

### **C. Remittance Address**

Extreme Networks, Inc.  
Dept. LA21921  
Pasadena, CA 91185-1921

Or Authorized Resellers listed on WSCA Website

### **D. Special Terms and Conditions**

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence

The order of precedence for the contract terms will be as follows:

1. Attachment B-2: Changes to WSCA Terms and Conditions
2. Attachment B-1: WSCA Terms and Conditions
3. Attachment A: Addendum 1
4. Contractor's Terms and Conditions, if applicable
5. Contractor's Response to RFP DG7500
6. RFP DG7500

2. Included Documents

The documents listed in Number 1 are included in the contract. It is agreed that any reference to the "Entire Agreement" includes these documents.

3. Public Information

The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.

4. Arbitration

The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.

5. Contract Period

The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.

6. Governing Law

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

7. Revisions to Contractor's Response to the RFP

Note: The changes below may be listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.

The Contractor's Response to the RFP will be revised as follows:

A. Add the following provision to the Contract:

Consequential Damages Waiver. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR THIRD PARTIES FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS AND LOST SAVINGS, HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DAMAGES ARISING FROM DEATH OR PERSONAL INJURY; AND EACH PARTY'S TOTAL LIABILITY WITH RESPECT TO DIRECT DAMAGE TO PROPERTY SHALL BE LIMITED TO TWO MILLION DOLLARS. Some jurisdictions do not allow the exclusion of consequential damages, so such exclusion may not apply to Purchasing Entity.



B. The Extreme Confidentiality Agreement will be replaced with the revised Confidentiality Agreement which is attached as Exhibit 1 to this contract.

C. The Extreme Support Program Agreement will be replaced with the revised Support Program Agreement which is attached as Exhibit 2 to this Contract.

## **E. Contractor Requirements**

### 1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors or their respective resellers.

### 2. Serving Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

### 3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one half of one percent (.50%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

4. Usage Reporting Requirement  
Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.
5. Change in Contractor Representatives  
The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.
6. Website Development and Maintenance  
Contractor must maintain said website and keep the information current and correct on a timely basis.
7. Rollout and Marketing  
Contractor may conduct a marketing effort as described in Contractor's proposal.
8. Right to Publish  
Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.
9. Contractor's Scope of Equipment and Services  
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.
10. E-Rate Requirement  
Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.
11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid

Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period

Percentage discount depth from list is not subject to a “price increase request” that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are also guaranteed for the entire contract..

13. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied

Manufacturer’s price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

**F. Contract Scope of Equipment and Related Services**

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

**1. Price Proposals and Level Discounts**

**All Hardware and Software Products = 35% off List Price.**

**All Services and Training = 10% off List Price.**

Base line pricing is the published list price for Extreme products and services. The Extreme Price List can be found at:

<http://www.extremenetworks.com/apps/WSCA/main.asp>

The Total List Price of all hardware and software products per purchase order shall determine additional discounts. Discounts shall be as follows:

<b>Hardware and Software Products per Purchase Order</b>	
<b>Total List Price of PO</b>	<b>Discount off List Price</b>
Less than \$500,000	35%
\$500,000 to \$999,999	37%
\$1M to \$1,499,999	39%
\$1.5M +	41%

**Services and Training = 10% off List Price – No additional discount.**

**2. Warranties**

Limited Warranty. Extreme warrants to the Purchasing Entity as the end user of the Product that, during the warranty period specified in the warranty card provided with the Product at the time of shipment, the Product shall perform substantially in accordance with the Specifications. In the event of a failure of a Product to perform substantially in accordance with the Specifications, as applicable, during the warranty periods described above, Extreme shall, at its option, repair or replace the Product or refund the fees paid by the Purchasing Entity for such Product (following the Purchasing Entity's return of the Product). The foregoing sets forth the Purchasing Entity's sole and exclusive remedies for a breach of the above limited warranties.

Warranty Return Procedures. Products shall be non-returnable except as provided above in "Limited Warranty" or as otherwise expressly provided in this Agreement. Prior to any return by Purchasing Entity of any Product, Purchasing Entity shall obtain a return material authorization ("RMA") from Extreme. Purchasing Entity shall return the Products with the RMA form to Extreme's designated repair facility, freight prepaid within thirty (30) days of receipt of the RMA, with a written statement

describing the nonconformity. If Extreme is unable, notwithstanding commercially reasonable efforts, to reproduce a nonconformity reported by Purchasing Entity, then it shall so notify Purchasing Entity and the parties shall employ their joint reasonable efforts to diagnose such alleged nonconformity. Extreme will be responsible for all return shipping costs of repaired or replacement warranted units to Purchasing Entity. Replacement or repaired Products will be warranted for the remaining warranty period of the original Product.

**Disclaimer of Warranties.** EXTREME WARRANTS THE PRODUCTS ONLY TO THE PURCHASING ENTITY PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. EXCEPT AS SET FORTH ABOVE, EXTREME MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE PRODUCTS OR SERVICES. ALL IMPLIED WARRANTIES AS TO SATISFACTORY QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS ARE EXPRESSLY DISCLAIMED. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so such limitations or exclusions may not apply to Purchasing Entity.

### **Warranty Process**

If the product was purchased from an Extreme channel partner, please contact the channel partner to process the warranty request. If the product was purchased directly from Extreme, please call your local Extreme TAC during normal business hours. When you call, please have the following information available:

- Product number (example, Summit 400)
- Serial number of the product (on the outside of the product, or can be viewed via the CLI)
- Complete description of the product failure

If the problem requires that the product be shipped back to Extreme Networks, ensure that you have obtained a Return Merchandise Authorization (RMA) number, note this RMA number on the box, and ship the defective unit back to the appropriate Extreme Networks location.

### **Dead-on-Arrival (DOA) Process**

If the product has failed operation within 24 hours of initial operation, and the unit has a date code that falls within 90 days from when the unit was shipped from Extreme Networks, the product will be replaced with a new product. Extreme will ship an

advanced replacement with expedited delivery. Please follow the same procedures for the return of the product as noted above for warranty.

### **3. Technical Support**

For Tech Support Issues, Extreme Maintains a Toll Free Line (1-800-98-2408).

- **Severity Problem Reporting (S1)**

The highest level of problem reporting into TAC is Priority Problem Reporting. This process is for a network-down or network-impaired situation.

- Call TAC. Customer will immediately be connected to a TSE who will open a service request and provide customer with a service request number.
- Once connected to a support engineer, explain the technical details of the issue. The following information is required: Outputs from the 'show tech-support' CLI command if it is supported by the software version. If customers are running on an older version (prior to 6.1.7), this command will not be available. In this scenario, the customer will need to send the outputs from the following CLI commands.
  - show version
  - show switch
  - show log
  - show config
  - show tech-support (version 6.1.7 and higher only)
  - top
- Current network topology. This is not required but is highly recommended for speeding up the troubleshooting process for S1/S2 cases.
- Identify the remote access (i.e. modem) for Extreme Networks engineers to log into the switches, if required.
- Once the service request is opened, the TAC will work with customer until the issue is resolved. Customer can monitor the service request progress by logging into the password-protected e-Support Center on the Extreme Networks web site. (See 'Tracking Service Requests on the Web' pg. 8)
- If engineers determine a product is defective, a RMA will be generated. RMA information such as the number and the type of replacement will be provided to customer.

- **Bug Reporting Process**

Any product defects (bugs) found in the field should be reported to the TAC using the problem reporting procedure described above. The TAC must verify the defect or bug before escalating it to engineering. To find all known product defects go to "Browse Known Issues List" found on the users e-Support homepage.

- **Feature Enhancement Requests**

All feature enhancement requests should be directed to the TAC. These requests are forwarded to the local SE and to the Extreme Networks Product Management team. The Product Management team will provide a product defect number to the SE for tracking purposes. An issue that is reported to the TAC as a possible bug will have a product defect number assigned to it by the TAC. If it is later determined to be an enhancement request, the TAC will notify the SE and Product Management team.

- **Service Resolution Times**

The severity ranking given to open service requests is as follows:

Severity 1 – Customer has network down issues and/or business is severely impacted.

Severity 2 – Customer has network-impaired issues; minor impact to business.

Severity 3 – Customer has issues that are not affecting their network.

Severity 4 – Customer is requesting general product information.

Escalation Flow by Priority

SR Notification Timetable

<b>SUPPORT</b>	TAC Duty Mgr	TAC Duty Mgr	Global TAC Dir	VP CA	CEO
<b>ENGINEERING</b>			Sustain Eng Mgmt	VP SQA VP Eng	COO
<b>SALES</b>		AM/SE	SE Dir	VP Regional Sales	SVP Sales
<b>S1</b>	Immediate	Hour 1	Hour 2	Hour 3	Hour 4
<b>S2</b>	Day 7	Day 10	Day 15	Day 20	-
<b>S3</b>	Day 10	Day 15	Day 21	-	-
<b>S4</b>	Day 15	Day 21	Day 30	-	-

Note: S1 notifications will be sent via voice mail. All other notifications will be sent via auto-notification e-mails

Attached as Attachment C are the terms of Extreme Networks current Support Program.

#### 4.. **Maintenance & Support**

- **Extreme Spare Parts Depots**
  - Santa Clara, California,
  - Mexico City, Mexico
  - Calgary, Canada
- **Technical Assistance Centers (TAC):**
  - Initial Response Facility Operating 7X24X365 in RTP, North Carolina
  - Americas Level 2 TAC Located in Santa Clara, CA. and Utrecht, The Netherlands
- **Maintenance Services Offered:**
  - RMA Support with varied response times depending on customer preference:
    - 4 Hour Onsite Parts Delivery with Engineer
    - 4 Hour Parts Only Parts Delivery
    - Next Business Day Advanced Hardware Replacement with Engineer
    - Next Business Day Advanced Hardware Replacement with/out Engineer
    - 48 Hour Advanced Hardware Replacement
    - 10 Day Return to Factory Service
  - Access to Extreme's electronic Support tool, eSupport
    - On-Line RMA Requests
    - RMA Tracking
    - Service Agreement and Asset tracking
    - Knowledge Database
    - Trouble shooting guides and release note
  - Software release Updates
  - 7X24X365 Access to Extreme's Technical Assistance Center
- **Service Order Requirements**
  - Service Parts Numbers and quantities must be included on all order
  - Standard Order Requirements apply
  - Customer must also include a list of serial numbers on which the service is being procured on
  - Customer must supply a Technical Contact Name, Number, and e-mail

#### **Product Warranty Coverage**

### Edge products

<b>Product</b>	<b>Warranty</b>
<u>Summit 200-24</u>	Ltd Lifetime
<u>Summit 200-48</u>	Ltd Lifetime
<u>Summit 300-24</u>	Ltd Lifetime
<u>Summit 400-24p</u>	Ltd Lifetime
<u>Summit 400-24t</u>	Ltd Lifetime
<u>Summit 400-48t</u>	Ltd Lifetime
<u>Summit X450e-24p</u>	Ltd Lifetime
<u>Summit 300-48</u>	Ltd One Year
<u>Summit48si</u>	Ltd One Year
<u>Summit WM100</u>	Ltd One Year
<u>Summit WM1000</u>	Ltd One Year

### Aggregation products

<b>Product</b>	<b>Warranty</b>
<u>BlackDiamond 8810</u>	Ltd One Year
<u>BlackDiamond 8806</u>	Ltd One Year
<u>Alpine 3808</u>	Ltd One Year
<u>Alpine 3804</u>	Ltd One Year
<u>Summit X450a-48t</u>	Ltd One Year
<u>Summit X450a-24t</u>	Ltd One Year
<u>Summit X450-24x</u>	Ltd One Year
<u>Summit X450-24t</u>	Ltd One Year
<u>Summit5i</u>	Ltd One Year

### Core products

<b>Product</b>	<b>Warranty</b>
<u>BlackDiamond 12804</u>	Ltd One Year
<u>BlackDiamond 10808</u>	Ltd One Year

<u>BlackDiamond 6808</u>	Ltd One Year
--------------------------	--------------

### Security products

Product	Warranty
<u>Sentriant</u>	Ltd One Year
<u>Sentriant CE150</u>	Ltd One Year

### Warranty Process

If the product was purchased from an Extreme channel partner, please contact the channel partner to process the warranty request. If the product was purchased directly from Extreme, please call your local Extreme TAC during normal business hours. When you call, please have the following information available:

- Product number (example, Summit 400)
- Serial number of the product (on the outside of the product, or can be viewed via the CLI)
- Complete description of the product failure

If the problem requires that the product be shipped back to Extreme Networks, ensure that you have obtained a Return Merchandise Authorization (RMA) number, note this RMA number on the box, and ship the defective unit back to the appropriate Extreme Networks location.

### Dead-on-Arrival (DOA) Process

If the product has failed operation within 24 hours of initial operation, and the unit has a date code that falls within 90 days from when the unit was shipped from Extreme Networks, the product will be replaced with a new product. Extreme will ship an advanced replacement with expedited delivery. Please follow the same procedures for the return of the product as noted above for warranty.

Additional Warranty and Service information can be found at:  
<http://www.extremenetworks.com/services/programs/Warranty.as>

## 5. Training and Additional Value Added Services

Pricing for all services and training shall be at 10% discount off the Extreme list price. Please see the file entitled, "Extreme Networks Pricelist" for pricing information.

**Education & Training:**

Extreme Networks offers a selection of instructor-led technical courses designed to provide you with proven experience and skills to successfully design, deploy and manage Extreme solutions in a variety of networking environments.

These courses are offered globally through our Authorized Training Partners (ATPs) in regional languages and locations, ensuring the availability of local training centers to minimize expensive travel costs.

Extreme technical courses may be ordered directly through the ATP in your region. To find an overview of Extreme ATPs in your region, please go to <http://www.extremenetworks.com/education/training/> and click on the 'Authorized Training Partners' link. Select the link for the ATP of your choice to order and/or enroll.

To buy a course directly from Extreme Networks, you can order an Extreme Training Voucher. One voucher represents the value of one day of an instructor-led course for one person, delivered via an Extreme ATP. Vouchers are to be redeemed at the local ATP of your choice.

**ExtremeWare® Courses**

Code	Course Name	Days	Level
<u>ECT-200/5</u>	ExtremeWare CLI Configuration and Troubleshooting Rev 2.0	5	ENA
<u>EMR-300/2</u>	Extreme Multicast Routing	2	ENS
<u>EAR-300/2</u>	ExtremeWare Advanced Redundancy Features Rev 2.0	2	ENS
<u>EAS-300/3</u>	ExtremeWare Advanced Security and Traffic Engineering Rev 2.0	3	ENS
<u>EIGP-300/3</u>	ExtremeWare Advanced IGP Routing and Configuration - OSPF and IS-IS	3	ENS
<u>ENMS-CBT</u>	Extreme Network Management Solutions (CBT)	1	Enriching

**ExtremeWare to ExtremeWare® XOS™ Delta Courses**

Code	Course Name	Days	Level
------	-------------	------	-------



<u>EECD-200/2</u>	ExtremeWare to ExtremeWare XOS Configuration Delta Rev 1.0	2	ENA
<u>EARCD-300/2</u>	Extreme Advanced Routing Configuration Delta Rev 1.0	2	ENS
<u>ERFD-300/1</u>	ExtremeWare to ExtremeWare XOS Redundancy Fundamentals Delta Rev 1.0	1	ENS
<u>ESFD-300/1</u>	ExtremeWare to ExtremeWare XOS Security Fundamentals Delta Rev 1.0	1	ENS

### ExtremeWare XOS Courses

<u>Code</u>	<u>Course Name</u>	<u>Days</u>	<u>Level</u>
<u>ECF-200/5</u>	Extreme Configuration Fundamentals Rev 3.0	5	ENA
<u>EMR-300/2</u>	Extreme Multicast Routing Rev 3.0	2	ENS
<u>ERF-300/2</u>	Extreme Redundancy Fundamentals Rev 3.0	2	ENS
<u>ESF-300/3</u>	Extreme Security Fundamentals Rev 3.0	3	ENS
<u>EIGP-300/2</u>	Extreme Interior Gateway Protocols Rev 3.0	2	ENS
<u>IPv6-100/2</u>	Extreme IPv6 Fundamentals	2	Enriching
<u>Custom</u>	Custom Training	TBD	Enriching

### Professional Services

Access Expertise When You Need It

Choosing networking technologies is a complex process, and implementing them to meet your business needs can stretch your internal resources to the limit. Extreme Networks' Professional Services team helps you save time and avoid expensive errors. Our team can tailor a solution to meet your specific network requirements by providing expertise in the following key networking segments:

- Network architecture and design
- Network implementation, resiliency and reliability
- Convergence of voice, video and data
- Security
- Wireless

Choose from consulting services with predefined deliverables or custom services specifically designed to meet your business goals. For more information visit:

<http://www.extremenetworks.com/services/programs/profservices.asp>

## **Advanced Services**

### **Make the Network Visible**

In the past, IT leaders have had to choose between complex management applications, piecemeal point solutions, or cost-prohibitive managed services to obtain the level of detail needed to monitor, evaluate, analyze and determine what is really occurring in their network. Finally help is here-Extreme Networks is making the network visible with the Premier Services Program (PSP). PSP goes beyond traditional transactional management (reactionary, break-fix maintenance) and delivers a suite of measurement tools that provide you with information to allow you to proactively manage your network and gain a clearer view of transactions, devices and performance. Through the use of hosted, real-time network management tools, PSP can improve availability, simplify operational management, and demonstrate the value of your network infrastructure. Select from a series of modules to build a customized service that is right for you:

- Comprehensive network monitoring
- Network cost and system optimization
- Network traffic and application analysis
- Security optimization
- Convergence planning and management
- Foundation services
- Network documentation
- Automated asset discovery

Take a virtual tour or request a demo at:

<http://www.extremenetworks.com/go/psp.htm>

## **6. Servicing Sub-Contractors (Resellers)**

A list of the Servicing sub-contractors will be posted on the WSCA Website at [www.aboutwsca.org](http://www.aboutwsca.org) and on the Extreme network website. This list will be updated as changes are made.



EXHIBIT   
CONFIDENTIALITY AGREEMENT  
(DISCLOSURES **BY** EXTREME NETWORKS)

This Agreement is made and entered into, as of January 15, 2003 ("Effective Date"), by and between Extreme Networks, Inc. ("Company"), a Delaware Corporation, having a principal place of business at 3585 Monroe Street, Santa Clara, CA 95051 and State of Utah, Division of Purchasing and General Services, a(n)  individual,  partnership,  limited liability partnership,  corporation,  limited liability company (check the appropriate box) of the state of \_\_\_\_\_, having a principal place of business at State Office Building, Capitol Hill, Room 3150, Salt Lake City, UT 84114-1061 ("Recipient"). The parties agree that this Agreement will govern Company's disclosures relating to the following purpose: The procurement process for the State of Utah Statewide Contract AR1471 (the "Contract") for Western States Contracting Alliance ("WSCA") Contracts for Data Communications Equipment and associated OEM Maintenance and Training (the "Purpose").

1. Definition of Confidential Information. "Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Company. "Confidential Information" includes, without limitation, Company's respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to Company or Recipient in the course of Company's business. The following items will not be considered Confidential Information: a) invoices sent to Recipient's participating entities; b) payments sent by or refunds to Recipient's participating entities; c) backup paperwork related to work performed and services received; d) the Contract terms and conditions; or e) Contract prices. Confidential Information provided as information fixed in a tangible or electronic medium of expression will be conspicuously designated as "Confidential" or "Proprietary".

2. Nondisclosure and Nonuse Obligations. Recipient agrees that Recipient will not use, disseminate, or in any way disclose any Confidential Information to any person, firm or business, except to the extent necessary for internal evaluations in connection with negotiations, discussions, and consultations with personnel or authorized representatives of Company and for any other purpose Company may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations or agreements in progress between the parties shall not be released to any form of public media without the prior written approval of Company. Recipient agrees that Recipient shall treat all Confidential Information of Company with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case less than reasonable care. If Recipient is not an individual, Recipient agrees that Recipient shall disclose Confidential Information of Company only to those of Recipient's employees who need to know such information. Recipient will immediately give notice to Company of any unauthorized use or disclosure of the Confidential Information. Recipient agrees to assist Company in remedying any such unauthorized use or disclosure of the Confidential Information.

3. Exclusions from Nondisclosure and Nonuse Obligations. Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations"), with respect to any portion of Confidential Information, shall not apply to any such portion that Recipient can document either (a) was in the public domain at or subsequent to the time such portion was communicated to Recipient by Company through no fault of Recipient; (b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time such portion was communicated to Recipient by Company; or (c) was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient by Company. A disclosure of any portion of Confidential Information, either (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, shall not be

considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Recipient shall provide prompt prior written notice thereof to Company to enable Company to seek a protective order or otherwise prevent such disclosure.

4. Ownership and Return of Confidential Information and Other Materials. All Confidential Information, and any Derivatives thereof whether created by Company or Recipient, remain the property of Company and no license or other rights to Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, "Derivatives" shall mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. Recipient hereby does and will assign to Company all of Recipient's rights, title in interest and interest in and to the Derivatives. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists, and all other tangible media of expression) furnished to Recipient by Company shall remain the property of Company. At the termination or expiration of the Contract and/or at Company's request and no later than twenty (20) days after such request, Recipient shall destroy or deliver to Company, at Company's option, (a) all Confidential Information furnished to Recipient by Company, (b) all tangible media of expression in Recipient's possession or control which incorporate or in which are fixed any Confidential Information, and (c) written certification of Recipient's compliance with Recipient's obligations under this sentence.

5. No Warranty. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or performance.

6. No Export. Recipient will not export, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

7. Term. This Agreement shall govern all disclosures of Confidential Information from Company to Recipient that are made during the period of the Contract. Recipient's obligations under Paragraph 2 ("Nondisclosure and Nonuse Obligations") with respect to each disclosure of Confidential Information of Company which Recipient has received during the term of this Agreement shall continue for a period of five (5) years following the date of such disclosure by Company to Recipient unless terminated pursuant to Paragraph 3 ("Exclusions from Nondisclosure and Nonuse Obligations"), notwithstanding any termination of this Agreement.

8. No Assignment. Recipient shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Company.

9. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by telecopy or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may specify in writing.

10. Governing Law and Forum; Legal Fees. This Agreement shall be governed by the laws of the United States of America and by the laws of the State of Utah. The construction and effect of any participating entity's addendum against this Agreement shall be governed by and construed in accordance with the laws of the Recipient's purchasing entity's state. Venue for any claim, dispute or action concerning the construction and effect of this Agreement shall be the State of Utah. Venue for any claim, dispute or action concerning the construction and effect of a participating entity's addendum shall be the Recipient's purchasing entity's state.

11. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

12. Waiver; Amendment; Modification. No term or provision hereof will be considered waived by Company, and no breach excused by Company, unless such waiver or consent is in writing signed by Company. The waiver by Company of, or consent by Company to, a breach, of any provision of this Agreement by Recipient shall not operate or be construed as a waiver of, consent to, or excuse of any other or subsequent breach by Recipient. This Agreement may be amended or modified only by mutual agreement of authorized representatives of the parties in writing.

13. Injunctive Relief. A breach of any of the promises or agreements contained herein will result in damage to Company, and Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

14. Entire Agreement. This Agreement, along with Item D.3 of Attachment A of the Contract, constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

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

"Company"

"Recipient"

Extreme Networks, Inc.

State of Utah

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT 2

### SUPPORT PROGRAM

This end user support program (“Support Program”) is effective as of the effective date of the Agreement. Unless otherwise defined herein, the defined terms used in this Support Program shall have the meaning set forth in the Agreement. The following terms and conditions shall govern the provision of support Services to Purchasing Entity with respect to the Products, including hardware (“Hardware”) and software (“Software”).

1. Definitions. As used in this Support Program, the following terms shall have the meanings set forth below:
  - 1.1 “Business Day” for each regional TAC shall mean Monday through Friday, 8:00 am to 5:00 pm in the time zone where such TAC is located, excluding State holidays in the Participating Entity’s State.
  - 1.2 “Certified Engineers” shall mean Purchasing Entity’s engineers providing services who have been trained and certified in writing by Contractor by complying with Contractor’s certification requirements.
  - 1.3 “Defect” shall mean a failure of any Product to operate in accordance with Contractor’s technical specifications as set forth in the end user manual or internal engineering documentation for such Product.
  - 1.4 “Releases” shall mean Updates and/or Upgrades, collectively. No Alpha or Beta or non-production versions shall be considered Releases.
  - 1.5 “TAC(s)” shall mean Contractor’s technical support assistance centers.
  - 1.6 “Update” shall mean a new version of a 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 Product, but does not include substantive features or functions not performed by the prior Release of the Product.
  - 1.7 “Upgrade” shall mean a new version of a Product that includes substantive features or functions not performed by the prior Release of the Product.

Services. The scope of the Services provided to Purchasing Entity hereunder is based on the support plan purchased by Purchasing Entity, as further described in Attachment 1 (“Support Plans”). Upon payment in advance of the Annual Support Fee, Contractor shall use commercially reasonable efforts during the term of this Support Program to provide the Services set forth in the applicable support plan. 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 Purchasing Entity. Contractor shall have the right to use subcontractors to perform all or part of the Service(s), as it deems appropriate.

2.1 Releases. Contractor will make available to Purchasing Entity all Releases made generally available by Contractor, subject to the Purchasing Entity’s payment of any applicable fees. The content of all Releases shall be decided upon by Contractor in its sole discretion. Updates shall be provided to Purchasing Entity free of charge during the term of the applicable Product warranty and support plan. Purchasing Entity shall ensure implementation of Updates promptly. Contractor will impose additional charges for Upgrades, and Purchasing Entity shall install only one (1) copy of an Upgrade for each Product for which the Upgrade is purchased.

2.2 Corrections. During the term of this Support Program, Contractor shall use commercially reasonable efforts to provide a correction or workaround for any reported and reproducible Defect in the Products with a level of effort commensurate with the severity level and as set forth in the applicable support plan; provided that, Contractor shall have no obligation to correct all Defects in the Products. Upon identification of any Defect, Purchasing Entity shall (i) notify TAC of such Defect and the severity level as described in Attachment 2 (“Severity Level Description”) and the specific serial number of the defective Product, and (ii) provide TAC with enough information to locate and reproduce the Defect. Contractor shall not be responsible for correcting any Defects not attributable to Contractor’s Products or any Defects listed under Section 4 (“Exclusions”) of this Exhibit.

### 3. Purchasing Entity Obligations.

3.1 Purchasing Entity Assistance. Purchasing Entity agrees to provide Contractor with reasonable access to the Products for which problems are reported and all back-ups and Purchasing Entity 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, Purchasing Entity may provide modem level access for all Purchasing Entity sites. (Purchasing Entity may provide passwords and/or activate the modem only when needed.) Purchasing Entity shall be responsible for all cables, hardware or software not provided by Contractor. Purchasing Entity’s failure to provide such access or information may delay the Services.

3.2 Contact People. Purchasing Entity shall appoint at least two (2) technical personnel within the Purchasing Entity’s organization to serve as the primary contact between Purchasing Entity and Contractor and to receive support as provided herein. It is preferred that the assigned technical personnel are trained and certified by Contractor as “Certified Engineers”. Purchasing Entity shall provide and shall update as appropriate contact information, including address, phone number and email address. All of Purchasing Entity’s support inquiries shall be

initiated through these contacts.

- 3.3 Return Material Authorization. Except in those cases where a Product is replaced on-site, Purchasing Entity shall promptly return defective Products to Contractor in accordance with the process described in this Section and Attachment 1 (“Support Plans”). A Return Material Authorization (“RMA”) number, obtained by Purchasing Entity from Contractor, must accompany any and all Products returned to Contractor by Purchasing Entity. Contractor may refuse any Product not accompanied by an RMA number. Refused shipments will be returned to Purchasing Entity via collect freight. Products returned for repair must be accompanied with a detailed description of the Product failure. Replacement Products will be warranted for the remaining warranty period of the original Product, if any, as specified in the Agreement. If Purchasing Entity fails to ship to Contractor a defective Product within twenty (20) business days of Purchasing Entity’s receipt of the replacement unit for such Product, Contractor will invoice Purchasing Entity the purchase price for such Product based on the current list price, less the applicable discounts, and Purchasing Entity shall pay such invoice in accordance with the payment terms of the Contract. The transportation charges for all Products and parts returned to Contractor shall be borne by Purchasing Entity. Contractor will pay the transportation charges involved in the return of warranted Products to Purchasing Entity.

4. Exclusions. The Services provided by Contractor hereunder will not include support and maintenance of any third party software or hardware, whether or not such third party software or hardware is provided by Contractor. Contractor is not required to provide any services for problems arising out of: (i) Purchasing Entity’s failure to implement all Releases issued under this Support Program; (ii) any alterations of or additions to the Products performed by parties other than Contractor; (iii) accident, 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); or (iv) interconnection of the Products with other products not supplied by Contractor. Contractor shall only be obligated to support the then-current Release of the Products and the immediately prior Release. Support for any earlier Releases or for other problems not covered under this Support Program may be obtained at Contractor’s then-current rates, less applicable discounts, for special technical services and on Contractor’s then-current terms and conditions for such services.

5. Fees and Payment.

5.1 Orders. Purchasing Entity may purchase Services for Products purchased by Purchasing Entity from Contractor and its authorized distributors by issuing purchase orders for the applicable support plan (described in Attachment 1 (“Support Plans”)) concurrently with Purchasing Entity’s purchase of the Products to be covered by the ordered

Services (including a list of each Product model number and serial number and location by address of the facility where Product is located). If such information is not otherwise contained in a purchase order, promptly following Purchasing Entity's purchase of any Services, Purchasing Entity shall provide to Contractor, in writing, the Product model numbers and serial numbers and address for each Product (Contractor will not be obligated to provide Services for a Product unless Contractor has received such information). The terms and conditions of this Support Program shall apply to all orders for Services submitted to Contractor and supersede any different or additional terms on Purchasing Entity's purchase orders. All orders placed with Contractor for Services will be non-cancelable for the initial one-year term of the Services, and for any period for which the fees have been prepaid.

5.2 Annual Support Fee. Purchasing Entity will pay the annual support fee for the Services ("Annual Support Fee") set forth in the Price List for the applicable support plan. Contractor will invoice the Annual Support Fee as described in Attachment 3 ("Annual Support Payments"), and payment will be due and payable in advance and in United States dollars within thirty (30) days of the date of Contractor's invoice. Contractor reserves the right to increase the Annual Support Fee for subsequent annual terms and shall give Purchasing Entity advance notice of such increases. The Annual Support Fee for "on-site" support plans includes the cost of certain on-site Services as described in Attachment 1 ("Support Plans"). Purchasing Entity shall be responsible for any other travel and living expenses incurred in connection with Services or on-site Service calls (not expressly included in Purchasing Entity's applicable support plan). Such costs will be invoiced monthly as such expenses are incurred; payment of such invoices shall be due within thirty (30) days of the date of the invoice. If Purchasing Entity (i) fails to purchase Services concurrently with Purchasing Entity's purchase of the Product to be supported or (ii) fails to renew Services upon termination of any annual support term or (iii) purchases the Product in used condition, and Purchasing Entity subsequently desires to commence Services for such Product, Contractor may at its option inspect the Products and commence Services in accordance with its then current policies and upon payment by Purchasing Entity of the applicable Annual Support Fee and Contractor's inspection fee.

## 6. Term and Termination.

6.1 Term. Unless otherwise terminated as provided in Section 6.2 ("Termination") of this Support Program, the term of the Support Program and Services shall be as follows:

6.1.1 Term of Support Program. The term of the Support Program shall commence on the Effective Date of the Agreement and shall continue for one (1) year. Thereafter, this Support Program shall renew for successive one (1) year periods unless either party notifies the other party in writing of its intent to terminate the Support Program or the Agreement at least sixty (60) days prior to the commencement of any renewal term, or the Statewide Contract AR1471 is terminated. The services will continue through the end of the current paid-up period for the Participating Entity. Should Contractor terminate this Support Program without cause, Contractor shall continue to provide the Services ordered by

Purchasing Entity and accepted by Contractor prior to the effective date of termination for the remainder of the applicable Services term. Contractor shall have no obligation to provide Services unless Purchasing Entity purchases a support plan under this Support Program.

6.1.2 Term of Annual Support Plans. During this Support Program, the term of the Services for each Product covered by a support plan shall commence at such time that Contractor has accepted Purchasing Entity's purchase order for the applicable support plan and shipped the supported Product, and shall continue for a period of one (1) year following such date. Thereafter, the Services under such support plan will automatically renew for each Product on the annual renewal date described in Attachment 3 ("Annual Support Payments") for successive one (1) year terms during the Support Program, unless either party notifies the other party in writing of its intent to terminate the support plan for such Product at least sixty (60) days prior to the commencement of any renewal term, or the Statewide Contract AR1471 is terminated. The services will continue through the end of the current paid-up period for the Participating Entity.

## 6.2 Termination.

6.2.1 End Of Life. In the event Contractor discontinues or otherwise ceases to make available to Purchasing Entity a particular Product part number, Contractor will offer support services in accordance with its then-current policies with respect to such Product part number for three (3) years after Contractor's discontinuance of such Product part number; provided, however, that Contractor's support for the discontinued Product part number may not include all Services provided under the applicable support plan prior to discontinuation. This Support Program shall remain in effect with respect to other Product part numbers, if any, then covered by this Support Program.

6.2.2 Termination for Breach. This Support Program may be terminated at any time by either party upon written notice if the other party materially breaches a term or condition of this Support Program or the Agreement if such breach, where capable of correction, is not corrected within thirty (30) days of notice of such breach. If Purchasing Entity fails to pay the Annual Support Fee for a support plan covering any Product in accordance with the payment terms set forth herein, the Services for such Product will automatically terminate without notice to Purchasing Entity. If this Support Program is terminated by Purchasing Entity for Contractor's breach, Contractor shall refund any unearned portion of the Annual Support Fee paid by Purchasing Entity for the current support period. Otherwise, upon termination, all unpaid Annual Support Fees that are currently due and other charges payable under this Support Program shall become immediately due and payable, and all Annual Support Fees paid prior to the effective date of termination shall be non-refundable.

7. Ownership and Warranties. All Releases provided under this Support Program shall be deemed to be included within the Products and subject to the terms and conditions of the Agreement. All Releases provided hereunder are warranted for the remaining warranty period of the original Product, if any, as specified in the Agreement. Nothing in this Support

Program shall be construed as expanding or adding to the warranty set forth in the Agreement. Contractor will use all reasonable commercial efforts to provide the support requested by Purchasing Entity under this Support Program in a professional and workmanlike manner, but Contractor cannot guarantee that every question or problem raised by Purchasing Entity will be resolved.

**ATTACHMENT 1**  
**SUPPORT PLANS**

ExtremeWorks Support Plans (Purchasing Entity will indicate on purchase orders the applicable support plan(s) purchased):

- ExtremeWorks Extended Warranty
- ExtremeWorks Software Subscription Service
- ExtremeWorks 48 hour Advanced Replacement
- ExtremeWorks NBD Advanced Replacement
- ExtremeWorks 4 Hour Onsite

<b>ExtremeWorks Support Plan</b>	<b>Technical Assistance Center (in the applicable time zone for each regional TAC)</b>	<b>Privileged Web Access</b>	<b>Advanced Hardware Replacement</b>	<b>Onsite</b>	<b>Return and Repair</b>
<b>Extended Warranty</b>	7a.m.– 7p.m. (M-F)	24x7x365			10 business day turnaround
<b>Software Subscription (for standalone Software products and not covering firmware)</b>	7a.m.– 7p.m. (M-F)	24x7x365			
<b>Essentials U.S./ Canada Only</b>	9a.m.– 5p.m. (M-F)	24x7x365	72 hours (limited to a one time replacement per Product unit)		
<b>48 Hour Advanced Replacement</b>	24x7x365	24x7x365	2 business days		
<b>Next Business Day (NBD) Advanced Replacement</b>	24x7x365	24x7x365	Next Business Day		
<b>4 hour On-Site</b>	24x7x365	24x7x365	Included	24x7x365	

**Description of ExtremeWorks Support Plan Entitlements:**

## **1. Technical Assistance Center (TAC)**

- Email support including email responses within the next Business Day following receipt during the prior Business Day.
- Telephone support by TAC available 24x7x365; telephone callback by an Extreme technical support specialist within two (2) hours of Purchasing Entity's call during the Business Day.

## **2. Privileged Web Access**

- Web login and password access to Extreme's technical support site that may include Releases, technical support alerts, and on-line documentation (passwords are provided upon Contractor's acceptance of Purchasing Entity's purchase order for an ExtremeWorks support plan). Purchasing Entity's password may be used only by Purchasing Entity's IT personnel.
- Contractor will use reasonable efforts to ensure web access is available 24x7x365, but is not responsible for Internet downtime beyond its reasonable control.

## **3. Advanced Hardware Replacement (AHR)**

- Advanced replacement of a Product with a Defect attributable to the Hardware by Contractor's shipment of a like or equivalent Product model, in accordance with the response times set forth in the applicable ExtremeWorks support plan. Contractor must receive notice of defective Product by 2p.m. Pacific Standard Time Monday-Friday in order to ship the replacement Product the same Business Day, and response times are measured from Contractor's shipment date. Contractor is not responsible for any delays in delivery related to export or customs, regulations or processes.
- Purchasing Entity may request up to a total of five (5) Product units for Advanced Hardware Replacement during any calendar week.
- Upon receipt of a replacement Product, Purchasing Entity shall return the defective Product to Contractor in accordance with Section 3.3 ("Return Materials Authorization") of this Support Program in a timely manner.
- Contractor shall not be required to provide Advanced Hardware Replacement hereunder to the extent that, at any time, a total of ten (10) or more defective Product units are outstanding (a defective Product shall be "outstanding" if Contractor has shipped a replacement unit to Purchasing Entity and has not received the corresponding defective Product from Purchasing Entity).

## **4. Onsite Service**

- Onsite replacement of a Product with a Defect attributable to the Hardware with a like or equivalent Product model, in accordance with the response times set forth in the applicable ExtremeWorks support plan. Response times are measured from Contractor's receipt of notice of the defective Product and, following troubleshooting, Contractor's determination that onsite Product replacement is required.

- Certain on-site Services may not be available in some geographic regions outside the United States or may require a “phase-in” period before they can be made available to Purchasing Entity.
- Four-Hour support is only available to Purchasing Entity within one-hundred (100) miles of a regional Service Center.
- All onsite support contracts require Purchasing Entity site location pre-approval from Contractor before Contractor will accept a purchase order for the applicable support plan.

ATTACHMENT 2  
SEVERITY LEVEL DESCRIPTION

Severity Level 1. The network is down, and this will critically impact Purchasing Entity's business operations at the affected site(s) if service is not restored quickly.

Severity Level 2. The network is impaired so that Purchasing Entity's business is minimally impacted. A workaround is available.

Severity Level 3. Purchasing Entity needs support with configuration questions.

Severity Level 4. A problem that has minor or no impact on Purchasing Entity's system. Purchasing Entity requires information on the Products, features, and functionality or wants to log a documentation error.

Purchasing Entity may initially rank the severity of problems in its good faith judgment in accordance with the levels described above; provided, however, that Contractor may revise the severity level of such problem in Contractor's reasonable judgment based upon Contractor's analysis of such problems.

ATTACHMENT 3  
ANNUAL SUPPORT PAYMENTS

Initial Annual Support Terms. For each Product, the initial Annual Support Fees for Services for such Product shall be invoiced on or around the date of Contractor's acceptance of the purchase order for the applicable support plan. Notwithstanding the foregoing, if Purchasing Entity has purchased Services from an authorized Contractor reseller, such initial Annual Support Fee(s) are waived.

Renewal Terms. The Annual Support Fees for each renewal term of Services for the supported Products shall be purchased and invoiced on or around the anniversary of the Effective Date of this Agreement, pro-rated for partial years. By way of example, if the Effective Date of this Agreement is January 1, 2000 and Purchasing Entity purchases Services with a list price of \$5,000 on July 1, 2000, then the Annual Support Fees for such additional Products would be invoiced as follows:

Annual Support Term	Invoice Date (approximate)	Amount Invoiced
First	July 1, 2000 (expires June 30, 2001)	\$5,000
Second (pro-rated)	January 1, 2001 (expires December, 31 2001 and pro-rated for 6 months)	\$2,500 (\$5,000 / 12 x 6 months)
Third and thereafter	January 1, 20XX (expires December 31 of the next year)	\$5,000

# **Attachment B-1 WSCA Terms and Conditions**

## **Standard Contract Terms and Conditions**

### **Western States Contracting Alliance**

### **Request for Proposal**

**Note:** For the contract with Extreme Networks, Inc., changes have been made to the following terms: 9, 13, 17, 20, 21, 26, and 28. The changes are listed in Attachment B-2.

**1. PARTICIPANTS:** The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

**2. QUALITY ESTIMATES:** WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

**3. SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the RFP states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

**4. ACCEPTANCE OR REJECTION OF PROPOSALS:** WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

**5. SAMPLES:** Generally, when required, samples will be specifically requested in the Request for Proposals. Samples, when required, are to be furnished free of charge *based on agreement from both parties*. Except for those samples destroyed or mutilated in testing, samples will be returned at a offeror's request, transportation collect.

**6. CASH DISCOUNT TERMS:** Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**7. TAXES:** Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**8. MODIFICATION OR WITHDRAWAL OF PROPOSALS:** Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals no proposal may be modified or withdrawn, unless done in response to a request for a "Best and Final Offer" from WSCA.



**9. PATENTS, COPYRIGHTS, ETC.:** The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

**10. AWARD:** WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

**11. NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

**12. CANCELLATION:** Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or

default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.



**13. DEFAULT AND REMEDIES:** Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

**14. LAWS AND REGULATIONS:** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**15. CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow; the special terms and conditions shall govern.

**16. REPORTS:** The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.



**17. HOLD HARMLESS:** The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

**18. ORDER NUMBERS:** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**19. GOVERNING LAW:** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.



**20. DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance (*within 21 days after delivery for external damage and 30 days for any concealed damage*) when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.



**21. WARRANTY:** As used herein "Buyer" refers to any WSCA state agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

**22. AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

**23. ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

**24. NONDISCRIMINATION:** The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this

provision in very subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

**25. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.



**26. INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

**27. PAYMENT:** Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card".



**28. FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**29. HAZARDOUS CHEMICAL INFORMATION:** The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**30. FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

**31. EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**32. PROPOSAL PREPARATION COSTS:** WSCA is not liable for any costs incurred by the offeror in proposal preparation.

**33. CONFLICT OF INTEREST:** The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

**34. INDEPENDENT CONTRACTOR:** The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**35. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**36. DEBARMENT:** The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

**37. RECORDS ADMINISTRATION:** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

**38. AUDIT OF RECORDS:** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. *The scope of audits would be within the context of the contract.* Such access will be during normal business hours, or by appointment.

Revision date: September 14, 2006

## **Attachment B-2 Changes to WSCA Terms and Conditions**

The parties agree to the following changes to the WSCA Standard Terms and Conditions:

A. Item 9 will be replaced with the following:

PATENTS, COPYRIGHTS, ETC: The Contractor shall defend, indemnify, and hold the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities harmless against any and all damages, costs, liabilities, expenses (including reasonable attorneys' fees) and settlement amounts incurred in connection with any suit, claim, or action by any third party alleging that the Products furnished and used within the scope of this Agreement infringe any U.S. patent or U.S. copyright. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of: (i) a modification of the Products by anyone other than Contractor; (ii) a combination of the Products with any third party software or hardware where such combination is the cause of such infringement; or (iii) the use of a version of Products other than the then-current version if infringement would have been avoided by the use of the then-current version made available to the WSCA, the Participating States and/or the Purchasing Entities. Contractor's obligation to indemnify hereunder is subject to the WSCA, the Participating States and/or the Purchasing Entities (a) giving Contractor prompt written notice of any such claim; (b) giving Contractor sole control over the defense and settlement of any such claim; (c) providing full cooperation for the defense of any such claim, at Contractor's expense; and (d) not entering into any settlement or compromise of any such claim without Contractor's prior written approval. Upon notice of an alleged infringement or if in Contractor's opinion such a claim is likely, Contractor shall have the right, at its sole option and expense, to procure a license to the relevant Products or modify the Products or substitute other non-infringing hardware or software with similar operating capabilities; or if Contractor determines that the foregoing is not reasonable, Contractor may refund the fees paid by the WSCA, the Participating States and/or the Purchasing Entities for the infringing copies of the Products upon the WSCA, the Participating States and/or the Purchasing Entities return of such Products to Contractor. THIS SECTION ("PATENTS, COPYRIGHTS, ETC:") SETS FORTH CONTRACTOR'S SOLE AND EXCLUSIVE LIABILITY AND WSCA, the Participating States and/or the Purchasing Entities SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT BY THE PRODUCTS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

B. Item 13, Defaults and Remedies, will be replaced with the following:

A. Any of the following shall constitute cause to declare the Contract or any order under this Contract in default:

- (1) Nonperformance of contractual requirements which is not cured within thirty (30) days after the nonperforming party receives written notice thereof; or
- (2) A material breach of any term or condition of this Contract not cured within thirty (30) days after the defaulting party receives written notice thereof;
- (3) Bankruptcy, insolvency or receivership of the other party.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the Contract or any portion thereof, including any orders issued against the Contract;
- (3) In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations for a period no greater than thirty six (36) months.

C. Item 17, Hold Harmless, will be replaced with the following:

**HOLD HARMLESS:** Each Party shall release, defend, indemnify and hold the other party, as well as the officers, agents and employees of the parties, harmless, from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from negligence or intentionally wrongful acts or omissions of the indemnifying party, its employees or subcontractors when the indemnifying party is fulfilling its obligations hereunder.

**Limitation of Liability.**

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, EACH PARTY'S TOTAL LIABILITY ARISING FROM OR IN RELATION TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES SHALL BE LIMITED TO THE TOTAL AMOUNT PAID OR PAYABLE TO VENDOR UNDER THIS AGREEMENT IN THE MOST RECENT FULL CALENDAR YEAR PRECEDING EITHER PARTY'S INITIAL NOTICE OF ANY CLAIM OR POTENTIAL CLAIM

HEREUNDER, EXCEPT THAT EACH PARTY'S TOTAL LIABILITY WITH RESPECT TO DIRECT DAMAGE TO PROPERTY SHALL BE LIMITED TO TWO MILLION DOLLARS. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO DAMAGES ARISING FROM DEATH OR PERSONAL INJURY.

D. Item 20, Delivery, will be replaced with the following:

**DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery of Products to Purchasing Entity's receiving dock. Contractor shall use reasonable efforts to make deliveries in a timely manner of purchase orders accepted by Contractor, but Contractor shall not be liable for any damages to Purchasing Entity or any other person for Contractor's failure to fill any orders or for any delay in delivery caused by circumstances beyond Contractor's reasonable control. Products shall be deemed accepted by Purchasing Entity upon delivery.

The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

Except as provided in the warranty and support sections, and except in the event the parties mutually agree to a return in the event of ordering errors (the parties shall work in good faith to resolve any ordering errors in a mutually agreeable manner), Products are not returnable to Contractor.

E. Item 21, Warranty, will be replaced with the following:

**WARRANTY:** As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The Contractor agrees to warrant that all Products (including hardware, firmware, and/or software Products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this Contract for the period specified below, unless otherwise specified and mutually agreed upon elsewhere in this Contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this Contract unless otherwise specified and mutually agreed upon elsewhere in this Contract. In general, the Contractor warrants that: (1) the hardware portion of the Product will perform substantially in accordance with the Hardware Specifications for a period of one (1) year from date of shipment; (2) the software portion of the Product will perform substantially in accordance with the Software Specifications for a period of ninety (90) days following Customer's receipt of each Product unit (3) the Product will

be suitable for the ordinary purposes for which such Product is used, (4) the Product has been properly designed and manufactured. Remedies available to the PURCHASING ENTITY include the following: in the event of a failure of a Product to perform substantially in accordance with the Specifications, as applicable, during the warranty periods described above, the Contractor will at its option, (i) repair the Product, (ii) replace the Product (at no charge to the purchasing entity) whose nonconformance is discovered and made known to the Contractor in writing, or (iii) refund the full amount of any payments that have been made for such Product (following the Purchasing Entity's return of the Product). The foregoing sets forth Customer's sole and exclusive remedies for a breach of the above limited warranties.

F. Item 26, Inspections, will be replaced with the following:

**INSPECTIONS:** Goods furnished under this Contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in non-compliance with the Product Specifications, the Purchasing Entity shall promptly return defective Products to Contractor in accordance with the Return Material Authorization process described in this Section.

Return Material Authorization: Except in those cases where a Product is replaced on-site, Purchasing Entity shall promptly return defective Products to Contractor in accordance with the process described in this Section. A Return Material Authorization ("RMA") number, obtained by Purchasing Entity from Contractor, must accompany any and all Products returned to Contractor by Purchasing Entity. Contractor may refuse any Product not accompanied by an RMA number. Refused shipments will be returned to Purchasing Entity via collect freight. Products returned for repair must be accompanied with a detailed description of the Product failure. Replacement Products will be warranted for the remaining warranty period of the original Product, if any, as specified in the Agreement. If Purchasing Entity fails to ship to Contractor a defective Product within ten (10) business days of Purchasing Entity's receipt of the replacement unit for such Product, Contractor will invoice Purchasing Entity the purchase price for such Product based on the current Contract price and Purchasing Entity shall pay such invoice in accordance with the payment terms of the Contract. The transportation charges for all Products and parts returned to Contractor shall be borne by Purchasing Entity. Contractor will pay the transportation charges involved in the return of warranted Products to Purchasing Entity.

If Contractor is unable or unwilling to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part.

G. Item 28, Force Majeure, is replaced with the following:

FORCE MAJEURE: Neither party to this Contract will have the right to claim damages or terminate this Contract as a result of the other party's delay in performance due to circumstances beyond its reasonable control, including, but not limited to labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, components, supplies, raw materials, fire, riot, insurrection, epidemic, governmental action, acts of God and/or war which is beyond that party's reasonable control.

Rev. 062007





# STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT # 5

CONTRACT # AR1471

Original Starting Date: 07/26/07

Expiration Date : 05/31/12

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and

## EXTREME NETWORKS, INC.

(Referred to as CONTRACTOR)

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Amended Expiration Date: 05/31/2014

Effective Date of Amendment:

05/31/12

Potential Renewal Options Remaining:

The contract is amended to:

**Remove Calculated Research & Technology from the Authorized Resellers List for Utah**

Please provide the following contact information.

	Name	Phone Number	Email Address
General Contact	Ofir Menjivar	408-579-3117	omenjivar@extremenetworks.com
Sales Contact	Mary Corkery	610-941-2956	mcorkery@extremenetworks.com
Quarterly Report Contact	Mary Corkery	610-941-2956	mcorkery@extremenetworks.com

All other terms and conditions in the original contract remain the same.

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

**CONTRACTOR**

**STATE OF UTAH**

*Margaret Echerd*

*Nancy Britton*

*March 8, 2012*

*3-9-12*

Contractor's Signature

Date

Kent Beers, Director

Date

State of Utah Division of Purchasing

*Margaret Echerd*

Contractor's Name (Print)

*VP Corporate Controller*

Title (Print)

Purchasing Agent

Phone #

e-mail

Fax #

Debbie Gundersen

801-538-3150

dgundersen@utah.gov

801-538-3882

10/27/2008