

EXTREME NETWORKS, INC.
INTELLECTUAL PROPERTY INFRINGEMENT INDEMNITY

All capitalized terms not defined in this document shall have the meaning ascribed to them in the NACR Sales Agreement.

NACR will indemnify, hold harmless and defend or, at its option, settle any claim, action or proceeding brought against Customer by a third party to the extent it relates to or is based on a claim or allegation that any item of Product infringes a copyright or trade secret or a United States patent of a third party, and NACR will pay any and all damages and costs finally awarded against Customer in any such action or proceeding that are attributable to any such claim or incurred by Customer through settlement thereof, but NACR will not be responsible for any compromise made or expense incurred without its consent. NACR's obligation to defend and pay hereunder is subject to the condition that Customer

- (a) gives NACR prompt written notice of any such claim;
- (b) permits NACR to have sole control over the defense (including selection of counsel) and investigation and all negotiations for the settlement and compromise of any such claim, including any appeals;
- (c) fully cooperates with NACR in the investigation, defense or settlement of any such claim, and provides all available information, assistance and authority, at NACR's expense, to enable NACR to investigate, defend, compromise or settle such claim; and
- (d) not enter into any settlement or compromise of any such claim without NACR's prior written approval. NACR will have no obligation or liability to Customer with respect to any claim of infringement which is based upon
 - (i) a modification of a Product by anyone other than NACR;
 - (ii) a combination of a Product with any third party software or hardware where such combination is the cause of such infringement; or
 - (iii) the use of a version of a Product other than the then-current version if infringement would have been avoided by the use of the then-current version. Upon notice of an alleged infringement or if in NACR's opinion such a claim is likely, NACR will have the right, at its sole option and expense, to
 - (a) obtain for Customer the right to continue to use the applicable Products;
 - (b) modify the applicable Products so that they become non-infringing or substitute other non-infringing hardware or software with similar operating capabilities; or
 - (c) if NACR determines that neither (a) nor (b) described above are commercially reasonable, NACR may terminate Customer's distribution rights for the applicable Products in the applicable territories and upon return of such affected Products by Customer to NACR, NACR will refund the fees paid by Customer for the infringing copies of the Products, less depreciation on a five (5)-year straight line basis.

THIS DOCUMENT SETS FORTH NACR'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT BY THE PRODUCTS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.