

**EXTENET LVS LLC**

**TERMS AND CONDITIONS**

These Terms and Conditions (this “Agreement”) is by and between ExteNet LVS LLC (“Extenet”) and \_\_\_\_\_ (“Customer”), and is effective as of the date signed by Extenet (“Effective Date”).

1. **Service Orders.** Pursuant to this Agreement, Extenet and the Customer may execute a written order for specified services (a “Service Order”), which will be deemed to be incorporated herein at the time Extenet accepts the Service Order request. The Service Order and any related attachments will include details of the requested services to be provided by Extenet to the Customer (“Service(s)”), including the price(s), fees, and other charges.
2. **Use of Service and/or Equipment.** Service may be used by the Customer for any lawful purpose for which the service is technically suited. The Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, process, or code. All right, title and interest to such items remain, at all times, solely with Extenet. Equipment furnished by Extenet shall remain its property and shall be returned to Extenet whenever requested, within a reasonable period following the request, in good condition (subject to reasonable wear and tear). The Customer is required to reimburse Extenet for any loss of, or damage to, the facilities or equipment on the Customer’s premises, including loss or damage caused by agents, employees or independent contractors of the Customer through any negligence.
3. **Customer Responsibilities.** The Customer is responsible for (a) compliance with all applicable laws and regulations, as well as such compliance by its end-users; (b) payment of all charges associated with its use of Extenet’s services; and (c) arranging Extenet’s access to its premises at times mutually agreeable to Extenet and the Customer when required for installation, repaid, maintenance, inspection or removal of equipment associated with the provision of Extenet’s services.
4. **Charges.** The Customer shall pay all fees and charges (“Charges”) applicable to the Customer’s use of the Services, as set forth in any Service Order(s), which will be offered pursuant to special arrangement or individual case basis pricing. To the extent provided in the applicable Service Order, such applicable fees and charges may include non-recurring charges (“NRC”), monthly recurring charges (“MRC”), and taxes and other similar charges that arise out of Customer’s use of the Services, or Extenet is legally obligated to collect from the Customer. Extenet may, in its sole and absolute discretion but upon notice to the Customer, amend its rates if the provision of Service at the original rate(s) becomes economically infeasible.
5. **Billing and Late Fees.** The Customer is responsible for payment of all charges for services and equipment furnished by Extenet to the Customer. All charges due by the Customer are payable to Extenet or Extenet’s authorized billing agent upon presentation of the bill. A late payment charge may be applied if payment is not received by Extenet on or before the late payment date that shall be displayed on the Customer’s bill. The late payment date will be at least 15 days after the date of presentation on the billing envelope. Extenet shall credit payments within 24 hours of receipt to avoid assessing late payment charges incorrectly.

- a. **Collection Fees.** In the event that Extenet incurs fees or expenses, including attorney's fees, collecting, or attempting to collect, any charges owed to Extenet, Extenet may charge the Customer all such fees and expenses reasonably incurred, including a collection fee on the unpaid charges accruing at the lesser of a rate of one-and-one half percent (1.5%) per month or the maximum rate allowed by applicable state law. Collection fees on unpaid charges shall begin to accrue when the account is assigned to an outside collection agency. Such collection fees are separate and distinct from attorney's fees and other costs incurred in collecting charges owed to Extenet.
  - b. **Disputes.** The Customer may reasonably dispute any charges billed hereunder within 30 days of receipt of the bill on which the disputed charges appear, and the Customer will be deemed to have waived and accepted charges for any claims regarding disputed charges not received by Extenet within such 30-day period. Disputed charges that the Customer has withheld which are subsequently determined to have been correctly billed by Extenet shall bear interest at the lesser of 1.5% per month or the maximum rate allowed under applicable law from the date payment was due to the date payment is received by Extenet.
6. **Term.** Subject to Sections 5 and 6 below, this Agreement shall commence upon the Effective Date and continue for a period of \_\_\_\_\_ years ("Initial Term"). Thereafter, this Agreement shall continue on a month-to-month basis unless terminated by either party with at least 30 days' prior written notice.
7. **Termination or Suspension of Services by Extenet.**
- a. Extenet may suspend provision of service or terminate this Agreement, with seven (7) days' prior written notice for Customer's: (i) breach of a material term of this Agreement; (ii) violation of any law, rule, or regulation of any government authority having jurisdiction over the service; (iii) failure to pay invoices, subject to Section 3 (Billing and Late Fees); (iv) failure to provide Extenet reasonable access to relevant premises for the purpose of inspection and maintenance of equipment owned by Extenet; and (v) when necessary for Extenet to comply with any order or request of any governmental authority having jurisdiction.
  - b. Extenet may suspend provision of service or terminate this Agreement without prior notice for Customer's unauthorized or fraudulent use of the service.
  - c. Extenet may restore service after suspension of service for non-payment if the Customer pays all past due charges and all applicable non-recurring charge(s), including reconnection charges. Extenet reserves the right to refuse to restore service if the suspension of service was due to reasons of fraud, tampering with equipment, violations of rules and regulations, or similar reasons.

8. **Termination Liability.** Termination of this Agreement or suspension of services shall not relieve the Customer of its obligation to pay charges incurred under this Agreement prior to termination or suspension. In addition to the foregoing, if Extenet terminates this Agreement pursuant to Section 5 above, or if the Customer terminates this Agreement for any reason other than Extenet's material breach of this Agreement that remains uncured after written notice and a reasonable cure period of at least sixty (60) days, the Customer must pay immediately to Extenet all monthly recurring charges associated with the terminated service for the balance of the Initial Term and any outstanding non-recurring or other charges permitted hereunder ("Termination Liability").
9. **Indemnification.** Each party (the "Indemnifying Party") must indemnify, defend, and hold harmless the other party, its employees, agents, and contractors (collectively, the "Indemnified Party") from all claims, losses or damages arising from or related to personal injury or property damage caused by the negligence or willful misconduct of the Indemnifying Party. The Customer must indemnify, defend, and hold harmless Extenet, its employees, agents, and contractors, from all claims, losses or damages arising from (a) the Customer's breach of this Agreement, (b) the Customer's violation of any third party intellectual property right, (c) any claims brought by the Customer's end users, and (d) any act or omission of the Customer in connection with any service provided by Extenet pursuant to this Agreement.
10. **Limitation of Liability.** In no event shall Extenet be liable for any indirect, incidental, consequential, special or punitive damages (including, but not limited to, lost profits or revenue) arising out of or related to the provision of services or its indemnification obligations pursuant to this Agreement, including claims made by or through third parties. Extenet's liability to the Customer shall in no event exceed one month's calculation of monthly recurring charges for the services. Extenet shall have no liability or obligation to the Customer or its end users for the content of material transmitted over its facilities or the use thereof.
11. **Assignment.** The Customer may not assign or otherwise transfer this Agreement or any rights and obligations contained herein, including pursuant to a merger, change of control, or sale of substantially all assets of the Customer, without the prior written consent of Extenet. Such consent shall not be unreasonably conditioned, withheld or delayed. Extenet may freely assign or otherwise transfer this Agreement.
12. **Entire Agreement.** This Agreement, together with any exhibits, attachments, and addendums, sets forth the entire agreement of the parties with respect to the subject matter hereof, and supersedes any prior agreements, promises, representations, understandings, and negotiations between the parties with respect thereto. Any modifications, amendments, supplements to or waivers of this Agreement must be in writing and executed by authorized representatives of both parties.
13. **Force Majeure.** In the event of any circumstances beyond Extenet's reasonable control, including but not limited to, acts of God, fire, explosion, vandalism, acts of terrorism, hurricanes, government action or inaction, pandemics, and war ("Force Majeure Event"), Extenet will not be liable to the Customer or any third party for failure to perform if such failure is due to a Force Majeure Event. A Force Majeure Event

shall not excuse the Customer's obligation to pay for any services provided to Customer.

14. **Confidentiality; Publicity.** The Customer may not publicly disclose the existence of this Agreement, the services provided hereunder, or the terms, conditions or pricing set forth in this Agreement without the prior written consent of Extenet. Customer may not use Extenet's name, logo or service mark in any marketing material.
15. **Representations and Warranties.** Each party represents and warrants that it is fully authorized to enter into this Agreement. UNLESS SPECIFICALLY STATED HEREIN, EXTENET MAKES NO OTHER WARRANTIES, REPRESENTATIONS OR AGREEMENTS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
16. **Severability.** If any provision hereunder is held to be invalid, illegal or unenforceable by any governmental

authority with jurisdiction, this Agreement will be deemed to be revised only to the extent necessary to make such provision(s) legal and enforceable. If not possible to do so, the unaffected sections of this Agreement shall remain in full force and effect so long as the Agreement remains consistent with the parties' original intent.

17. **Survival.** The terms and conditions of this Agreement will survive the expiration or termination of this Agreement to the fullest extent necessary for the realization of the benefit thereof by the party in whose favor such terms and conditions operate.