

# ***Bluebird Network***

## **General Terms and Conditions**

The following General Terms and Conditions govern the relationship between Bluebird Network and a customer purchasing Services that are not subject to a Master Services Agreement (“Customer”). For purposes of these General Terms and Conditions, Bluebird Network means Bluebird Network LLC; Missouri Network Alliance, LLC d/b/a Bluebird Network; Illinois Network Alliance, LLC; Bluebird Underground, LLC; or any other affiliated entity providing services to Customer as specified on a Service Order (collectively, “Bluebird”).

The Customer’s signature on the Service Order or use of the Services constitutes agreement with the Terms and Conditions set forth herein. Bluebird may change these Terms and Conditions in the future with or without notice, and as publicly available on the Bluebird website at [www.Bluebirdnetwork.com](http://www.Bluebirdnetwork.com) under “Corporate Info,” “Regulatory,” “General Terms and Conditions.” Customer’s continued use of the Services shall constitute acknowledgement and acceptance of any changes to these Terms and Conditions.

1. **Term** A Service Order shall become effective on Bluebird’s acceptance of that Service Order. Upon acceptance of a Service Order by Bluebird, the Terms and Conditions and the Service Order will constitute a valid and binding contract between Bluebird and Customer (the “Agreement”). Unless sooner terminated as set forth herein, the Agreement shall remain in full force and effect for as long as any Service Order remains in effect (the “Service Term”).

2. **Payment Terms** Customer agrees to pay all applicable rates, fees and charges set forth on any Service Order (the “Fees”). Payment of the Fees is due and payable in US dollars within thirty (30) days of the date on Bluebird’s invoice. Payments not received within said thirty-day period are past due. In the event any payment is past due, Bluebird may, at its sole discretion, (i) apply a late charge equal to 1-1/2% (or the maximum legal rate, if less) on the unpaid balance per month (“Late Payment Charge”); (ii) require Customer to provide a security deposit or other form of security to guarantee the payment for the Services; and (iii) take any action in connection with any other right or remedy Bluebird has under this Agreement, at law or in equity. Any restrictive endorsements (such as “paid in full”), releases or other statements on or accompanying checks or other payments accepted by Bluebird shall have no legal effect.

The Fees may include charges levied on Bluebird by third party providers that furnish a component of the Services (“Third Party Charges”). Third Party Charges may be subject to change during the Service Term, and Bluebird reserves the right to modify the Fees based on changes to Third Party Charges, upon thirty (30) days’ written notice to Customer, which may take the form of a bill insert message transmitted with Customer’s invoice or other written notification (“Rate Change Notice”). Within ten (10) days after a Rate Change Notice is provided, Customer may terminate the Services for which the Fees have been modified without liability, other than the Customer’s obligation to pay: (i) all charges already incurred for Services provided prior to the effective date of such termination; and (ii) any unpaid nonrecurring charges for installation and/or special construction charges, and (iii) any early termination charges imposed on Bluebird by a third party provider as a result of the termination of Services by the Customer (“Third Party Termination Charges”).

3. **Billing Disputes** If Customer in good faith disputes any portion of any Bluebird invoice, Customer shall submit to Bluebird, within thirty (30) days of the date of Bluebird’s invoice, full payment of the undisputed portion of the invoice and written notice and documentation identifying and substantiating the disputed amount. If Customer does not report a dispute within thirty (30) days of the date of Bluebird’s invoice, Customer shall have waived its right to dispute that invoice. Bluebird and Customer agree to use their respective best efforts to resolve any billing dispute within thirty (30) days after Bluebird

receives written notice of the dispute from Customer. Any disputed amounts resolved in favor of Customer shall be credited to Customer on the next invoice following resolution of the dispute. Any disputed amounts determined to be payable to Bluebird shall be due within ten (10) days of the resolution of the dispute and shall be subject to a Late Payment Charge. Billing disputes that cannot be resolved between the parties will be settled according to the Conflict Resolution section contained herein.

4. **Termination and Cancellation** Either Customer or Bluebird may terminate Services by providing thirty (30) days’ written notice of intent to terminate Services upon: (a) the failure of the non-terminating party to generally pay its debts as they come due or if the non-terminating party becomes the subject of a bankruptcy proceeding, whether voluntarily or involuntarily, if such proceeding is not dismissed or vacated within 30 days after the other party is notified of such a filing; or (b) upon a Default. In addition to any other remedies hereunder or at law or in equity, Bluebird may suspend Services to Customer or cease accepting or processing Service Orders upon Customer’s Default. If Services are terminated due to Customer’s Default, such termination shall not affect or reduce Customer’s minimum monthly commitments, and all early termination penalties, if applicable, shall apply. Customer agrees to pay Bluebird reasonable expenses (including attorneys’ fees and collection agency fees) incurred in enforcing Bluebird’s rights in the event of Customer’s Default. In the event of Bluebird’s Default, Customer may terminate Services without penalty. Customer will, however, remain liable for all Fees incurred for Services provided prior to Customer’s termination of Services, including without limitation any Third Party Charges, as well as any Third Party Termination Charges.

In the event Customer terminates a Service on or after the Service Commencement Date but before the end of the applicable Service Term, Customer shall pay Bluebird an early termination fee equal to one hundred percent (100%) of the remaining Monthly Recurring Charge (MRC) due for the affected Service’s Service Term and the costs and expenses incurred by Bluebird to terminate the Service, including without limitation any Third Party Charges or Third Party Termination Charges.

In the event Customer cancels the Service after the Service Order has been executed and prior to the Service Commencement Date, Customer shall pay Bluebird: (a) any Third Party Charges or Third Party Termination Charges incurred by Bluebird as a result of such termination; (b) any nonrecurring charges for installation and/or special construction; and (c) all other costs associated with provisioning the Service reasonably incurred by Bluebird prior to such termination.

5. **Additional Assurances** If Customer experiences a material and adverse change in financial condition, business prospects, or payment history, Bluebird may demand that Customer deposit with Bluebird a security deposit or increase the amount of an already existing deposit (the “Security Deposit”), as the case may be. In no event shall the amount of the Security Deposit exceed two (2) months estimated or actual charges and other amounts payable by Customer hereunder.

1. **Start of Service** Customer shall have three business days to test and accept Services upon delivery and notification from Bluebird that the Services have been installed (“Test Period”). If, prior to the end of the Test Period, Customer reasonably determines that the Services are not working in accordance with the Service Order or applicable industry standards for the service delivered, Customer shall provide written notice to Bluebird (“Non-Conformance Notice”). Upon receipt of a Non-Conformance Notice, Bluebird shall use commercially reasonable efforts to remedy any deficiencies with the Services. Once any such deficiencies have been remedied or Bluebird determines that the Services conform to the applicable industry standards, Bluebird will provide written notice to Customer, which shall result in the commencement of a new Test Period. Customer shall be deemed to have accepted the applicable Service

if no Non-Conformance Notice is delivered to Bluebird prior to the end of the Test Period or if Customer makes commercial use of the Services.

7. **Rights, Obligations and Warranties of Customer** Customer shall at its own expense undertake all necessary preparations required to comply with Bluebird's reasonable installation and maintenance instructions, including providing Bluebird with space and power (at no charge to Bluebird) for placement and operation of Bluebird equipment to provided Services at the Customer's premises. Customer will provide Bluebird reasonable access to the Customer premises for installation, maintenance and removal of Bluebird equipment. Customer represents and warrants to Bluebird that (i) it has full right and authority to enter into a Service Order; (ii) it will not use the Services in any manner in violation of any federal, state or local law, regulation, rule or ordinance ("Applicable Law") or Bluebird's Acceptable Use Policy and as publicly available on the Bluebird website at [www.Bluebirdnetwork.com](http://www.Bluebirdnetwork.com) under "About Us"; (iii) any text, data, images, photographs, illustrations, graphics, sounds, video, programs, code, information and other materials ("Data") used in connection with or transmitted by the use of the Services will not violate or infringe the rights of others including, but not limited to, any copyright, trade mark, trade dress, patent, trade secret, privacy, publicity or other personal or proprietary right; (iv) the Data will not include indecent or obscene materials or in any way constitute a defamation or libel of Bluebird or any third party; (v) it will fully comply with all relevant export and encryption laws and regulations ("Export Laws") to assure that neither the Services nor any direct products thereof are used in a manner directly or indirectly in violation of Export Laws or intended to be used for any purposes prohibited by Export Laws, including, without limitation, nuclear, chemical or biological weapons proliferation; and (vi) it is certified to do business in all jurisdictions in which it conducts business and is in good standing in all such jurisdictions.

8. **Indemnity** Customer agrees to defend, indemnify and hold Bluebird and its affiliates, subsidiaries, stockholders, officers, directors, board members, contractors, employees, partners and agents harmless from any and all liabilities, costs and expenses, including but not limited to, reasonable attorneys' fees, related to or arising from, (a) any breach of these Terms and Conditions by Customer or its Customers ("Users"), including, but without limitation, Customer's representations and warranties; (b) the use of the Services or the Internet or the placement of any message, information, software or other materials on the Internet by Customer or Users; (c) acts or omissions of Customer, Customer's officers, directors, board members, partners, shareholders, employees, agents, suppliers, or contractors in connection with the construction, installations, maintenance, presence, use or removal of systems, channels, equipment or software not provided by Bluebird which are connected or are to connect to the Services; and (d) claims for infringement of any intellectual property right arising from the use of Services, equipment and software, apparatus and systems not provided by Bluebird in connection with any Services. Each party shall indemnify, defend, release, and hold harmless the other party, its affiliates, directors, officers, employees, workers, and agents from and against any action, claim, cost, damage, demand, loss, penalty, or expense including but not limited to attorney's fees, expert witness fees, and costs (collectively "Claims") imposed upon either party by reason of damages to Property or personal injuries, including death, as a result of an intentional or grossly negligent act or omission by indemnifying party in connection with the Services. The term "Property" as used in this section shall include real, personal, tangible, and intangible property, including but not limited to data, Proprietary information, intellectual property, trademarks, copyrights, patents, and knowledge. In the event any Claim is brought against a party to be indemnified, that party shall immediately notify the indemnifying party in writing, and the indemnifying party shall assume the cost of the defense thereof on behalf of the indemnified party and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against the indemnified party. Notwithstanding the foregoing, the indemnified party shall not be liable for any settlement of any Claim without the indemnifying party's written consent.

9. **Non-Solicitation of Employee** Each party recognizes that their respective employees constitute valuable assets of each other. Accordingly, neither party shall, during any Service Term and for a period of one year thereafter, directly or indirectly, solicit, employ, or offer to employ, or engage as a consultant or employee, any employee of the other party with whom such party had contact pursuant to this Agreement. The parties agree that the remedy at law for any breach of this provision shall be inadequate and that, in addition to any remedy it might have, the aggrieved party shall be entitled to injunctive relief without proof of irreparable injury and without posting.

10. **Investigation of Violations** Bluebird may investigate any violation of this Agreement or any Applicable Laws, or any complaints reported to it or any governmental entity and take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers, and/or third parties. Bluebird will not access or review the contents of any e-mail or similar stored electronic communications, except as required or permitted by applicable law or legal process.

11. **Insurance** Throughout the Term of this Agreement and any extension thereof, each party shall maintain and, upon written request, shall provide proof of adequate commercial general liability insurance covering all operations and work hereunder. Such insurance shall be written on an occurrence coverage basis and shall provide coverage equivalent to or greater than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage liability including coverage extension for blanket contractual liability, personal injury liability, products and completed operations liability, and advertising injury. Such insurance must cover any liability under the indemnification provisions of this Agreement.

12. **Authorized Use of Name** Without the other party's prior written consent, neither party shall: (i) refer to itself as an authorized representative of the other in promotional, advertising, or other materials; or (ii) use the other party's logos, trademarks, service marks, carrier identification codes (CICs), or any variations thereof in any of its promotional, advertising, or other materials, or in any activity using or displaying the other party's name or the Service(s) to be provided hereunder. Both parties agree to change or correct at their own expense any material or activity the effected party determines to be inaccurate, misleading, or otherwise objectionable under this section. Notwithstanding the foregoing, Customer is authorized to use the following statements: (i) "Customer utilizes the Bluebird network," (ii) "Customer utilizes Bluebird's facilities," (iii) "Bluebird provides only the network facilities," and/or (iv) "Bluebird is our network services Provider."

13. **Limitation of Liability** Bluebird's liability arising out of the provision of Services, resulting from delays in the restoration of Services, or arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the limitations set forth below. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, IN NO EVENT SHALL BLUEBIRD, ITS OFFICERS, AGENTS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, ANY PERSON OR ENTITY ASSISTING BLUEBIRD OR ITS SUBSIDIARIES OR AFFILIATES BE LIABLE TO CUSTOMER OR ANY OTHER THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER OF AND ITS OBLIGATIONS HEREUNDER UNDER ANY CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY FOR ANY TYPE OF INDIRECT, CONSEQUENTIAL, RELIANCE, INCIDENTAL, ACTUAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS, LOST REVENUES, LOST OPPORTUNITIES, LOST ROYALTIES, LOST DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR LOST SAVINGS OF ANY KIND, ARISING OUT OF OR RELATING TO THE SERVICES OR THE OBLIGATIONS OF BLUEBIRD HEREUNDER, WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. UNDER NO

CIRCUMSTANCES WILL BLUEBIRD, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, ANY PERSON OR ENTITY ASSISTING BLUEBIRD SUSIDIARIES OR AFFILIATES BE LIABLE TO CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS BLUEBIRD HAS COLLECTED FROM CUSTOMER WITHIN THE ONE MONTH IMMEDIATELY PRECEDING ANY CLAIM WITH RESPECT TO THE SERVICES DELIVERED HEREUNDER. CUSTOMER HEREBY WAIVES ANY CLAIM THAT THESE EXCLUSIONS DEPRIVE IT OF AN ADEQUATE REMEDY OR CAUSE THIS AGREEMENT TO FAIL ITS ESSENTIAL PURPOSE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY AND RISK FOR CUSTOMER'S USE AND USERS' USE OF THE SERVICES, SOFTWARE, OR EQUIPMENT PROVIDED BY BLUEBIRD, IF ANY, AND THE INTERNET. CUSTOMER UNDERSTANDS AND AGREES FURTHER THAT THE INTERNET (i) CONTAINS MATERIALS SOME OF WHICH ARE SEXUALLY EXPLICIT OR MAY BE OFFENSIVE TO SOME PEOPLE AND (ii) IS ACCESSIBLE BY PERSONS WHO MAY ATTEMPT TO BREAK THE SECURITY OF BLUEBIRD'S, ITS CONTRACTOR'S AND/OR CUSTOMER'S NETWORK FACILITIES. BLUEBIRD HAS NO CONTROL OVER AND ACCEPTS NO LIABILITY OR RESPONSIBILITY WHATSOEVER FOR SUCH MATERIALS OR ACTIONS, AND CUSTOMER AND CUSTOMER'S USERS ACCESS THE SERVICE AT THEIR OWN RISK.

14. **LIMITATION OF WARRANTY** BLUEBIRD IS NOT MAKING ANY WARRANTIES TO CUSTOMER RELATING TO THE SERVICES PROVIDED HEREUNDER OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY PARTICULAR WARRANTIES OF (i) MERCHANTABILITY, (ii) FITNESS FOR A PARTICULAR PURPOSE, (iii) EFFORT TO ACHIEVE PURPOSE, (iv) COMPLETENESS OR (v) QUALITY, ACCURACY, OR CURRENCY OF THIRD PARTY CONTENT, OR AS TO ANY MATTER, ALL OF WHICH WARRANTIES BY BLUEBIRD ARE HEREBY EXCLUDED AND DISCLAIMED. CUSTOMER AGREES THAT ANY EFFORT BY BLUEBIRD TO MODIFY THE SERVICES OR ANY EQUIPMENT SHALL NOT BE DEEMED A WAIVER OF ANY LIMITATIONS CONTAINED IN THIS SECTION AND THAT BLUEBIRD'S LIMITATION OF WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED IIN THEIR ESSENTIAL PURPOSE.
15. **System Maintenance** In the event Bluebird determines that it is necessary to interrupt Services or that there is a potential for Services to be interrupted for the performance of system maintenance, Bluebird will use best efforts to notify Customer prior to the performance of such maintenance and to schedule such maintenance during non-peak hours (midnight to 6:00 am local time). In no event shall interruption for system maintenance constitute a failure of performance by Bluebird.
16. **Emergencies** In the event of any emergency event that is either service affecting or will immediately become service affecting or will otherwise involve Bluebird's equipment or operations, Bluebird's work shall take precedence over any and all operations of Customer on Bluebird's premises, and Bluebird may rearrange any Customer equipment (with the same care used by Bluebird in rearranging its own equipment) as is reasonably necessary to respond to the emergency. In the event of any emergency involving Customer's equipment, Bluebird shall use reasonably commercial efforts to notify Customer prior to performing whatever repair and maintenance is necessary to respond to the emergency ("Emergency Measures"), and Customer authorizes Bluebird to take such repair and maintenance actions, irrespective of whether Bluebird actually provides notice. Customer hereby indemnifies and holds harmless Bluebird with respect to any damage to Customer's equipment resulting from any Emergency Measures undertaken by Bluebird.
17. **Confidential Information** A Party (the "Receiving Party") receiving any Confidential Information of the other Party (the "Disclosing Party") shall

exercise a reasonable degree of care, but in no event less than the same degree of care that it uses to protect its own Confidential Information of a like nature, to keep confidential and not disclose such Confidential Information. These obligations shall not apply to any Confidential Information to the extent it: (a) is approved by prior written authorization of the Disclosing Party for release by the Receiving Party; (b) is disclosed in order to comply with a judicial order issued by court of competent jurisdiction, in which event the Receiving Party shall give prior written notice to the Disclosing Party of such disclosure as soon as practicable and shall cooperate with the Disclosing Party in using all reasonable effort to obtain the appropriate protective order or equivalent, provided that the information shall continue to be Confidential Information to the extent it is covered by such protective order or equivalent; (c) becomes generally available to the general public through any means other than a breach by the Receiving Party of its obligations under this Agreement; (d) was in the possession of the Receiving Party without obligation of confidentiality prior to receipt of disclosure under this Agreement evidenced by written records made prior to such receipt or disclosure; (e) is developed independently by the Receiving Party without the use of or benefit from any of the Confidential Information of the other Party or without breach of this Agreement, as evidenced by written records of the Receiving Party in existence as of disclosure by the Disclosing Party; or (f) is required to be disclosed by government rule or regulation (e.g., in connection with a securities fund) provided that the Receiving Party gives the Disclosing Party advance written notice of the Disclosure and cooperates with the Disclosing Party in any attempt to limit the scope of the required disclosure. A recipient of Confidential Information shall not disclose the Information to any person or entity other than the recipient's (i) employees, contractors, or consultants; and/or (ii) Affiliates and their employees, contractors or consultants. Confidential Information shall only be disclosed to those persons who have a need to know and who are bound in writing to protect the Information from unauthorized use or disclosure. Confidential Information shall remain the property of the Disclosing Party and shall be destroyed or returned to the Disclosing Party upon request of the Disclosing Party. Either party may make Confidential Information available to its lenders and/or financial advisors provided they are bound by a written Confidentiality Agreement. Confidential Information shall not be disclosed to any third party without the prior written consent of the owner of the Information. The recipient shall use the Confidential Information only for the purposes of the Agreement and shall protect the Information from disclosure using the same degree of care used to protect its own Confidential or Proprietary Information, but in no event less than a reasonable degree of care. Because money damages may be insufficient in the event of a breach or threatened breach of this section, the affected party may be entitled to an injunction or restraining order in addition to such other rights or remedies as may be available under this Agreement, at law, or in equity, including money damages.

18. **Regulatory** Bluebird may assess Customer fees, surcharges, and federal, state, local, sales, income, use, utility, or other taxes (collectively, "Taxes") that are imposed or authorized by any regulatory or governmental entity related to the Services or otherwise permitted by Applicable Law.
19. **Taxes** The amounts payable by Customer under this Agreement do not include Taxes. Customer will be responsible, as required under applicable law, for identifying and paying all Taxes and other governmental fees and charges (and any penalties, interest, and other additions thereto) that are imposed on Customer in connection with the transactions and payments under this Agreement. Bluebird may charge and Customer will pay applicable Taxes that Bluebird is legally obligated to charge, and such Taxes will be stated separately on Bluebird's invoice, which will meet the requirements for a valid tax invoice. Customer may provide Bluebird with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case, Bluebird will not charge or collect the Taxes covered by such certificate. Throughout the term of this Agreement, Customer will provide Bluebird with any forms, documents, or certifications as may be required for Bluebird to satisfy any

information reporting or withholding tax obligations with respect to any payments under this Agreement. Customer is responsible for properly charging Taxes to its subscribers and for the proper and timely reporting and payment of such Taxes to the taxing authorities. Customer agrees to defend, indemnify and hold harmless Bluebird from Customer's non-payment or failure to report any and all taxes related to Services(s) provided to Customer under this Agreement.

**20. Legal Construction** In the event one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. In the event of any conflict between the provisions of these General Terms and Conditions and a Service Order, the Service Order shall have priority in resolving such conflict.

**21. Conflict Resolution** The provisions of this section shall be the sole and exclusive method and procedure to resolve any Disputes. "Disputes" shall exclude payment matters but shall include, without limitation, all questions of interpretation, all claims for damages, adjustments, credits and /or set offs, all questions or issues regarding the validity and enforceability of the Agreement, all questions regarding whether any particular act, omission, matter or event constitutes, or would constitute if remaining uncured following the expiration of any applicable cure period hereunder, a Default and any and every other controversy arising between the parties. No party may file a lawsuit for interpretation or enforcement of its rights under the Agreement except as may be authorized under the provisions of this Section. (a) Meet and Confer. The parties shall attempt in good faith to resolve any Dispute by negotiations between individual representatives who have authority to settle that Dispute. Any party may give the other party written notice of any Dispute together with a request that the parties meet and confer ("Notice of Dispute"). Within ten (10) days after delivery of the Notice of Dispute, individual representatives of both parties shall meet at a mutually acceptable time and place in Kansas City, Missouri, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the matter has not been resolved within twenty (20) days after delivery of the Notice of Dispute, or if the parties fail to meet within ten (10) days after delivery of the Notice of Dispute, either party may initiate Mediation of the Dispute under subsection (b) hereof. If a negotiating representative intends to be accompanied at a meeting by an attorney, the other negotiating representative shall be given at least two (2) working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's Rules of Evidence. (b) Mediation. If a Dispute has not been resolved by negotiation as provided in this section the parties shall endeavor to settle the Dispute by mediation under the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Disputes. A neutral third party will be selected from the CPR panel of neutrals. If the parties encounter difficulty in agreeing on a neutral, they will seek the assistance of CPR in the selection process. Mediation under this section will commence within thirty-five (35) days of the Notice of Dispute. (c) Litigation. If a Dispute has not been resolved by non-binding means pursuant to subsections (a) or (b) within sixty (60) days of the initiation of mediation, either party may initiate litigation, provided, however, that if one party has requested the other to participate in a non-binding procedure under subsections (a) or (b) and the other has failed to participate, the requesting party may initiate litigation before expiration of the aforesaid sixty (60) day period. (d) Statutes of Limitation Tolloed During Meeting and Confer and Mediation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedure specified in subsections (a) and (b) are pending. The parties will take such action, if any, required to effectuate such tolling. (e) Performance to Continue Pending Dispute Resolution. Each party is required to continue to perform its

obligations under the Agreement pending the final resolution of any Dispute covered by this section. (f) Extension of Deadlines. All deadlines specified in this section may be extended by mutual agreement in writing. (g) Controlling Law. The Substantive law of Missouri (without regard to its conflicts of laws principles) will control the outcome of any Dispute.

**22. Notices** All notices and other communications shall be in writing and shall be deemed to have been duly given as of the date of delivery or confirmed facsimile transmission. If mailed, notice shall be sent via registered mail, return receipt requested or via overnight commercial courier with tracking capabilities and becomes effective upon confirmed delivery. Notices will be delivered or sent to the party's designated Point Of Contact.

**23. Relationship of the Parties** Nothing contained in this Agreement shall be deemed or construed as creating a relationship of principal and agent, of a partnership or a joint venture between one partner hereto or hereof, it being understood and agreed that no provision contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of independent contractors.

**24. General** Because Bluebird acts only as a conduit for transmission of data, it is not subject to the Health Insurance Portability and Accountability Act (as per 65 FR Vol 78 No.17 Section 13408 of the HITECH Act); CUSTOMER IS SOLELY RESPONSIBLE FOR COMPLYING WITH SUCH STATUTES, RULES AND REGULATIONS.

**25. Survival** The sections pertaining to Customer's payment of amounts due, and both parties' confidentiality, liability, and indemnification obligations shall survive termination of this Agreement regardless of the reason for the termination.

**26. Force Majeure** Bluebird shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control including, but not limited to: acts of God, fire, explosion, vandalism, cable cuts not caused by Bluebird, flood, storm, or other similar catastrophe; any law, order, regulation, direction, action or request of any governmental entity having jurisdiction over either of the parties, or of any department, agency, commission, court bureau or other instrumentality of any governmental unit, or any civil or military authority; national emergencies; insurrections; riots; wars; or strikes, lock outs, or work stoppages (each, a "Force Majeure Event").

**27. Assignment** Neither party may assign or transfer a Service Order without the express written consent of the other party hereto, which consent shall not be unreasonably withheld. Notwithstanding the foregoing; (i) either party may assign all its rights and obligations hereunder to any Affiliate or to the surviving corporation into which the party may merge or consolidate, or to any entity to which the party transfers all, or substantially all, of its business and assets; and (ii) Bluebird may assign any amounts due from Customer to Bluebird to any Affiliate for billing purposes. Affiliate, as used herein, is defined as any entity controlled by, in control of, or under common control with the assigning party hereunder.

**28. No Waiver** Bluebird's failure to enforce the strict performance of any of its rights under the Agreement will not constitute a waiver of Bluebird's right to subsequently enforce such provision or any other provisions hereunder or thereunder.

**29. Headings** The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

**30. Governing Law** This Agreement and the performance hereof shall be governed, construed, and enforced in accordance with the laws of the State of Missouri without regard to conflicts of law principles. The venue for any action arising out of this Agreement shall be Boone County, Missouri.

**31. Definitions** For purposes of these Terms and Conditions, the following terms have the following definitions:

“Default” means that: (i) Customer fails to make payment as required under this Agreement and such failure remains uncorrected for five (5) days after written notice of such non-payment from Bluebird; (ii) either party fails to materially perform or observe any material term or obligation (other than making payment) under these Terms and Conditions, and any such failure remains uncorrected for thirty (30) days after the non-defaulting party’s written notice of such failure to the defaulting party; or (iii) Customer uses the Services for any improper or unlawful purpose or in any improper or unlawful manner.

“Services” means the products and services provided by Bluebird to Customer as set forth in a Service Order.

“Service Commencement Date” means the date the Services are accepted.

“Service Order” means an Access Service Request submitted by Customer and accepted by Bluebird.