

# SERVICES AGREEMENT

**This Service Agreement** (“Agreement”) governs the relationship between Bluebird Network, LLC dba Bluebird Network (“Bluebird”) and a customer purchasing Services as set forth on a Service Order (“Customer”) (each a “Party” and collectively the “Parties”). For purposes of this Agreement, Bluebird Network includes, but is not limited to, Bluebird Network LLC; Missouri Network Alliance LLC d/b/a Bluebird Network; Illinois Network Alliance, LLC; Bluebird Underground, LLC d/b/a Bluebird Network; Bluebird Quad Cities, LLC; PEG Bandwidth IL, LLC; Leasing MW, LLC; or any other affiliated entity providing services to Customer on a Service Order (collectively, “Bluebird”). Regulated Services will be provided by the respective regulated provider for the specific Service.

- 1. Term** This Agreement Term shall become effective upon the Effective Date and remain in full force and effect for as long as any Service Order remains in effect (the “Service Term”).
- 2. Services** Bluebird shall provide services to Customer as set forth on a Service Order submitted by Customer (“Services”). Customer shall have three (3) business days to test and accept Services after installation (“Test Period”). If within the Test Period, it is determined that the Services are not in accordance with the Service Order or the applicable service description, Customer shall provide written notice to Bluebird. Upon receipt of such notice, Bluebird shall use commercially reasonable efforts to remedy any deficiencies and will provide notice to Customer when such work is complete. Customer shall be deemed to have accepted the Services if no notice is delivered to Bluebird prior to the end of the Test Period or if Customer makes commercial use of the Services.
- 3. Payment Terms** Customer agrees to pay all undisputed rates, fees and charges set forth on the Service Order (the “Fees”), which may include regulatory charges or third party provider fees within thirty (30) days of the date on Bluebird’s invoice. In the event any payment is not received within thirty (30) days, Bluebird may, at its sole discretion, apply a late charge equal to 1-1/2% (or the maximum legal rate, if less) on the unpaid balance per month. 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. Any disputed amounts determined to be payable to Bluebird shall be due within ten (10) days of the dispute resolution. In addition to any other remedies hereunder or at law or in equity, Bluebird may suspend Services to Customer for non-payment.
- 4. Regulatory Charges** Bluebird may assess Customer any regulatory fees, and federal, state, local, sales, use, utility, or other surcharges or tariffs imposed by any regulatory or governmental entities or otherwise permitted by Applicable Law related to the Services provided which may include, but is not limited to, fees imposed by the Federal Universal Service Fund (“FUSF”), the National Exchange Carrier Association (“NECA”) or any applicable local power company service rate, as applicable.
- 5. Taxes** Bluebird may charge, and Customer will pay applicable taxes that Bluebird is legally obligated to charge (“Taxes”), and such Taxes will be stated separately on Bluebird’s 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.
- 6. Default** Either Party may terminate this Agreement if the other Party fails to materially perform or observe any material term or obligation under this Agreement, and any such failure remains uncorrected for thirty (30) days after the non-defaulting party’s written notice of such failure (“Default”). A Party may terminate Services upon a Default by the other Party or should the other Party become the subject of a bankruptcy. In the event of Customer’s Default, Customer shall pay all amounts due and unpaid charges for the entire Service Term and further agrees to pay Bluebird’s reasonable expenses (including attorneys’ fees and collection agency fees) incurred enforcing its rights under this Agreement and the Service Order. Furthermore, Bluebird may suspend Services to Customer upon Customer’s Default. In the event of Bluebird’s Default, Customer may terminate Services without penalty. Bluebird shall not be responsible for any failure or interruption in Services caused by an act or omission of a third party furnishing a portion of the Services.
- 7. Early Termination** In the event Services are terminated by Customer prior to completion of the Service Term, Customer shall pay Bluebird an early termination fee equal to one hundred percent (100%) of the Monthly Recurring Charge (MRC) due for months one through twelve (1-12), seventy-five percent (75%) for months thirteen through thirty-six (13-36) and fifty percent (50%) for the remaining MRC due for the affected Service’s Service Term and any unpaid installation fees or Non-Recurring Charge (NRC), plus any costs and expenses incurred by Bluebird to terminate the Service.
- 8. Warranties of Customer** Customer represents and warrants that (i) it has full right and authority to enter into this Agreement and any Service Order; (ii) it has or will obtain all licenses, authorizations, and permits necessary to install and operate Customer’s equipment; and (iii) neither it nor its customers will use the Services in violation of any applicable laws or Bluebird’s Acceptable Use Policy and as publicly available on the Bluebird website at [bluebirdnetwork.com](http://bluebirdnetwork.com). In the event Bluebird receives any complaints reported to it or to any governmental entity, Bluebird may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, customers, and/or third parties.
- 9. Indemnification** Customer agrees to defend, indemnify and hold Bluebird and its affiliates, directors, officers, employees, and agents harmless from any and all liabilities, costs and expenses, including but not limited to, reasonable attorneys’ fees (“Claims”), related to or arising from (a) any breach of this Agreement by Customer or its customers; (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 its customers; (c) acts or omissions of Customer or its customers in connection with the construction, installation, 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. Each party shall indemnify, defend, release, and hold harmless the other party, its affiliates, directors, officers, employees, and agents from Claims imposed upon either party by reason of damages to Property 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, the indemnifying Party 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 its written consent.
- 10. Insurance** In the event Customer equipment or personnel enters a Bluebird facility, then 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 or personal injury liability. Such insurance must cover any liability under the indemnification provisions of this Agreement and Customer insurance company may not subrogate with respect to insurance carried by Bluebird.
- 11. Limitation of Liability** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS ABOVE, IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR

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NONPERFORMANCE HEREUNDER. In no event shall Bluebird's accumulative liability for all claims arising out of this Agreement exceed the total amount paid by Customer to Bluebird within the one (1) month prior. Except as otherwise explicitly set forth in a Service Description or this Agreement, Bluebird shall not be liable under this Agreement for any failure or interruption in Services. Bluebird and its affiliates shall not be liable to Customer or its permittees who may enter a Bluebird premises, or to others who may suffer death, injury, or damage to the extent caused by Customer, Customer permittee or any third party. Customer and its affiliates shall not be liable to Bluebird, or others who may suffer death, injury or damage to the extent it may be caused by Bluebird.

**12. Disclaimer** BLUEBIRD MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY SERVICES PROVIDED TO CUSTOMER HEREUNDER. BLUEBIRD SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, AND PERFORMANCE OR INTEROPERABILITY OF THE SERVICES WITH ANY CUSTOMER EQUIPMENT OR SERVICES.

**13. 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").

**14. Maintenance** Bluebird may interrupt the Service(s) temporarily to perform scheduled maintenance on any day between the hours of 12:00 a.m. and 6:00 a.m. local time. Bluebird may perform emergency maintenance as needed and will use best efforts to coordinate with the Customer to minimize any impact. In no event shall interruption for scheduled or emergency maintenance constitute a failure of performance by Bluebird. Customer hereby indemnifies and holds harmless Bluebird with respect to any damage to Customer's equipment resulting from any maintenance undertaken by Bluebird.

**15. Confidential Information** The Parties agree not to disclose to a third party any non-public information regarding either Party's business that has been provided to the receiving Party ("Confidential Information"). Each Party shall treat all Confidential Information with reasonable care and protect such Confidential Information as if such information was its own Confidential Information. This section does not apply to information already known to the receiving party, already in the public domain, rightfully obtained from a third party, or required by law to be disclosed as part of any court proceedings.

**16. Authorized Use** Without the other Party's prior written consent, neither Party shall: (i) refer to itself as an authorized representative of the other; or (ii) use the other Party's logos, trademarks, service marks, carrier identification codes, or any variations thereof any activity using or displaying the other Party's name or the Service(s) to be provided hereunder.

**17. Dispute Resolution** The provisions of this section shall be the sole and exclusive method and procedure to resolve any disputes: (i) The Parties shall first attempt in good faith to resolve any dispute by negotiations between individual representatives who have authority to settle that dispute upon written notice of any dispute. Within ten (10) days after delivery of the notice, individual representatives of both Parties shall meet at a mutually acceptable time and place and attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any state's Rules of Evidence. (ii) If a dispute has not been resolved by (i) 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 by a neutral third party selected from the CPR panel of neutrals. (iii) If a dispute has not been resolved by non-binding means pursuant to subsections (i) or (ii) within ninety (90) days of the initiation of mediation, either Party may initiate litigation. (iv) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in subsections (i) and (ii) are pending. (v) Each Party is required to continue to perform its obligations under the Agreement pending the final resolution of any dispute covered by this section.

**18. General Provisions** (a) This Agreement is the entire agreement between the Parties and supersedes all prior written or oral agreements. (b) In the event there is a conflict between the terms of this Agreement, Service Description, or Service Order, if applicable, the Service Order shall supersede and govern, and then the Service Description shall supersede and govern. (c) This Agreement may only be amended in writing signed by duly authorized representatives of both Parties. (d) Either Party may assign all its rights and obligations hereunder to any affiliate or to the surviving entity 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. (e) This Agreement shall inure to the benefit of and be binding against each Party's heirs, successors or assigns. (f) No specific waiver(s) or failure(s) to enforce any provision of this Agreement shall be deemed to constitute any permanent or general waiver. (g) If any term in this Agreement is held invalid or unenforceable in any respect, then the remainder of the Agreement shall not be affected, and each term or condition of the Agreement shall be valid and enforceable to the fullest extent permissible by law. (h) This Agreement creates no partnership, joint venture, or agency relationship between the Parties and results in no joint service offerings. (i) If Bluebird seeks to enforce any term or condition of or related to this Agreement, then Bluebird shall be entitled to payment of (in addition to other remedies) its reasonable attorneys, collection agency, investigative, arbitration, and/or court costs and fees. (j) Service Orders and any amendments may be executed in counterparts which together shall constitute a single agreement. (k) Descriptive headings used herein shall not affect the construction or interpretation of the Agreement. (l) Bluebird may verify and use Customer's credit information as needed prior to acceptance of a Service Order. (m) Bluebird may demand that Customer deposit with Bluebird a security deposit or increase the amount of an already existing deposit, as the case may be. (n) 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. (o) 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 Jackson County, Missouri.