

## STANDARD TERMS AND CONDITIONS

**These Standard Terms & Conditions** (“Terms & Conditions”) govern 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 these Terms & Conditions, 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 d/b/a Bluebird Network; 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. Bluebird may, at any time, and at its sole discretion, modify these Terms & Conditions, with or without notice to Customer. Any such modification will be effective immediately upon posting on Bluebird’s website at BluebirdNetwork.com.

### Definitions

**Monthly Recurring Charges:** the monthly fees applicable to the Services as set forth on a Service Order (MRC);

**Non-Recurring Charges:** the one-time fees associated with the Services as set forth on a Service Order (NRC).

1. **Term.** These Terms & Conditions shall become effective upon the Effective Date, which is defined as the date of the last signature on an applicable Service Order and remain in full force and effect for as long as any Service Order remains in effect (the “Service Term”). Billing for Services shall commence on Service Commencement Date, which is defined as the date upon which Customer accepts or is deemed to have accepted Services, pursuant to Section 2 below. Upon expiration of the initial term as set out in a Service Order, the Service therein shall automatically renew on a month-to-month basis (each a “Renewal Term”) subject to price increases following the end of an initial Term until either Party terminates the Service Order with thirty (30) days’ notice to the other Party.

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 MRC, NRC, fees and charges set forth on the Service Order (the “Fees”), which may include regulatory charges, surcharges, taxes, 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 the greater of \$25 or 1.5% (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 without notice until past-due payment is made in full.

If Customer is a cryptocurrency miner purchasing Services through any Bluebird-owned data center, the following additional Payment Terms apply. 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; payment is due by the 1<sup>st</sup> day of each month.

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. Customer may provide Bluebird with an exemption certificate or equivalent information acceptable to the relevant regulatory authority, in which case, from the date of presentation of such certificate, Bluebird will not charge or collect the regulatory fees, surcharges, or tariffs covered by such certificate.

5. **Taxes and Fees.** All charges set forth in a Service Order are exclusive of, and Customer shall be responsible for and agrees to pay, any and all applicable international, federal, state and local use, excise, sales, value added, consumption, gross receipts, access, franchise and other taxes, fees, assessments, duties and surcharges (including, without limitation, any universal service fund surcharge) levied or imposed upon Bluebird or Customer in connection with the provision, sale or use of the Service, product or facility furnished to Customer and which Bluebird is required or permitted to collect from Customer (collectively referred to as “Taxes”). Customer shall not be responsible for, and Taxes will not include, taxes on Bluebird’s net income. If Customer believes it is exempt from Taxes, Customer shall provide Bluebird with a valid and duly executed exemption certificate and any other information with respect to such exemption as Bluebird may require; such certificate will be honored from the date that Bluebird receives such certificate and additional information from Customer. If any such exemption is ruled invalid by the tax or governmental authority for any reason, Customer shall reimburse Bluebird for any Taxes, including without limitation any penalties and interest, arising from or in connection with such invalid claim of exemption.

6. **Access.** Notwithstanding anything to the contrary in these Terms & Conditions, an applicable Service Description, or a Service Order hereunder, Bluebird shall not be liable to provide the Services to Customer in the event that Bluebird is not permitted access to any location required for such Services to be performed. Accordingly, Bluebird shall have the right to terminate, without liability, any applicable Service Order with notice to Customer. Additionally, if Bluebird is charged a fee by any landlord, private location owner, or any other such entity in order to gain access or easement rights to property in order to install equipment or otherwise perform the contracted Services (“Access Fees”), Bluebird may, at its option, pass-through such fees to Customer whether or not such are stated in the original Service Order and Customer shall pay such access fees.

7. **Default.** Either party may terminate any Service Order (i) for the other's material breach (including non-payment) by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure or (ii) in the event the other Party becomes the subject of a bankruptcy ("Default"). In the event of Customer's Default, Bluebird may suspend Services rather than terminating the Service Order, in which case, Customer must cure the Default, including the payment of all amounts currently due, prior to Services being re-instated.

8. **Effects of Termination for Cause.** In the event of Customer's Default, Customer shall pay all amounts due and all 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 these Terms & Conditions and the Service Order. 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.

9. **Early Termination.** In the event Services are cancelled or 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. To the extent the Early Termination Fee is deemed to be liquidated damages, Customer acknowledges that the amount of damage Bluebird would suffer as a result of Customer's early termination of Services or Bluebird's termination for cause is difficult to estimate and that the Early Termination Fee reflects the Parties' reasonable estimation of the anticipated damages Bluebird may incur. In the event Customer terminates a Service at any time prior to the applicable Service Commencement Date, which is defined as the date on which Services are accepted, Customer shall pay Bluebird: (a) the cost of any third party-imposed termination liability or any third-party charges incurred by Bluebird as a result of such termination; (b) any NRC for installation and/or special construction; and (c) all other costs associated with provisioning the Service reasonably incurred by Bluebird prior to such termination.

**10. Equipment Removal.**

- a. Customer will cease use of the Service or Services set forth in the applicable Service Order immediately upon its expiration or termination. Within thirty (30) days of that date (or earlier at Customer's option), Customer will disconnect its provided equipment ("Equipment") from the Bluebird network or equipment and remove the Equipment from Bluebird's premises, as applicable. Disconnect and removal will be performed in a workmanlike manner and reasonable care to not disrupt, damage, or alter any part of the Bluebird network or premises or Bluebird's other customers equipment or space. Customer hereby consents and authorizes, without any other requirement, that Bluebird, upon thirty (30) days' prior written notice, may apportion, sell, use, store, destroy, or otherwise dispose of Equipment not so disconnected or removed within such thirty (30) days after the termination or expiration date. Bluebird shall be entitled to keep any proceeds from the sale of such Equipment. Customer will pay all expenses and costs incurred in connection with Bluebird's disposition of the Equipment.
- b. Following the termination or expiration of an applicable Service listed on a Service Order, Customer shall reimburse Supplier the replacement value of any Supplier equipment when (i) Customer does not allow Supplier access to retrieve said equipment during Supplier's normal business hours or (ii) when said equipment is damaged, lost, or stolen prior to Supplier's retrieval or during return by Customer.

11. **Warranties of Customer** Customer represents and warrants that (i) it has full right and authority to enter into these Terms & Conditions 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 any manner in violation of any applicable laws, or [Bluebird's Acceptable Use Policy](#), and as publicly available on the Bluebird website at [bluebirdnetwork.com](#). In the event Bluebird reasonably believes that a violation of any warranty has or will occur, Bluebird may take any action that it deems appropriate and reasonable under the circumstances to protect its systems, facilities, customers, and/or third parties.

12. **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 these Terms & Conditions 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, that Party shall immediately notify the indemnifying Party of the Claim; in the event the indemnifying Party fails to assume the defense on time to avoid prejudicing the defense, the indemnified Party may defend the Claim, without loss of rights pursuant to this Section. 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 will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it to admit wrongdoing or liability or subjects it to any ongoing affirmative obligation. The indemnified Party shall not be liable for any settlement of any Claim without its written consent. Neither Party shall be liable to the other for any losses or damages other than those listed in this Section.

13. **Insurance** In the event Customer equipment or personnel enters a Bluebird facility, then throughout the Term of any Service Order and any extension thereof, each party shall maintain and, upon written request, shall provide proof of adequate commercial general liability insurance covering all equipment, 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 these Terms & Conditions and Customer insurance company may not subrogate with respect to insurance carried by Bluebird.

**14. 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, PUNITIVE 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 THESE TERMS & CONDITIONS AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. In no event shall Bluebird's accumulative liability for all claims arising out of these Terms & Conditions 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 these Terms & Conditions, Bluebird shall not be liable under these Terms & Conditions 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 premise, 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. THE LIABILITIES LIMITED BY THESE TERMS & CONDITIONS APPLY TO THE BENEFIT OF BLUEBIRD'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF BLUEBIRD IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Customer acknowledges and agrees that Bluebird has based its pricing on and entered into these Terms & Conditions in reliance upon the limitations of liability and disclaimers of warranties and damages in these Terms & Conditions and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of the provisions of these Terms & Conditions, Bluebird's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Bluebird's liability limits and other rights set forth in these Terms & Conditions apply likewise to Bluebird's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

**15. 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, THAT ANY CONTENT, INCLUDING CUSTOMER CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE BE LOST OR DAMAGED, AND PERFORMANCE OR INTEROPERABILITY OF THE SERVICES WITH ANY CUSTOMER EQUIPMENT OR SERVICES. BLUEBIRD MAKES NO WARRANTY REGARDING NETWORK SECURITY; ENCRYPTION EMPLOYED BY ANY SERVICE; THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED, OR LOAD BALANCED; OR THAT BLUEBIRD'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA.

**16. 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").

**17. 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.

- 18.** When Services are provided by any Bluebird data center, the Bluebird Data Center Customer Guidelines are incorporated herein and made a part of these Terms & Conditions by this reference. Customer agrees that it has read and understands the current version of the Customer Guidelines which are available to Customer at BluebirdNetwork.com. Bluebird may change the Customer Guidelines from time to time. In no event shall Bluebird alter or amend the Customer Guidelines in such a manner as will cause Customer to be unable to use the Services contemplated by these Terms & Conditions or the data center Service Description.

**19. 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 in the public domain, rightfully obtained from a third party, or required by law to be disclosed as part of any court proceedings.

**20. 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, or engage in any activity using or displaying the other Party's name or the Service(s) to be provided hereunder.

**21. 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 these Terms & Conditions pending the final resolution of any dispute covered by this section.

**22. Transmissions** 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. Customer shall have full responsibility and liability for all content Customer or its customers transmits over Bluebird's network. Bluebird shall have no responsibility or liability for any material contained in the signals transmitted by Customer or its customers over Bluebird's network, including any responsibility or liability with respect to the content of what is transmitted or any copyright or other

intellectual property right therein, and Customer agrees to indemnify and hold Bluebird and any of Bluebird's third-party providers harmless with respect to any claims therefrom.

**23. General Provisions** (a) These **Terms and Conditions, together with any Service Description (if applicable) and the Service Order constitute** the entire agreement between the Parties and supersede all prior written or oral agreements, except any prior non-disclosure agreements. (b) In the event there is a conflict between these Terms and Conditions, any applicable Service Description, or the Service Order, the order of precedence shall be the terms of Service Order, the terms of the Service Description, then the terms of these Terms and Conditions. (c) Customer is not entitled to credit against amounts due except as provided in any applicable Service Description; in no event shall a Customer engaged in cryptocurrency mining be entitled to credit against amounts due for times during which its equipment is not running, whether due to customer or Bluebird disruption of service. (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) These Terms & Conditions 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 these Terms & Conditions shall be deemed to constitute any permanent or general waiver. (g) If any term in these Terms & Conditions is held invalid or unenforceable in any respect, then the remainder of these Terms & Conditions shall not be affected, and each term or condition of these Terms & Conditions shall be valid and enforceable to the full extent permissible by law. (h) These Terms & Conditions create no partnership, joint venture, or agency relationship between the Parties and result in no joint service offerings or ownership by Customer of any Bluebird equipment, fiber or other appurtenance related to the Services. (i) If Bluebird seeks to enforce any term or condition of or related to these Terms & Conditions, 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 these Terms & Conditions. (l) Bluebird may verify and use Customer's credit information as needed. (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. Any such security deposit shall be used to offset amounts due at the time of termination of Services; the remaining deposit amount, if any, shall be returned to Customer within 45 days of termination. (n) The sections pertaining to Customer's payment of amounts due, and both Parties' confidentiality, liability, and indemnification obligations shall survive termination of these Terms & Conditions regardless of the reason for the termination. (o) These Terms & Conditions 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 these Terms & Conditions shall be Jackson County, Missouri.

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