

BluBOX END USER SUPPORT AGREEMENT

This "Agreement" is made between:

BluBOX Security, Inc. 9 Bartlett Street, Andover, MA 01803, (BluBOX), and

AND

_____ (Customer),

with premises at _____

for the services listed in BluBOX's quotation specified below and shall be subject to the attached standard terms & conditions, schedules, and any other subsequent and mutually agreed-upon Change Orders as signed by both Parties.

1. **QUOTATION #** (If Applicable): _____

2. **SYSTEM(S) OR FACILITY(S) COVERED:**

3. DESCRIPTION OF SERVICES

Item	Coverage Period	Annual Price
_____	_____	_____
_____	_____	_____
_____	_____	_____

Prices do not include sales tax, permits, shipping, or customs fees, which will be added as applicable at the time of invoicing.

Prices for years after the nearest year do not take into account equipment additions or removals and are subject to change in accordance with the terms of this Agreement.

4. INVOICING FREQUENCY

Services are billable in advance.

5. EXPLANATION OF SERVICE LEVEL

Standard Support: Subject to the other terms and conditions of this Agreement, the charges generally cover the following:

- Service call placed by contacting BluBØX Support preferably by entering a Service request on BluSKY. Telephone call or e-mail to Support@BluBØX.com are also acceptable.
- Response provided 8:00am to 5:00pm (Facility's Local Time) Monday through Friday, except holidays, with an eight (8) hour response goal.
- Labor and materials required to perform covered repairs and/or replacements due to normal wear-and-tear. (Materials used in any such replacement may be from BluBØX's inventory and shall be of substantially equal quality and performance, but not necessarily new. The decisions of whether to repair or replace and whether to use new or used shall be based upon BluBØX's sole discretion).
- Support and upgrades to locally-installed software, if any.
- Remote support and diagnostic services including live statistical health data on system (requires internet connectivity),
- Response outside normal service hours is provided, but will be charged at prevailing time & materials rates.

The Standard Support charges do NOT include:

- Any repairs, replacements, reprogramming or resetting of one or more System components that may be required on account of fire, theft, flood, storm, criminal behavior, Force Majeure, howsoever caused, including negligence or accident.
- Any repairs, replacements, reprogramming or resetting of one or more System components that may be required after extended power failure or any other event of Customer's servants, agents or of any third party,
- Repairs or replacements to the Excluded Items for whatever reason.
- Travel time and expenses beyond 20 miles of a Company service center.

- Replacement to equipment due to obsolescence or incompatibility with newer system components.

6. AUTHORIZATION

By signing below 1) Customer indicates that this Agreement is accepted; 2) Customer Intends for BluBØX to proceed with its obligations as defined herein; 3) Customer agrees to pay the Annual Costs as indicated herein (plus any applicable taxes); 4) Customer agrees to the terms and conditions printed on the pages attached to this Agreement, 5) Customer acknowledges having read and understood the Agreement and its terms & conditions, and 6) Customer represents that no changes have been made to them.

7. ACCEPTANCE

For CUSTOMER:

SIGNATURE

NAME

TITLE

FOR BLUBOX Security, Inc:



Patrick deCavaignac
Sr. VP and Chief Operating Office

SUPPORT AGREEMENT STANDARD TERMS & CONDITIONS

1. DEFINITIONS

- 1.1. **Anniversary Date** is the day on which the Agreement shall commence and upon which the invoicing of Support services shall be based.
- 1.2. **Authorized User** shall mean any person for whom a record exists in BluSKY's people database.
- 1.3. **Beneficial Use** indicates the substantial availability of the System to the Customer. Minor additions, deficiencies, adjustments or corrections are not considered in the determination of Beneficial Use.
- 1.4. **Documentation** refers collectively to documents, submittals, drawings, manuals, and the like, in paper or electronic form, that are provided to the Customer by BluBOX.
- 1.5. **Equipment** means, collectively, hardware, devices, components and other materials listed in the Quotations and Change Orders that are the object of the services to be provided under this Agreement.
- 1.6. **in-Service Date** is the first day when the Customer has Beneficial Use of the System.
- 1.7. **Quotation** refers to the BluBOX quotation(s) and change orders that list the items of Equipment and the services that BluBOX proposed to provide, and the price and fees that are to be paid by the Customer for such Equipment and services. Normally, the Support Agreement pertains to the listed Equipment and conforms to the pricing of the proposed services.
- 1.8. **System** means, collectively, the equipment, the devices and the software that are locally-installed on Customer premises to form the BluBOX security system. Note that a System may serve several Facilities.
- 1.9. **Services** means, collectively, system design, project management, system integration, installation, programming, testing, warranty, system support and any other service that is rendered to Customer by BluBOX.
- 1.10. **Service Plan** refers to an agreement in which BluBOX is contracted to provide a level of support to the Customer for a periodically-paid fee.
- 1.11. **Third Party Equipment** means equipment which is proprietary to a third party (other than an affiliate of BluBOX).
- 1.12. **Third Party Software** means software which is proprietary to a third party (other than an affiliate of BluBOX).

2. LICENSES, RESERVATION OF RIGHTS.

- 2.1. Subject to the terms and conditions of this Agreement, BluBOX hereby Customer a limited, non-exclusive, royalty-free, non-transferable, non-sublicensable, license to use the locally-installed Third Party software and any documentation for the sole purpose of operating the System.
- 2.2. Customer acknowledges and agrees that its use of any Third Party Software and/or Third Party Equipment provided by BluBOX in connection with the System may be subject to the terms and conditions of the licenses or other agreements that were supplied by the Third Party licensor or supplier.
- 2.3. Customer obtains a license to use the BluSKY software by paying the appropriate BluSKY monthly licenses fees. These fees may be included in the fee charged for this Support Agreement, or may be billed separately. Customers' use of BluSKY software is governed by the BluSKY Sponsor's User License Agreement.
- 2.4. A Sponsor may designate certain people as Authorized Users who shall have limited access to and use of the BluSKY Software. Such users shall be subject to the terms of BluSKY's click-through End User License Agreement. This Agreement is subject to periodic updates; the most current and active version can be viewed at www.BluBOX.BluSKY.com.
- 2.5. Customer will not (a) copy, or permit a third party to copy any software or documentation; However, Customer may make one copy of the software and the documentation for back-up purposes, (b) alter, or permit a third party to alter, any part of any software or documentation; (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any software or permit a third party to do any of the foregoing; (d) use the software for purposes of providing a service bureau, including, without limitation,

providing Third Party hosting, or Third Party application integration or application service provider type services; (e) sublicense, sell, transfer, lease, or disclose any Software or documentation, or include or transfer any computer instructions, routines, devices, viruses, or software code whose purpose is to disrupt or damage or interfere with the use of computer and telecommunications facilities or to perform functions which are not an appropriate part of the functionality of the System or whose intended result is to disrupt processing.

- 2.6. BluBOX reserves all right, title and interest in and to the Software and Documentation not expressly granted to Customer herein.
- 2.7. If a Service Plan includes Software Upgrades, new Software releases that include enhancements, modifications, or error corrections, shall be provided as needed. Major upgrades or versions that are separately priced and licensed by BluBOX as new products are not included under Service Plans.
- 2.8. BluBOX may, upon its own initiative, upgrade Customer's Security System to the newest applicable release of the Software, either as part of a routine service intervention or, if in BluBOX's sole judgment, the new release is likely to resolve a problem with Customer's Security System. Labor which is required to install a new release of the Software is covered under this Service Plan. Any upgrades to infrastructure and/or equipment that may be needed to install the upgrade are not covered under this Agreement

3. **PRICING AND PAYMENT TERMS.**

- 3.1. Prices and payment terms for the Services provided under this Agreement are set forth in this Agreement and are payable to BluBOX.
- 3.2. Any charges, fees and other amounts due under this Agreement shall be due and payable within forty-five (45) days from Customer's receipt of an applicable invoice.
- 3.3. If Customer fails to pay any amount required in accordance with this Agreement within ten (10) business days following the payment due date, BluBOX shall supply a written notice to Customer asking that the default be cured within five (5) business days. If payment is not made, then, in addition to any other rights that BluBOX may have, BluBOX shall have the right to suspend or terminate delivery of all or a portion of the Services to Customer. Access to the applicable Services may not be reinstated until Customer pays all overdue amounts.
- 3.4. At no time may Customer withhold the payment of any portion of any fee that is not subject to a good faith dispute as defined herein.
- 3.5. All such disputes must be raised and presented to BluBOX in accordance with this Section. In the event that Customer disputes any fees, Customer shall cooperate with BluBOX in good faith, to promptly resolve such dispute.
- 3.6. Customer agrees to pay or to reimburse BluBOX for all charges, fees, expenses, permits, and the like by any utility or governmental authority related to the provision of Services to Customer under this Agreement.
- 3.7. Unless specifically indicated, the fees listed in this Agreement do not include taxes, permits, or other such fees; therefore, Customer shall be responsible for all taxes, tariffs, permits, and transportation costs related to this Agreement (including any value added, customers or sales taxes) other than taxes on BluBOX's income. Customer shall pay or reimburse BluBOX for all sales, use, excise, personal property, value-added, or other federal, state, or local taxes, duties, or any similar assessments based on the System sold and/or the services provided under this Agreement or on the Customer's use of the System.
- 3.8. If Customer intends to provide a Certificate of Tax Exemption, Customer must provide a valid and fully completed Certificate within three (3) days of Agreement approval. Absent such a Certificate, BluBOX must invoice the Sales Tax and must remit it to the State immediately after invoicing. If a valid Certificate is received after one or more invoices have been rendered, BluBOX will discontinue the invoicing of Sales Tax on later invoices. However, under no circumstances can previously-invoiced Sales Tax be rebated. Customer shall pay any Sales Tax that was invoiced up to five (5) days prior to the date that a fully executed certificate satisfactory to BluBOX was received by BluBOX.
- 3.9. BluBOX reserves the right to modify the fees due under this Agreement once each year. Customer has the right to affirmatively reject any such price increase by written notice at least thirty (30) days prior to the expiration of the then-current Term of this Agreement, or thirty (30) days after the announcement of the price increase, whichever comes last. In the event Customer rejects a price increase, this Agreement shall be terminated when it expires.

4. SYSTEM SUPPORT CHARGES

- 4.1. System Support charges will commence on the In-Service Date. In the case of a previously installed System, a pre-inspection of the System may first be required. Charges for the period between the In-Service Date and the Anniversary Date shall be invoiced on a pro-rata basis and will be payable in the first billing period. During the term of this Agreement, Customer shall pay the System Support charges specified in the Quotation and any Addenda thereto. The initial System Support charges are those shown detailed in the Quotation and apply to the term that starts on the Anniversary Date and shall terminate per the conditions of this Agreement. All stated charges are exclusive of any federal, state, or local taxes Customer shall be responsible for the payment of such taxes, excluding usage taxes that may be due on the services or the replacement components which are furnished hereunder. The annual System Support charges do not cover costs that may be applicable to interventions that are excluded under various sections of this Agreement.
- 4.2. BluBOX reserves the right to increase System Support charges (including software licensing) on each Anniversary Date. Customer shall have thirty (30) days from the date of renewal to determine whether to accept the increase or cancel the Agreement. In the event the Agreement is canceled, Customer shall pay any charges due up to the date of cancellation pursuant to the pre-notice rates.
- 4.3. This Agreement covers the support of System(s) only at the location(s) were first recorded in the Quotation. Customer shall provide BluBOX with timely written notification that System components shall be or have been permanently removed. Upon receipt of such notification, BluBOX will delete the Components from the Equipment covered under the Agreement. Support charges already billed or applicable to the quarter in which notice was received will remain due. The support charges for the quarter following the removal of the Components shall be reduced in the amount of the applicable Component support costs. Any adjustment that may be due on account of the relocation of the Components shall be reflected in the System Support costs that cover the quarter immediately following the quarter in which the relocation was effected.
- 4.4. Customer will be billed all labor, materials, freight, and insurance charges pertaining to the relocation or removal of System Component(s).
- 4.5. Support for any Service out of the scope of this Agreement, work incident to any of the Exclusions detailed herein, and equipment not listed in the Quotation or Attachment(s) shall be invoiced at BluBOX's then current time and material rates as detailed at www.BluSKY.com. Payment for such charges shall be made in accordance with the conditions provided herein.
- 4.6. This Agreement applies to the entire System, not to individual components. At any time during the term of this Agreement, Customer shall allow the addition of any newly purchased System Components to the Agreement. Such additions will cause an immediate increase in the Annual Costs of the Agreement. In the event a System Component is added to this Agreement, the Anniversary Date of the Agreement shall not be altered.

5. TERM AND TERMINATION

- 5.1. Unless terminated earlier in accordance with this Section or the Rider, the initial term for this Agreement shall be effective for a period of three (3) years from the Anniversary Date. Thereafter, unless terminated earlier in accordance with this Section, the term for Services shall automatically renew for additional one (1) year terms (each a Renewal Term, and collectively with the Initial Term, Term), unless either Party provides written notice of its intention not to renew at least ninety (90) days prior to the expiration of the Term. Upon BluBOX's option, it may terminate this Agreement if (i) at any time a petition in bankruptcy shall be filed by or on behalf of Customer, or (ii) upon Customer's action upon any insolvency law, or (iii) a receiver or trustee of any of Customer's property is not removed within ninety (90) days after appointment. Customer reserves the right at any time to terminate this Agreement upon written notice if Customer, in Customer's sole opinion, determines that BluBOX or any of its agents or employees has been negligent, wasteful, dishonest or otherwise unsatisfactory in performing the services pursuant to this Agreement.
- 5.2. Upon any termination of this Agreement, all rights and obligations of the Customer and BluBOX under this Agreement will cease except for: (a) Customer's obligation to make any payment of any fees properly accrued on or prior to the date of termination, and (b) the obligations of Customer or BluBOX under Sections 2, 5, and 14 through 15.
- 5.3. If detailed in the Quotation, BluBOX shall provide Internet Service Provider (ISP) services inclusive of line charges. Regardless of any other billing cycle within this or other BluBOX Agreements, Customer shall pay BluBOX annual in advance for all ISP invoices.

- 5.4. Customer shall be responsible for paying all fees in connection with any ISP or telecom Agreement resulting from any early termination of the ISP or telecom Agreement by Customer for any reason.
- 5.5. Prices payable by Customer for Connectivity Services are subject to change upon notice to Customer. If Customer fails to pay any fees in connection with any ISP or telecom Agreement, the Connectivity Services may be suspended. Any restoration of service costs shall be borne by Customer.
- 5.6. BluBOX shall provide detailed information upon commencement of the warranty/service period with directions relating to obtaining service, support interventions, and other operational procedures. These procedures are subject to modification from time to time.

6. SERVICES PROVIDED

- 6.1. In consideration of the timely payment of the amounts due, BluBOX will provide the Services detailed in the Quotation.
- 6.2. BluBOX will perform Services set forth in the Quotation. Except as otherwise set forth in the Quotation, Customer is solely responsible for any requirements not defined in the Agreement.
- 6.3. Unless agreed otherwise in writing, services under this Agreement shall be provided Monday through Friday excluding holidays during the normal business hours of 8:00 am to 5:00 pm (Local Time to the Service Location). Customers may request that remote diagnostic and/or on-site services outside of the covered hours, which will be billed at BluBOX's then current time and material rates as detailed at www.BluSKY.com. Payment for such charges shall be made in accordance with the conditions provided herein.

7. CUSTOMER RESPONSIBILITIES

- 7.1. Customer agrees (a) not to knowingly use the System or Documentation in violation of any applicable laws or regulations; (b) to supply all licenses, permits, and other authorizations necessary to install, operate and support the System; (c) to comply with the requirements set forth in the Quotation; (d) to ensure that the System is used properly in accordance with the operating instructions issued by BluBOX and manufacturers; (e) not to alter, interfere or permit any alteration or interference with the System or connect any other equipment to the System; (f) to permit BluBOX reasonable access to the System in the Customer's Premises for installation at all reasonable times, subject to the rights of tenants of the premises; (g) to obtain and pay for the cost of any communication service or other equipment required for operating the System, unless specifically included in the Quotation; (h) to provide free of charge to BluBOX electricity and all other consumables for the System and, unless specified otherwise in the Quotation, to cause to be furnished and installed the power circuits at all security points for which they are required; (i) to provide facilities with environments suitable for and meeting the requirements for the equipment provided by BluBOX (including protection from excessive heat, cold, moisture, insufficient ventilation, dust, hazardous materials, vandalism, and other items that may interfere with the System); (j) to provide secure and environmentally suitable storage for all equipment shipped to the premises until it is installed by BluBOX (Customer assumes the risk of damage or loss for all equipment that has been shipped to or installed at the premises.); (k) to cause to be furnished and installed the fire system monitored relays at all security points for which they are required including the installation of the cables and programming to connect the relays to the fire alarm panel(s) for the activation of those relays, unless specifically stated in the Quotation; (l) to arrange suitable training for its staff in use of the System; (m) to ensure that all disc and data files that may be affected in any way by the installation or continuing operation of the System are adequately backed up and secured; (n) to take financial responsibility for any modifications or additions to the System required by the authority having jurisdiction; (o) to furnish appropriate levels of insurance to protect the Equipment and the Customer's property from all casualties (it is understood by Customer that this Agreement provides no insurance against loss); (p) to perform all preventive maintenance or routine maintenance actions specified by BluBOX; (q) not to alter, interfere or permit any alteration or interference with the System or connect any other equipment to the System; (r) to initially determine that the System is in fact malfunctioning before requesting maintenance services (Actions taken by BluBOX to respond to service requests in which it is subsequently discovered by Customer or BluBOX that there was no malfunction covered under this agreement shall be billed to Customer at BluBOX's then-current time and materials); (s) to follow any problem identification procedure specified by BluBOX for the System; (t) to implement appropriate safeguards to protect all Customer-specific programs and data at all times and especially before the System is serviced; and (u) unless specifically included in the Quotation, to obtain and pay for the cost of any communication service or other equipment required for operating the System. This Agreement and each other agreement executed and delivered in accordance with this Agreement constitutes the valid and binding agreement of Customer, enforceable against Customer in accordance with its terms.

8. EXCLUSIONS

- 8.1.** This Agreement does not cover certain types of interventions or malfunctions including: (a) the installation, removal or relocation of a System or any of its components not provided for in the Quotation; (b) the provision or installation of supplies or accessories and the performance of preventive maintenance procedures not provided for in the Quotation; (c) any alterations including the installation of optional or mandatory engineering updates which could reasonably be installed by Customer as detailed herein; (d) any malfunction of the System which is due to an improper operating environment, (including, without limitation, 1) damage by water or lightning; 2) inadequate electrical power (including low power, unstable power, power surges, or power failure); 3) inadequate ventilation, air temperature, or humidity control; or 4) accumulation of dust or dirt; (e) any malfunction of the System which is due to (1) misuse including abnormal, excessive, neglectful, or abusive utilization of the System or any of its components; 2) use of faulty media; 3) tampering, including maintenance performed by persons other than authorized representatives of BluBOX or unauthorized alterations of any Equipment or Software component of the System; 4) the unauthorized connection of other hardware, software, equipment, components or other materials to the System by mechanical or electrical means, or 5) the malfunction of such other hardware, software, equipment, components or other materials whether the connection was authorized or not; (f) any malfunction of the System which is due to (1) a change in the software environment in which the System was originally installed, including changes made by the client to the Operating System or related files including registry files, .dll files and the like; 2) a change to the network environment variables; 3) the loading of unauthorized software onto any of the System's PCs; (g) unless specifically provided in the Quotation, any lift, hoisting, or other machinery required for Service; (h) cable material and cable labor required for any post installation Service; (i) any labor that is expended in the recovery, modification, or manipulation of Customer's variable data; 0) unless specifically provided in the Quotation, any equipment not installed by BluBOX or its subcontractors; and (k) any intervention which is found to have been unnecessary, (including, without limitation: 1) interventions where the System is found to be functioning normally, or 2) where the malfunction was due to causes other than the malfunction of a component of the covered System, including failure by Customer to properly operate the System or attempts by Customer to move a component of the System or load new software onto the System.)
- 8.2.** Any work done by a third party shall be borne by Customer, whether such work was done on the System or on any other system with which the System interfaces unless BluBOX has given prior written authorization for the third party to perform the work.

9. INSURANCE. See Rider.

- 10. BASIS OF THE BARGAIN; FAILURE OF ESSENTIAL PURPOSE.** Customer acknowledges that BluBOX has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between Customer and BluBOX. Customer and BluBOX agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

11. CONFIDENTIAL AND PRIVATE INFORMATION

- 11.1.** Parties acknowledge that during the course of the Agreement, information may be disclosed by one Party (Disclosing Party) to the other Party (Recipient). It is understood that such information may be of a competitively sensitive or proprietary nature in connection with this Agreement ("Confidential Information"). Recipient of such information agrees to hold such Confidential Information in strict confidence and to use the same only for purposes of performing obligations hereunder. Recipient agrees that it will not disclose any such Confidential Information to any party, other than furnishing such Confidential Information to its employees who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Agreement; provided that such employees are bound by written agreements respecting such Confidential Information in accordance with the terms of this Section. Parties agree that Recipient will not allow any unauthorized person access to the Confidential Information, either before or after the termination of the Agreement, and that Recipient will take all action reasonably necessary and satisfactory to Disclosing Party to protect the confidentiality of the Confidential Information, including without limitation implementing and enforcing operating procedures to minimize the possibility of unauthorized use or copying of Confidential Information and limiting access to only those employees who have a need to know for purposes of performing the Services, have been advised of the confidential nature, and are under an express written obligation to maintain such confidentiality. These restrictions shall not apply to (a) information generally available to the public or (b) information released by a Party generally without restriction. Recipient

agrees to provide Disclosing Party notice immediately after learning of or having reason to suspect a breach of any of the confidentiality obligations set forth in this Agreement. Notwithstanding the foregoing restrictions, Recipient may disclose information to the extent required by an order of any court or other governmental authority, but only after Recipient has notified and given Disclosing Party a reasonable opportunity to obtain protection for such information in connection with such disclosure. Upon any termination of this Agreement, Parties shall return all tangible embodiments of the other Party's Confidential Information.

- 11.2. Parties agree not use the System or Services to transmit, store or exchange any private or consumer related information including but not limited to Social Security Numbers, Driver's License numbers, State-issued Identification Card numbers, financial account numbers, Debit or Credit Card numbers.

12. WARRANTY

- 12.1. BluBOX warrants that all equipment, software, replacement equipment components and software upgrades furnished pursuant to this Agreement shall be free from defects in materials and workmanship at the time of installation. Such equipment shall not necessarily be new but will be of the quality to support their intended functions.
- 12.2. The foregoing warranties do not cover damage to the System (or any part thereof) due to problems caused by Customer's negligence, abuse or misapplication, any failure to comply with the Environmental Requirements, other external causes (including, without limitation, hardware or software installed by Customer or other parties not subcontracted by BluBOX, accident, abuse, misuse, problems with electrical power, servicing or modifications not authorized by BluBOX) or usage not in accordance with the Agreement
- 12.3. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION, AS ALLOWED BY LAW, BLUBOX MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE AND FITNESS FOR A PARTICULAR PURPOSE.
- 12.4. Warranty coverage for any service out of scope work of this Agreement, work incident to any of the Exclusions detailed herein, and equipment not listed in the Quotation or Attachment(s) shall be invoiced at BluBOX's then current time and material rates as detailed at www.onefacility.com. Payment for such charges shall be made in accordance with the conditions provided herein.

13. OMITTED

14. INDEMNITY. See Rider

15. GENERAL PROVISIONS

- 15.1. This Agreement may not be assigned by BluBOX without the express written consent of Customer, which consent shall not be unreasonably withheld, provided, however, that either Party may assign any or all of its rights and obligations under this Agreement without the other Party's written consent to any affiliate or to a third party by way of merger, acquisition, consolidation, or sale or transfer of all or substantially all of BluBOX's assets or capital stock; provided that such assignee shall expressly assume all of the assigning Party's obligations under this Agreement by written notification delivered to the non-assigning Party. Any attempted assignment, delegation, or transfer in violation hereof shall be invalid. Subject to the foregoing, the rights and liabilities of Customer and BluBOX hereunder will bind and inure to the benefit of their respective successors and assigns. Customer may assign this agreement to any successor manager of the premises or to any purchaser of the premises provided that any successor manager or purchaser expressly assumes all Customer's responsibilities under this Agreement.
- 15.2. Parties shall not be responsible for any failure to perform or delay in performing, except for Customer's obligations to make payments as detailed herein, due to causes beyond its reasonable control, including, but not limited to, (i) any fire, explosion, unusually severe weather, natural disaster or Act of God/Nature; (ii) epidemic; any nuclear, biological, chemical, or similar attack; any other public health or safety emergency; any act of terrorism; and any action reasonably taken in response to any of the foregoing; (iii) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (iv) any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (v) any strike, lockout or other labor dispute or action; (vi) any action taken in response to any of the foregoing events by any civil or military authority; or (vii) any other event beyond Party's control.

- 15.3. All disputes, claims, or controversies arising out of this agreement, or the negotiation, validity or performance of this agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the State of Delaware without excluding that body of law applicable to choice of law. Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Agreement.
- 15.4. To the extent permitted by any Law now or hereafter in effect, Parties hereby waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in every action, proceeding or hearing brought by either Party, concerning any matter whatsoever arising out of, or in any way connected with this Agreement, the relationship of Parties, Parties' use or occupancy of the Property, any claim of injury or damage, or the enforcement of any remedy under any Law now or hereafter in effect. Notwithstanding the foregoing, Parties agree that this waiver shall not be effective where the legal effect of such waiver would be to Invalidate In whole or In part, or to limit or Impair in any manner any policy of insurance in force for the benefit of either Party or to limit or Impair any rights, remedies or coverage afforded thereunder.
- 15.5. Any notice under this Agreement will be in writing and delivered by personal delivery, overnight courier, ' certified or registered mail, or return receipt requested, and will be deemed given upon personal delivery, two (2) days after deposit with overnight courier or five (5) days after deposit in the mail or twenty-four (24) hours after Customer receives delivery receipt confirmation. Notices will be sent to Customer or BluBOX at its address and to the designee set forth in the Quotation or such other address and designee as Customer or BluBOX may specify in writing pursuant to this Section.
- 15.6. Nothing in this Agreement will be construed to imply a joint venture, partnership, or agency relationship between Customer or BluBOX, and BluBOX will be considered an independent contractor when performing services under this Agreement.
- 15.7. No failure or delay by Customer or BluBOX in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as any waiver of any such right, power, or remedy.
- 15.8. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way Customer and BluBOX agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 15.9. The Rider attached hereto is hereby incorporated into, and made a part of, this Agreement. This Agreement, including the Quotation(s), all subsequent Change Orders or Schedules, and the Rider attached hereto, expresses the entire understanding of the Parties and supersedes and replaces all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof. In the event of a conflict between these terms and conditions and any attachment hereto, these terms and conditions shall control unless the applicable Exhibit specifically states otherwise. However, as between these terms and conditions and the Rider, the Rider shall control, The Agreement may not be modified or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of each Party. Any failure to exercise or delay in exercising any right, power or privilege granted under the Agreement shall not operate as a waiver of such right, power or privilege or preclude any further exercise thereof or the exercise of any other right, power or privilege.

**RIDER
TO
CONTINUING SERVICE AGREEMENT**

A. SERVICES: Unless otherwise provided in this Agreement, Contractor shall furnish, at Contractor's sole cost and expense, all supervision, labor, supplies, tools, materials and equipment, and the transportation, handling and storage thereof, to perform the Services at the time(s) and as further specified and described in this Agreement. Contractor shall perform the Services diligently and in a first class manner, using its best skill and judgment and only first quality supplies, materials, equipment and workmanship. Contractor shall perform the Services in such a manner as to minimize the possibility of any annoyance, interference, or disruption to the occupants of the Property.

B. TERM: This Agreement shall be for a term commencing on the Commencement Date set forth on page 1 of this Agreement and, unless sooner terminated pursuant to any provision hereof, ending on the Termination Date set forth on page 1 of this Agreement without the need for any notice from either party to the other. However, notwithstanding the foregoing, Manager may at any time and without cause, terminate this Agreement in whole or in part upon thirty (30) days' prior written notice to Contractor. In addition, Manager reserves the right at any time to terminate this Agreement: (1) immediately, if Manager, in Manager's sole opinion, determines that Contractor or any of its agents, servants, employees, subcontractors, suppliers or materialmen has been negligent, wasteful, dishonest or otherwise unsatisfactory in performing the Services pursuant to this Agreement, or (2) upon seven (7) days' written notice, in the event of a sale of the Property. Termination of this Agreement shall be without prejudice to Manager's right to recover damages from Contractor, or any other rights and remedies of Manager under this Agreement or available at law or equity.

C. INDEPENDENT CONTRACTOR/EMPLOYEES/SUBCONTRACTORS:

1. Contractor shall perform the Services as an independent contractor, maintaining complete supervision and control over its employees and any subcontractors and shall have complete discretion as to the methods and processes used in performing the Services. Contractor shall secure and maintain, at Contractor's sole cost and expense, all permits, licenses and bonds required for the performance of the Services. Contractor, at its sole cost and expense, shall comply with all laws, ordinances, rules, regulations and orders of any governmental authority having jurisdiction over the Services, including without limitation, any of the foregoing relating to the treatment, production, storage, handling, transfer, processing, transporting, use, disposal and release of hazardous, toxic or radioactive matter.

2. Contractor shall engage only trained individuals directly employed and supervised by Contractor and shall not subcontract any of the Services without the prior written consent of Manager. Neither Manager's approval of any subcontractors nor the failure of performance by any subcontractors shall relieve, release or affect in any manner any of Contractor's duties, liabilities or obligations hereunder, and Contractor shall be and remain fully liable hereunder at all times.

3. If Manager, in Manager's reasonable opinion, determines, for any reason, that any particular employee, or subcontractor, supplier or materialman is unsatisfactory to Manager, then written notice from Manager to Contractor, Contractor shall remove said employee, subcontractor, supplier or material man, and shall provide a qualified substitute. All personnel furnished by Contractor will be deemed employees of Contractor and will not for any purpose be considered employees or agents of Manager, and Contractor shall comply with all employment laws relative to such employees, including but not limited to Wage and Hour laws, Worker Compensation Laws, Immigration Laws and OSHA-type laws.

4. In performing the Services, Contractor shall exercise the highest degree of care to prevent accidents and injuries to persons (including, without limitation, Contractor's employees) and damage or loss of property in, on or about the Property, and shall promptly comply with any reasonable direction of Manager for the prevention and elimination of safety hazards.

D. LIENS AND ENCUMBRANCES: Assuming Manager has made all timely and appropriate payments required to Contractor, to the extent permitted by applicable law, Contractor, for itself and on behalf of all subcontractors, suppliers, materialmen and others claiming by, through or under Contractor, hereby waives and releases any and all

statutory or common law mechanics', materialmen's, construction or other such lien claims, or rights to place a lien upon the Property or any improvements thereon in connection with any Services performed under or in connection with this Agreement. Contractor further agrees to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and a release of lien respecting the Services at such time or times and in such form as may be reasonably requested by Manager. Contractor shall protect the owner of the Property (Owner) and Manager from all liens for labor performed, materials supplied or used by Contractor and/or any other person in connection with the Services undertaken by Contractor hereunder, and shall not at any time suffer or permit any lien, notice of lien, stop notice or attachment or encumbrance to be imposed by any subcontractor, supplier or materialman, or other person, firm or corporation, upon the Property or any improvements thereon, by reason of any claim or demand against Contractor or otherwise in connection with the Services.

E. RELEASE: Contractor shall bear the risk of loss or damage to any tools, equipment and materials which Contractor stores in or about the Property, whether due to fire, theft, vandalism or any other cause whatsoever. To the extent permitted by applicable law, Contractor agrees to look solely to its insurers, and does hereby release and waive any and all rights it has now, or may in the future have, to recover against Owner, Manager and each of their trustees, beneficiaries, general and limited partners, officers, agents, servants, affiliates, or employees (collectively, the Releasees) for loss or damage to property, or personal injury or death (including, but not limited to, claims for damage to property of Contractor and injury to, or death of, employees of Contractor and claims for contribution or indemnity or for reimbursement of workers' compensation benefits), in any way relating to or resulting from the Services performed or to be performed under or in connection with this Agreement. Contractor hereby waives all rights of subrogation of its insurers with respect to claims against Releasees.

F. DAMAGE TO PROPERTY: Contractor shall, at its own expense, repair or cause to be repaired or reimburse Manager for any damage to Owner's or Manager's property, other than that necessary for the proper execution of the Services, caused by Contractor or any of its employees, subcontractors, suppliers or materialmen.

G. INSURANCE: Contractor shall at all times during the Term, and any extension or continuation of this Agreement, obtain and maintain, at its sole cost and expense, and require all subcontractors to obtain and maintain, the following insurance which shall name Owner, Manager and their partners, beneficiaries, trustees and affiliates as additional insureds, and which shall insure Owner, Manager, their affiliates and Contractor against all of the various claims, liabilities and attorney's fees described in Article H hereof including: (1) commercial general liability (including products and completed operation and contractual liability) in the amount of either (a) \$1,000,000 per occurrence/\$2,000,000 aggregate for bodily injury, death or property damages or (b) \$1,000,000 per occurrence/\$1,000,000 aggregate with an umbrella of \$1,000,000 per occurrence/aggregate for bodily injury, death or property damages; (2) automobile liability in the amount of at least \$1,000,000 combined single limit for bodily injury, death or property damages, per occurrence; (3) applicable workmen's compensation in statutory limits, and employer's liability insurance in the amount of at least (a) \$100,000 each accident, (b) \$500,000 disease-policy limit and (c) \$100,000 disease-each employee; and (4) any other insurance commonly used by contractors for services of the type performed pursuant to this Agreement. Insurance required under this Article shall be with companies rated A-VII or better in Best's Insurance Reports and shall be written as primary policy coverage and not contributing with or in excess of any coverage which Manager, Owner or their affiliates may carry. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days' prior written notice to Manager. Contractor may provide any of the foregoing insurance under a blanket policy or policies. Contractor's additional insured obligations cannot be transferred to a subcontractor. If Contractor subcontracts any work under this Agreement, Contractor's obligation to provide additional insured status to Owner, Manager and their partners, beneficiaries, trustees and affiliates under their commercial auto and commercial general liability insurance shall not be assigned. Contractor and any subcontractor shall not be permitted to satisfy any of its insurance obligations set forth in this Agreement through any self-insurance or self-insured retention.

H. INDEMNIFICATION: Contractor shall defend diligently, indemnify and hold harmless Manager, Owner and each of their past, present and future general and limited partners, and the affiliates, officers, trustees, agents, servants and employees of Manager and Owner and such partners, from and against any and all claims, demands, losses, damages, injuries (including death) to any persons (including, anyone employed directly or indirectly by Contractor, Manager or Owner), liabilities, costs, expenses, judgments, liens, encumbrances, order and awards, including claims, against Manager or Owner for express or implied indemnity or contribution arising by reason of any of the above, (collectively, the claims), together with reasonable attorneys' fees and litigation expenses, to which Manager or Owner may become subject by reason of any acts or omissions of Contractor or any of its employees or subcontractors or anyone else claiming by, through or under Contractor. Contractor promptly shall satisfy and discharge any judgment which

nevertheless may be rendered against Manager or Owner as a result of any such claims. The foregoing indemnity shall not be limited in any way by any other provision of this Agreement or by limitation on the amount or type of damages, compensation, proceeds or benefits payable by or for Contractor, its employees, subcontractors, materialmen, laborers, agents, or representatives under insurance policies, workers or workmen's compensation acts, disability benefit acts, or other employee benefit acts. Contractor's indemnification cannot be transferred to a subcontractor. If Contractor subcontracts any work under this Agreement, Contractor's obligation to indemnify Owner, Manager and their partners, beneficiaries, trustees and affiliates under their commercial auto and commercial general liability insurance as set forth above cannot be assigned. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Section H shall not exceed the limits of the insurance required to be carried by Contractor pursuant to Section G above.

I. NOTICES: Every notice or other communication to be given by either party to the other with respect to this Agreement shall be in writing and shall not be effective for any purpose unless the same be served personally or by United States certified mail, return receipt requested, postage prepaid, addressed if to Manager or to Contractor at the address first above set forth, or at such other address as Manager or Contractor may from time to time designate by notice given as above provided. All notices shall be deemed given on the date the return receipt, or other receipt in the event of personal delivery, is signed or delivery is rejected by the addressee.

J. ATTORNEY'S FEES: In the event that any action, suit or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorneys' fees and expenses incurred in each and every such action, suit or other proceeding.

K. WAIVER: Any failure of Contractor or its insurers to comply in full with any of the provisions of this Agreement, and any failure by Manager to enforce the provisions of this Agreement, shall in no way constitute a waiver by Manager of any contractual right hereunder, unless such waiver is in writing and signed by Manager.

L. VOIDABILITY: In the event that any provision of this Agreement shall be held to be void, voidable or unenforceable, the remaining portions hereof shall remain in full force and effect.

M. CHOICE OF LAW: The rights and duties arising under this Agreement shall be governed by the laws of the State in which the Property is located.

N. AGENCY/LIMITATION OF LIABILITY: Manager represents that it is the duly authorized agent of Owner and has full power and authority to act for and on behalf of Owner in entering into this Agreement and in all matters arising under this Agreement. Neither Manager nor any principal of Manager, nor any officer, director, partner, trustee, employee or other agent of the same shall have any personal liability in connection with this Agreement or the Property. If Owner should have any liability under this Agreement or otherwise, Contractor shall look solely to the equity of Owner in the Property for the satisfaction of Contractor's claims against Owner. In the event of a sale of the Property while this Agreement is in effect, the purchaser shall be deemed to have assumed this Agreement, and thereafter Manager and Owner shall be released from any liability hereunder accruing after the date of such sale.

O. TIME: All time limits provided in this Agreement are of the essence of this Agreement.

P. SURVIVAL: Except as expressly provided to the contrary herein, all provisions of this Agreement shall survive all performances hereunder.

Q. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Contractor may not assign this Agreement or any of the payments due or to become due to it hereunder without obtaining Manager's prior written consent.