# END USER AGREEMENT

This End User Agreement is entered into by BlueCat Networks (USA) Inc., with respect to Customers located in the United States of America, and BlueCat Networks, Inc., with respect to Customers located outside the United States of America, in either case, "**BlueCat**" and the company indicated below ("**Customer**"), effective as of the later date of signature indicated below.

| | |
|---|---|
| **Customer (full legal name):** | |
| **Jurisdiction of incorporation:** | |
| **Mailing address:** | |
| **Contact person (name and title):** | |
| **Telephone:** | |
| **E-mail:** | |
| **Website:** | |

Whereas BlueCat develops, owns and licenses certain software products and services in the DNS, DHCP and IPAM markets; and

Whereas Customer desires to: (a) obtain from BlueCat certain licenses for BlueCat's products; and (b) engage BlueCat to provide certain services, in each case as more fully described herein and in the applicable Purchase Order;

Now, therefore, in consideration of the foregoing recitals, the mutual covenants of the Parties in this Agreement, and other good and valuable consideration, by executing below, the Parties agree to the terms and conditions set out on the following pages.

| **BlueCat Networks, Inc. / BlueCat Networks (USA) Inc.** | **Customer** |
|---|---|
| | |
| **Vivian Leung** | **Name:** |
| **Authorized Signing Officer** | **Title:** |
| **Date:** | **Date:** |

**For notices:**

| | | | |
|---|---|---|---|
| Address: | 4101 Yonge Street, Suite 502<br>Toronto, Ontario M2P 1N6<br>Canada | Address: | |
| Phone: | 416-646-8400 | Phone: | |
| Email: | legal@bluecatnetworks.com | Email: | |

## 1. DEFINITIONS AND SCHEDULES

1.1. **Definitions.** In this Agreement, except where the context or subject matter is inconsistent therewith, the following terms shall have the following meanings, and such meanings shall apply to both singular and plural forms of any such terms:

(a) **"Affiliate"** means a Party's direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control;

(b) **"Agreement"** means this End User Agreement, all schedules annexed hereto, each Purchase Order and SOW and any other document incorporated by reference herein;

(c) **"Appliance"** means any physical computer hardware component sold by BlueCat where the Software is resident or installed;

(d) **"Confidential Information"** means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, including all technical information, data, documentation, code, prototypes and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential having regard to the circumstances surrounding disclosure. Confidential Information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;

(e) **"Documentation"** means all standard user guides, operating manuals and release notes for the operation of the Product, available in hard copy or electronic format, from BlueCat including via the Customer Care portal at https://care.bluecatnetworks.com, and any revisions, updates and supplements thereto, as approved and amended by BlueCat from time to time;

(f) "**e-Learning**" means BlueCat's computer based training courses;

(g) **"Intellectual Property Rights"** means all intellectual property and other proprietary rights, including all rights provided under trade secret law, patent law, copyright law, trade mark or

service mark law, design patent or industrial design law, semi-conductor chip or mask work law, and any other statutory provision or common law principle which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how, whether registered or not and including all applications therefor;

(h) **"Maintenance and Support"** means the maintenance services (including renewals) relating to updates, upgrades, patches, bug fixes and other improvements to the Software and the technical support services relating to the Products provided by BlueCat as described in the BlueCat Customer Care Support Handbook;

(i) **"Party"** means either BlueCat or Customer and "Parties" should be interpreted accordingly;

(j) **"Product"** means any and all software, hardware and related services available from BlueCat for purchase or license by Customer identified in a Purchase Order and may include, without limitation: (a) all Software licensed by BlueCat to Customer pursuant to this Agreement, whether embedded on an Appliance, or made available for download or use; (b) all related Documentation; (c) Maintenance and Support; (d) Professional Services; (e) e-Learning; and (f) Threat Protection.

(k) **"Professional Services"** means professional services (and where appropriate, e-Learning) provided by BlueCat to its customers in connection with the purchase and implementation of Products;

(l) **"Purchase Order"** means an order schedule issued by BlueCat or Customer, a quote issued by BlueCat, a SOW issued by BlueCat, an invoice issued by BlueCat or any other document confirming the Products to be purchased or licensed by Customer, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement;

(m) **"Software"** means the then current object code version of the computer program licensed by BlueCat to Customer pursuant to this Agreement, as evidenced either on an Appliance or available for download or use;

(n) "**SOW"** means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer; and

(o) **"Threat Protection"** means BlueCat's DNS security feed.

1.2. **Schedules.** The following schedules are attached to and form a part of this Agreement:

Schedule "A" – Additional Professional Service and e-Learning Terms and Conditions.

## 2. BLUECAT SOFTWARE AND SERVICES

2.1. **Grant of License.** BlueCat hereby grants to Customer a non-exclusive, non-transferable, non-assignable, non-sublicenseable, perpetual license to use the Software identified on any Purchase Order accepted by BlueCat and paid for by Customer, subject at all times to the terms and conditions set forth in this Agreement.

2.2. **Documentation License.** BlueCat hereby grants to Customer the non-exclusive, non-transferable, non-assignable right to use and reproduce the Documentation in electronic or paper format, subject at all times to the terms and conditions set forth in this Agreement.

2.3. **Acceptable Use.** Customer shall use the Products for internal use only. Customer shall not: (a) modify, translate or copy any Software or Documentation; (b) reverse engineer, decompile or dissemble the Software, create derivative works based on the Software or Documentation, or attempt to derive the source code of the Software; (c) rent, lease or use the Software to operate a service bureau or application service provider; (d) use the Software on equipment not provided by BlueCat or explicitly approved by BlueCat or in the Documentation; (e) use the Software in any application where a failure could cause personal injury or death or damages to property; (f) remove any proprietary notices, labels or marks on the Products; or (g) use the Software or any Product in a manner inconsistent with the Documentation or this Agreement.

2.4. **Maintenance and Support.** Upon payment of Maintenance and Support fees, BlueCat shall provide the Standard Maintenance and Support described in the BlueCat Customer Care Support Handbook, available upon request and at the Customer Care portal **https://care.bluecatnetworks.com**, as may be updated from time to time by BlueCat in its sole discretion. Maintenance and Support is automatically renewed annually at the then current fee and may not be cancelled with less than sixty (60) days' notice prior to the renewal date. Once paid, Maintenance and Support fees are non-refundable. For clarity, upon payment of additional fees, BlueCat shall provide the Technical Account Management services described in a Purchase Order.

2.5. **Professional Services.** Subject to a SOW accepted by BlueCat, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule "A".

2.6. **Training.** Subject to a SOW accepted by BlueCat, BlueCat shall provide the instructor-led training described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule "A". Upon payment of e-Learning fees, BlueCat shall provide Customer access to the BlueCat e-Learning services as further described in Schedule "A". E-Learning is licensed on a subscription basis per unique user. E-Learning is automatically renewed annually at the then current fee and may not be cancelled with less than sixty (60) days' notice prior to the renewal date. Once paid, e-Learning fees are non-refundable.

2.7. **Threat Protection.** Upon payment of Threat Protection fees, BlueCat shall provide Customer access to the Threat Protection security feed. Threat Protection is licensed on a subscription basis per DNS/DHCP active instance. Threat Protection is automatically renewed annually at the then current fee and may not be cancelled with less than sixty (60) days' notice prior to the renewal date. Once paid, Threat Protection fees are non-refundable.

## 3. ORDERS, DELIVERY AND PAYMENT

3.1. **Purchase Orders.** All orders of Product by Customer shall be evidenced by a Purchase Order. The terms of all Purchase Orders, whether issued and accepted before or after the execution of this Agreement, must be consistent with this Agreement. If any terms and conditions affixed to any Purchase Order delivered by Customer conflict with the terms and conditions of this Agreement, BlueCat's acceptance of Customer's Purchase Order and delivery of the Products is solely on the express understanding and condition that this Agreement contains the only terms and conditions that will apply to such Purchase Order and BlueCat hereby objects to and rejects any conflicting or additional terms and conditions. No terms in any form of Customer Purchase Order, other than the identification of the Product(s), the price and quantity of the Product(s) and the address for invoicing and delivery, if applicable, shall be binding on BlueCat.

3.2. **Delivery; Risk of Loss; Download.** BlueCat shall arrange for delivery of Appliances to the address indicated in the Purchase Order, provided that all costs related to customs, shipping and insurance of the Appliances are reimbursed to BlueCat by Customer. Delivery of Appliances and

risk of loss will pass to Customer FOB shipping point. BlueCat shall arrange for virtual delivery of Software by making Software available for download or use, including, where applicable, providing a license key, at which point delivery will be deemed to be complete.

3.3. **Invoices**. Upon delivery of the Appliances or virtual Software, as the case may be, BlueCat shall issue Customer an invoice for the Appliances, Software and Maintenance and Support identified in the Purchase Order. Invoices will indicate the currency in which payment is due. All fees are exclusive of sales, use, consumption and value add taxes, which shall be the responsibility of the Customer.

3.4. **Payment Terms.** All invoices are due in full thirty (30) days from the date of invoice without deduction or set off. All applicable sales and use taxes shall be identified on the invoice and are the responsibility of the Customer. In the event of payment after the due date, interest shall be payable on the overdue amount at the rate of one and one half (1.5%) percent per month, calculated and compounded monthly, or the maximum rate permitted by law, whichever is less, calculated from the due date to the date of payment.

## 4. WARRANTIES

4.1. **Software Warranty.** Upon delivery of the Appliance or Software and for a period of thirty (30) days thereafter, the Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and current antivirus software) and will perform substantially in accordance with the Documentation.

4.2. **Exceptions to Software Warranty.** The Software warranties set forth in Section 4.1 do not apply upon any of the following: (a) any change or service to the Software or Appliance made by any party other than BlueCat or its authorized agent; (b) the operation of the Software or Appliance with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) the Software or Appliance was used in a manner other than as contemplated in this Agreement or the Documentation; and (d) failure by Customer to report a warranty claim within the warranty period specified in Section 4.1.

4.3. **Software Remedy.** Upon a valid software warranty claim by Customer, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of virtual Software, deliver a replacement copy of the Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Customer and attributable to the Software giving rise to the warranty claim.

4.4. **Hardware Warranty.** Any applicable hardware warranty is described in the BlueCat Customer Care Support Handbook, available upon request and at the Customer Care portal **https://care.bluecatnetworks.com**, as may be updated from time to time by BlueCat in its sole discretion.

4.5. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE ARE NO REPRESENTATIONS OR WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE) RELATING TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION.

## 5. CONFIDENTIALITY; NON-DISCLOSURE

5.1. **Non-Disclosure**. Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in this Agreement. Each receiving Party is responsible for any breach of this Agreement by any person to whom it provides, or provides access to, Confidential Information. Each receiving Party shall safeguard the disclosing Party's Confidential Information using the same standard it employs to safeguard its own confidential information of like kind, but in no event less than a commercially reasonable standard of care.

5.2. **Return of Confidential Information.** Upon the termination of this Agreement, or at the disclosing Party's request, the recipient Party shall deliver to the disclosing Party all files, documents, computer programs and other media (and all copies and reproductions of any of the foregoing) in its possession or control that contain Confidential Information of the disclosing Party; provided, however, that the receiving Party may retain a copy of any Confidential Information to the extent it would be unreasonably burdensome to destroy such copy (such as archived computer records), and such retained information shall continue to be treated as Confidential Information subject to the restrictions set forth in this Agreement, notwithstanding any termination or expiration of this Agreement. Upon the request of the disclosing Party, the recipient Party shall certify in writing that all materials containing Confidential Information have been destroyed or returned to the disclosing Party in accordance with this Section 5.2 and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.

5.3. **No Rights to Confidential Information.** All Confidential Information remains the sole property of the disclosing Party and no license or other rights to Confidential Information is granted or implied by this Agreement.

5.4. **Required Disclosure**. In the event that Confidential Information has been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient, then such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, to the extent possible, provides the other Party with timely prior notice of such requirement and coordinates with the other Party in an effort to limit the nature and scope of such required disclosure.

## 6. INTELLECTUAL PROPERTY

6.1. **Ownership**. All Intellectual Property Rights belong to BlueCat, its Affiliates or its licensors. No rights to the Software are being sold to Customer.

6.2. **IP Infringement Indemnity.** At its own cost, BlueCat shall indemnify and defend Customer against any and all third party claims or demands that the Product (or any portion thereof) violates a third party's Intellectual Property Rights in Canada or the United States and all amounts required to be paid in a settlement approved by BlueCat or awarded by a court in a final, non-appealable judgement; provided: (a) Customer has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay by Customer; (b) BlueCat shall have full control over the defence of the claim, provided that any settlement or resolution entered into by BlueCat shall not require any admission of liability or any payment by Customer; (c) Customer has not made any admission against BlueCat's interests and has not agreed to any settlement of any claim or demand without BlueCat's consent; and (d) Customer shall cooperate with BlueCat in the defence of the claim,

at BlueCat's expense. This Section 6.2 shall constitute Customer's sole remedy from BlueCat in respect of infringement claims and demands.

6.3. **Exceptions to Indemnification.** Notwithstanding Section 6.2, BlueCat shall be under no obligation to indemnify Customer to the extent any infringement claim or demand by a third party arises as a result of: (a) a modification to the Product by a party other than BlueCat or its authorized agents, which modification has resulted in the claim or demand by the third party; (b) the incorporation into Product of any information, software, program or code provided or requested by Customer; (c) the combination of Product with any computer program, software, hardware or equipment where such claim of infringement would not exist without such combination; (d) the use of Product in a manner inconsistent with the terms of this Agreement or the Documentation; or (e) use of a superseded version of Product where use of the then-current version of Product would avoid any claim of infringement.

6.4. **Continued Use.** At BlueCat's sole expense and discretion, in response to any pending or potential infringement claim, BlueCat may: (a) procure for Customer the right to continue using the Product or applicable portion thereof; (b) modify Product or applicable portion thereof so that it is non-infringing, provided the modified Product performs in substantially the same manner without reasonable degradation of functionality; or (c) terminate this Agreement either entirely or only as it relates to the Product in question or the applicable portion thereof and upon return of the Product in question or the applicable portion thereof or certification of destruction, refund to Customer the unamortized or unexpensed portion of the purchase price allocated to that portion of the Product, based on a three-year straight line amortization, determined in accordance with BlueCat's generally accepted accounting principles.

## 7. LIMITATION OF LIABILITY; EXCLUSIONS

7.1. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND THE SCHEDULES AND EXCEPT FOR (A) ANY BREACH BY BLUECAT OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5 AND (B) BLUECAT'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 6.2, BLUECAT'S AGGREGATE LIABILITY TO CUSTOMER WILL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID BY CUSTOMER TO BLUECAT IN RELATION TO THE OFFENDING PRODUCT OR SERVICE PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE NOTIFICATION OF ANY CLAIM BY CUSTOMER.

7.2. **EXCLUSIONS**. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND THE SCHEDULES AND EXCEPT FOR (A) ANY BREACH BY EITHER PARTY OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 5 AND (B) BLUECAT'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 6.2, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY LOSSES (INCLUDING LOST SALES, LOST REVENUE, LOST PROFITS, LOST DATA OR LOST CONTENT) WHATSOEVER ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

7.3. **APPLICATION.** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 7 APPLY (A) TO ALL CAUSES OF ACTION, (B) WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FOR FUNDAMENTAL BREACH, HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, (C) EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS ITS ESSENTIAL PURPOSE AND (D) EVEN IF BLUECAT IS ADVISED IN ADVANCE OF THE DAMAGES IN QUESTION OR EVEN IF SUCH DAMAGES WERE FORESEEABLE.

7.4. **Customer Acknowledgements.** Customer acknowledges and agrees that: (a) it is responsible for the backup of its data and for ensuring that all necessary Appliance and Software updates, renewals and refreshes are completed prior to their expiry or arranges for a transition to an alternative solution satisfactory to its needs prior to the expiry of the Appliance, Software or this Agreement, as applicable. The Products have been designed, manufactured and tested for use in general office and business environments. BlueCat has not tested or certified its Products for use in applications where failure or malfunction can reasonably be expected to result in death, personal injury, catastrophic property damage or catastrophic environmental harm. Without limiting the generality of the foregoing, Customer acknowledges and agrees that: (a) the Products are not fault tolerant and are not designed or intended for use in environments requiring fail safe performances, including, without limitation, in the operation of nuclear facilities, aircraft navigations or communication systems, air traffic control, weapons systems, direct life-support machines or any other application in which the failure of the Product could lead directly to death, personal injury or severe physical or property damage (collectively, "**High Risk Activities**"); (b) BlueCat shall in no way be liable for use of the Products in High Risk Activities; and (c) BlueCat has no liability or obligation to Customer related to any third party software, whether preloaded on any Appliance or provided in conjunction with the Software, and none of the warranties, remedies or other obligations of BlueCat contained in this Agreement shall apply to such third party software.

## 8. TERMINATION

8.1. **Termination for Breach**. A Party may terminate this Agreement and any outstanding Purchase Order if the other Party (a) makes a general assignment for the benefit of creditors, makes a written admission of its inability to pay its debts or obligations as they become due, has a petition in bankruptcy filed by or against it, a receiver or trustee of any of its property is appointed, is adjudged to be insolvent by any court having jurisdiction, or it is dissolved, liquidated or terminated; or (b) is in breach of a material term of this Agreement and such breach is not cured within thirty (30) days of written notice of such breach. BlueCat may terminate this Agreement and any outstanding Purchase Order (including any obligations to provide Maintenance and Support and Professional Services) upon non-payment of any fees by Customer.

8.2. **Termination Obligations.** Upon the earlier of (a) termination of this Agreement and (b) termination of any outstanding Purchase Order, Customer shall delete all instances of virtual Software and any Documentation and upon request, certify to such destruction. In addition, Customer shall return all Appliances to BlueCat.

8.3. **Survival.** Notwithstanding the termination of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 4.5, 5, 6 and 7.

## 9. MISCELLANEOUS PROVISIONS

9.1. **Evaluation Units; Laboratory Units; Cold Spares.** Evaluation units, laboratory units and cold spares are to be used only for non-commercial, non-production environments. All such units are provided "as is" and BlueCat makes no warranties of any kind, express or implied. All evaluation units are governed by a separate evaluation agreement available from BlueCat.

9.2. **Orders through Resellers**. Section 3 shall not apply to Software purchased through a reseller. All other terms and conditions in this Agreement shall apply to Products purchased through a reseller.

9.3. **Third Party Software.** The use of any third party software resold by BlueCat to Customer is governed by the terms of the license agreement between such licensor and BlueCat.

BlueCat does not provide any warranties, and has no liability or obligations to the Customer, related to the third party software.

9.4. **Assignment.** Without the prior written consent of BlueCat, Customer may not assign this Agreement or any of its rights or obligations hereunder, except to an Affiliate and provided (a) such Affiliate agrees to be bound by the terms of this Agreement and (b) Customer remains responsible for Affiliate's compliance with this Agreement, including payment of all fees.

9.5. **Press Releases; Marketing.** BlueCat may refer to Customer and use its logo for the limited purpose of identifying it as a customer in sales and marketing materials.

9.6. **Entire Agreement; Amendment.** This Agreement contains the entire understanding of the Parties hereto on the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the Parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both Parties.

9.7. **Waiver of Breach.** The waiver of any breach of this Agreement, or the failure of a Party to exercise or enforce any right under this Agreement, shall in no event constitute a waiver of any other breach, whether similar or dissimilar in nature, or prevent the exercise or enforcement of any right under this Agreement.

9.8. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any party other than BlueCat, Customer and their permitted assigns any benefits, rights or remedies.

9.9. **Rights and Remedies.** In the event of any breach of this Agreement, the rights and remedies of the Parties provided for in this Agreement shall not be exclusive or exhaustive, and are in addition to any other rights and remedies available at law or in equity.

9.10. **Notices.** Any notice required or otherwise provided for in this Agreement shall be given to BlueCat or Customer, as the case may be, at the physical or e-mail address set forth on the signature page of this Agreement, or as updated from time to time pursuant to a notice provided pursuant to this Section, with a copy to any individuals with whom the Parties typically communicate.

9.11. **Severability**. If any provision of this Agreement is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the remaining terms and conditions of this Agreement shall be unimpaired and the Parties shall substitute a valid, legal and enforceable provision as close in legal and economic consequence as possible to the provision being struck or considered unenforceable. If the limitation of liability set forth in this Agreement is limited by law, then BlueCat's liability will be limited to the greatest extent permitted by law.

9.12. **Non-Solicitation**. During the provision of any Professional Services pursuant to a SOW and for a period of six (6) months thereafter, Customer shall not, either directly or indirectly: (a) solicit any BlueCat employee or contractor who provided services to Customer to leave the employment or contractual relationship with BlueCat; (b) hire any such employee or contractor; or (c) otherwise interfere with BlueCat's relationship with such employee or contractor. Any general advertisement by Customer not directed to a BlueCat employee or contractor shall not violate this Section.

9.13. **Force Majeure**. Except for payment and confidentiality obligations, neither Party shall be liable for any delay or failure to perform its obligations in this Agreement directly attributable to circumstances beyond its reasonable control, such as acts of God, fire, natural disaster, terrorism,

labor stoppage, internet service provider failures or delays, civil unrest, war or military hostilities, or criminal acts of third parties.

9.14. **Export Controls.** Customer acknowledges that the Products and any technical information related to the Products are subject to export controls under U.S., Canadian and other export control laws. Therefore, Customer shall not directly or indirectly, whether to an Affiliate or a third party: (a) export, re-export, transfer, or release (herein referred to as "export") any Product to any prohibited or restricted destination, person, or entity, or (b) use or allow any Affiliate or third party to use any Product in a manner prohibited or restricted by export control laws, in each case, without appropriate government authorization. Customer shall comply with all applicable export controls laws at all times.

9.15. **US Government End User.** Each Product is a "commercial item" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire the rights set out in this Agreement for each Product consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR 12.212; or (ii) for acquisition by or on behalf of the Department of Defense, the terms set forth in DFARS 227.7202. Use of each Product and related documentation is further restricted by the terms and conditions of this Agreement.

9.16. **Governing Law**. Regardless of the place of execution or performance or the domicile of the Parties, if Customer is a U.S. incorporated entity, then this Agreement is governed by the laws of New York excepting its choice of law provisions, and the Parties hereby agree to irrevocably attorn to the non-exclusive jurisdiction of the courts of the State of New York and the venue of Buffalo. If Customer is not a U.S. incorporated entity, but is incorporated in a member state of the European Union, then this Agreement is governed by the laws of England and Wales excepting its choice of law provisions and the Parties hereby agree to irrevocably attorn to the non-exclusive jurisdiction of the courts of England. If Customer is not a U.S. incorporated entity, and is not incorporated in a member state of the European Union, then this Agreement is governed by the laws of the Province of Ontario excepting its choice of law provisions and the Parties hereby agree to irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario and the venue of Toronto. The rights and obligations of the Parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act, or any version adopted by any state, does not apply to this Agreement.

9.17. **Headings.** Headings used in this Agreement are for convenience of reference only, and shall not be used to modify the meaning of or to interpret the terms and conditions of this Agreement.

9.18. **Counterparts; Delivery by E-mail.** This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Delivery of an executed copy of this Agreement by e-mail transmission will constitute valid and effective delivery of an original executed copy.

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## SCHEDULE "A"

## ADDITIONAL PROFESSIONAL SERVICE AND E-LEARNING TERMS AND CONDITIONS

In addition to the terms and conditions set forth in the BlueCat End User Agreement, which continue to apply to Professional Services and e-Learning to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services and e-Learning provided by BlueCat:

1. **Instructor-Led Training Courses.** All instructor-led training courses to be provided by BlueCat to Customer shall be described in a SOW signed by both Parties and referencing this Agreement. Each SOW must be consistent with the terms of this Agreement (including this Schedule "A") unless explicitly stated in the SOW.

2. **Professional Services**. All Professional Services to be provided by BlueCat to Customer shall be described in a SOW signed by both Parties and referencing the Agreement. Each SOW must be consistent with the terms in this Agreement (including this Schedule "A") unless explicitly stated in the SOW.

3. **Time and Materials**. Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis. The actual cost of the Professional Services performed may be less than or greater than the estimated amounts set out in the SOW. If requested, (a) BlueCat will provide regular updates on the services being performed and (b) BlueCat will not exceed the estimate in the SOW without Customer's consent.

4. **Expenses**. Unless explicitly stated in a SOW, Customer shall reimburse BlueCat for all reasonable and documented expenses, including travel, parking, accommodations and meals.

5. **Change Orders**. If either Party wishes to make a change to the scope of work set out in a SOW, a change order must be submitted which describes the scope of the Professional Services to be performed, the revised time frame and a cost estimate. Each change order must be accepted by both parties to be binding.

6. **Scheduling**. Unless explicitly stated in the SOW, Professional Services will be provided between Monday and Friday, from 8:00 am to 5:00 pm local time. Weekend and overtime rates apply outside these days and hours.

7. **Delivery Dates**. Delivery dates in the SOW are estimates only and are not binding completion dates. Change orders and other unforeseen circumstances may require the parties to adjust previously estimated delivery dates.

8. **Invoices**. Unless otherwise agreed, BlueCat will invoice Customer for services performed and expenses incurred on a monthly basis. Payment is due thirty (30) days from invoice delivery.

9. **Prepaid**. Prepaid service days expire unless used within twelve (12) months of the purchase date as specified in the Purchase Order. No credit or refund shall be due to Customer for expired or unused services.

10. **Limited License re. Deliverables**. BlueCat is not providing or licensing any BlueCat Software to Customer in connection with the Professional Services, except for specific deliverables identified in the SOW ("**Deliverables**"). The Deliverables are not "work made for hire" and any Intellectual Property Rights in the Deliverables remain with BlueCat. The Deliverables are licensed to Customer in connection with BlueCat Software upon the same terms and conditions as set forth in the End User Agreement.

11. **Warranty**. For a period of thirty (30) days from the performance of the Professional Services, BlueCat warrants that the Professional Services were performed in a professional manner using qualified and experienced personnel familiar with BlueCat Products. Any warranty claims must be reported to BlueCat within thirty (30) days of the related Professional Services.

12. **Exceptions to Warranty**. The warranty set forth in Section 10 does not apply upon any of the following: (a) any change, addition, deletion or other modification was made to the Deliverables, except as specifically authorized in writing by BlueCat; and (b) failure by Customer to report a deficiency within the specified warranty period.

13. **Warranty Remedy**. Upon a valid deficiency claim by Customer, BlueCat shall remedy the deficiency within a reasonable period of time and failing that, BlueCat shall refund all Professional Services fees paid by Customer and attributable to the deficiency giving rise to the warranty claim.

14. **Independent Contractor**. The manner and means used by BlueCat to perform the Professional Services are in the sole discretion and control of BlueCat. BlueCat may make use of subcontractors to perform the Professional Services provided BlueCat shall remain responsible for the performance of its subcontractors.

15. **Expiry**. Unless otherwise agreed, a SOW expires if not implemented within twelve (12) months.

16. **Termination**. For any termination for convenience by Customer upon ten (10) business days' notice or less, Customer shall be responsible for all Professional Service resources that are not redeployed and all non-cancellable expenses which are incurred.

Terms specific to e-Learning and Instructor-Led Training:

1. **e-Learning Services**. All e-Learning Services to be provided by BlueCat are licensed on a subscription basis per unique user pursuant to a Purchase Order. Each subscription commences on the date a user is provided access to the e-Learning Services and runs for a continuous period of time until the subscription period has expired.

2. **Unique Users**. Licenses to e-Learning Services and instructor-led training courses are personal to each user and are non-transferable. Users may not share logons, passwords or licensed content. Customer is responsible for securing and protecting login and other access information from unauthorized disclosure or use.

3. **Content**. Licensed content is for internal training purposes only.