



## MASTER AGREEMENT

This Master 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 anywhere else, in either case, "BlueCat" and the company indicated below ("Customer"), effective as of the later date of signature indicated below ("Effective Date").

BLUECAT	CUSTOMER
<b>Vivian Leung</b>	<b>Name:</b>
<b>Authorized Signing Officer</b>	<b>Title:</b>
<b>Date:</b>	<b>Date:</b>
<b>Email: legal@bluecatnetworks.com</b>	<b>Email:</b>

### FOR NOTICES

#### To BlueCat Networks, Inc.:

Address: 4100 Yonge Street, 3<sup>rd</sup> Floor  
Toronto, ON M2P 2B5 Canada

Telephone: +1.416.646.8400

#### To Customer:

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

#### To BlueCat Networks (USA) Inc.:

Address: 1000 Texan Trail, Suite #105  
Grapevine, TX 76051 USA

Telephone: +1.817.796.8370

## 1. DEFINITIONS; PURCHASE ORDERS; SCHEDULES

1.1. **Definitions.** Capitalized terms not expressly defined in this Agreement have the meaning given to them in Schedule "A".

1.2. **Purchase Orders.** All orders of Software Product and Cloud Services Offerings and Professional Services 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, unless specifically stated and agreed to by the Parties. No terms in any form of Customer Purchase Order, other than the identification, price, quantity and license model of the Software Product and Cloud Services Offerings, the Subscription Period, if applicable, and the address for invoicing and delivery, if applicable, shall be binding on BlueCat, unless specifically stated and agreed to by the Parties.

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

Schedule "A" – Definitions

Schedule "B" – Additional E-Learning Terms and Conditions

Schedule "C" - Additional Professional Service Terms and Conditions

Schedule "D" – Additional Managed Services Terms and Conditions

## 2. BLUECAT SOFTWARE PRODUCTS

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

2.2. **Documentation License.** Customer may access and use the Documentation for the Software Products identified on any Purchase Order, on a non-exclusive, non-transferable, non-assignable basis, subject at all times to the terms and conditions set forth in this Agreement.

2.3. **Duration of License.** Software Products (including Documentation) licensed on a Subscription basis are temporary and expire when the Subscription Period for the relevant Software Product(s) expires or is terminated. For Software licensed on a perpetual basis, such Software licenses will become perpetual (unless terminated as provided herein or as otherwise set out in a Purchase Order) when all payments for such licenses have been received by BlueCat.

2.4. **Support; Duration.** BlueCat shall provide the standard Support for the applicable Software Product to the extent specified in a Purchase Order. Support shall be provided as a Subscription during the Subscription Period. Once paid, Support fees are non-refundable.

## 3. BLUECAT CLOUD SERVICES

3.1. **Access and Use.** Customer may access and use the Cloud Services on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, and subject at all times to the terms and conditions of this Agreement.

3.2. **Documentation License.** Customer may access and use the Documentation applicable to the Cloud Services on a non-exclusive, non-transferable, non-assignable basis, during the applicable Subscription Period, subject at all times to the terms and conditions set forth in this Agreement.

3.3. **DNS Edge Service Levels; Sole Remedy.** BlueCat will make the DNS Edge Cloud Service available to Customer, and provide Support for the DNS Edge Cloud Service, in accordance with the Service Level Schedule. BlueCat's obligations in the Service Level Schedule do not apply to the extent: (a) Customer's system does not meet the minimum requirements listed in the Documentation to support the DNS Edge Cloud Service; (b) Customer has breached or continues to breach this Agreement; and (c) the Service Availability (as defined in the Service Level Schedule) is impacted by Customer's failure to incorporate or utilize any recommendations or data produced by the DNS Edge Cloud Service (e.g. security recommendations emanating from the DNS Edge Cloud Service). *The remedies listed in the Service Level Schedule are Customer's sole remedy and BlueCat's sole obligation for any failure of the DNS Edge Cloud Service. All other Cloud Services are provided "as is", per the disclaimer in Section 6.5.*

3.4. **Security.** BlueCat will maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Cloud Services and Customer Data.

3.5. **Access Methods; Authorized Users; Unauthorized Access or Use.** Customer agrees that it is responsible for protecting the security and integrity of the Access Methods. Customer shall be fully responsible for any Authorized Users' breach of this Agreement. Customer agrees that it is liable for any acts or omissions occurring under any Access Methods, whether by Authorized Users or otherwise. Each Party shall notify the

other Party immediately of any suspected or known unauthorized access or use of the Cloud Services, will use commercially reasonable efforts to prevent such unauthorized access or use, and will use commercially reasonable efforts to stop said unauthorized access or use.

3.6. **Customer Data.** Customer hereby grants to BlueCat a non-exclusive, worldwide right to use, process and transmit, the Customer Data via the Cloud Services so that BlueCat may provide the Cloud Services to Customer. Customer agrees that BlueCat does not review, edit, substantiate, determine or otherwise have any responsibility for the accuracy, quality, integrity, legality, reliability, or appropriateness of any Customer Data. *Customer has sole responsibility for, and BlueCat disclaims all liability for, the Customer Data transmitted by Customer to the Cloud Services.*

3.7. **No Personal Data.** Customer acknowledges and agrees that (a) the Cloud Services are not intended or designed to securely host and store any Personal Data; and (b) no Personal Data is accessible or identifiable based solely on Customer Data. Furthermore, an IP address shall not be considered Personal Data. Neither Customer nor any Authorized User will submit to the Cloud Services, or access or use the Cloud Services to collect, process or store, any Personal Data.

3.8. **Third Party Tools.** Customer acknowledges and agrees that the Cloud Services interoperate with several Third Party Tools and that the Cloud Services may be highly dependent on the availability of such Third Party Tools. If at any time any Third Party Tool ceases to be available to BlueCat on reasonable terms, then BlueCat may cease to provide such features to Customer (a “**Tool Change**”). In the event that any Tool Change has a material negative impact on the Cloud Services, then Customer may, within thirty (30) days of a Tool Change, terminate this Agreement and any applicable Purchase Order for the portion(s) of the Cloud Services impacted by the Tool Change, by providing BlueCat with not less than ninety (90) days’ notice of its intention to terminate.

3.9. **Updates and Modifications to Cloud Services.** Customer acknowledges and agrees that from time to time BlueCat may apply updates to, or otherwise revise, the Cloud Services and that such updates and/or revisions may result in additions, modifications or removal of functionality, features, content or the appearance of the Cloud Services.

3.10. **Ancillary Cloud Services Software.** To the extent that Customer receives any Ancillary Cloud Services Software from BlueCat, then BlueCat grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable and limited license to use the Ancillary Cloud Services Software during the applicable Subscription Period solely for Customer’s internal business purposes. For certainty, Customer’s right to use the Software ceases when the right to access and use Cloud Services ends. At such time, each copy of the Ancillary Cloud Services Software must be promptly uninstalled or BlueCat (to the extent technically possible) may disable the Ancillary Cloud Services Software. In the event that BlueCat makes available a new version of any Ancillary Cloud Services Software, then such new version must be promptly downloaded and installed by Customer.

3.11. **E-Learning.** If Customer orders the E-Learning Cloud Service pursuant to a Purchase Order, the terms and conditions in Schedule “B” will apply in addition to the terms and conditions of this Agreement.

#### 4. **ADDITIONAL TERMS & RESTRICTIONS**

4.1. **License and Subscription Models.** The Software Product and Cloud Services Offerings are provided or made available based on the license or subscription model identified in the applicable Purchase Order. Usage of the Software Product and Cloud Services Offerings may not exceed the maximum allowable licenses or subscriptions or any other usage or scope restrictions. Prior to renewal of any Software Product and Cloud Services Offerings and at BlueCat’s discretion, acting reasonably, at any time during the Subscription Period where Customer’s usage thereof has exceeded such restrictions, Customer will be invoiced for any over usage of the applicable product or service at the then-current list price.

4.2. **Acceptable Use Policy.** Customer agrees to, and to ensure that its Authorized Users will, comply with the Acceptable Use Policy. Neither this Agreement nor the Acceptable Use Policy requires that BlueCat take any action against Customer or any Authorized User or other third party for violating the Acceptable Use Policy or

this Agreement, but BlueCat is free to take any such action it sees fit, in addition to any other remedies BlueCat may have.

4.3. **Amazon Web Services.** BlueCat uses the Amazon Web Service (“AWS”) for certain of its Cloud Services. Customer acknowledges and agrees to its obligations of “you” that are set out in the AWS Customer Agreement currently located at [aws.amazon.com/agreement](https://aws.amazon.com/agreement).

4.4. **Professional Services.** Upon payment of additional fees, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in this Agreement and in Schedule “C”.

4.5. **Appliances.** Upon payment of additional fees, BlueCat shall provide the Appliances identified in a Purchase Order.

4.6. **Managed Services.** If Customer is a managed provider of DNS services, then the terms and conditions in Schedule “D” will apply in addition to the terms and conditions of this Agreement.

## 5. ORDERS, DELIVERY AND PAYMENT

5.1. **Fees.** Customer hereby agrees to pay the fees for the Software Product and Cloud Services Offerings and/or Professional Services set out in a Purchase Order, plus applicable taxes.

5.2. **Delivery; Risk of Loss; Access.** (a) For Software Products provided via Appliances, 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 paid by Customer. Delivery of Appliances and risk of loss will pass to Customer FOB shipping point. (b) For Software Products provided for download and installation on Customer equipment or environment, BlueCat shall arrange for virtual delivery of Software Products by making Software available for download, such as providing a license key, at which point delivery will be deemed to be complete. (c) For Cloud Services, BlueCat shall arrange for delivery of the Cloud Service by making it available for use by providing login credentials to Customer, at which point delivery will be deemed complete.

5.3. **Invoices.** Upon the delivery of any Software Product or Cloud Services Offering, BlueCat shall issue Customer an invoice for the applicable product and/or service. 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.

5.4. **Payment Terms; No Refund.** All invoices are due in full thirty (30) days from the date of invoice without deduction or set off. Once paid, Service fees are non-refundable. 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. All prepaid fees are non-refundable.

## 6. LIMITED WARRANTIES FOR SOFTWARE AND APPLIANCES; DISCLAIMER

6.1. **Software Warranty.** For a period of thirty (30) days following delivery of any Software, such ordered Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and antivirus software) and will perform substantially in accordance with its Documentation. Such warranty does not apply upon: (a) any change or service to the Software made by any party other than BlueCat or its authorized agent; (b) the operation of the Software with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) the Software was used in a manner other than as contemplated in this Agreement or the Documentation; or (d) failure by Customer to report a warranty claim within the warranty period specified in this Section 6.1.

6.2. **Appliance Warranty.** Any applicable Appliance warranty is described in the BlueCat Customer Care Support Handbook.

6.3. **Sole Software and Appliance 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 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 portion of the Software giving rise to the warranty claim. *The foregoing remedies are BlueCat's sole obligation and Customer's sole remedy in the event of a valid warranty claim under this Article 6.*

6.4. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 6 OR SCHEDULE "C", THE SOFTWARE PRODUCT AND CLOUD SERVICES OFFERINGS, THIRD PARTY TOOLS, AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE 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 SOFTWARE PRODUCT AND CLOUD SERVICES OFFERINGS, THIRD PARTY TOOLS, AND PROFESSIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CURRENCY, ACCESSIBILITY, RELIABILITY, SECURITY, AVAILABILITY, UNINTERRUPTED USE, OR THAT THE SOFTWARE PRODUCT AND CLOUD SERVICES OFFERINGS, THIRD PARTY TOOLS AND PROFESSIONAL SERVICES ARE OR WILL BE ERROR FREE OR VIRUS FREE, OR WILL ACHIEVE ANY INTENDED RESULT. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION.

## 7. CONFIDENTIALITY, NON-DISCLOSURE

7.1. **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.

7.2. **Destruction of Confidential Information.** Upon the termination of this Agreement, or at any time at the disclosing Party's request, the recipient Party shall destroy Confidential Information of the disclosing Party in its possession or control except to the extent it would be unreasonably burdensome to destroy such information (such as archived computer records), and such information will continue to be treated as Confidential Information, 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 of the disclosing Party have been destroyed and no further Confidential Information of the disclosing Party is in the possession or control of the recipient Party.

7.3. **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.

7.4. **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.

## 8. INTELLECTUAL PROPERTY

8.1. **Ownership.** As between the parties, all Intellectual Property Rights in and to the Software

Product and Cloud Services Offerings, including the Software, as well as any Third Party Tools and Professional Services, belong to BlueCat, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software and any Ancillary Cloud Services Software provided to Customer pursuant to this Agreement are licensed, and not sold, and Customer receives no title or ownership in any of the foregoing. BlueCat reserves all rights not expressly granted under this Agreement.

8.2. **Service Results.** All Intellectual Property Rights in and to the Cloud Services and the Service Results belong to BlueCat. Customer acknowledges and agrees that BlueCat may monitor and analyze, and that the Service Results may include, aggregated anonymized information based on the data of BlueCat's customers, including Customer Data.

## 9. INDEMNIFICATION

9.1. **BlueCat's Indemnification Obligations.** BlueCat shall indemnify and defend Customer against any and all third party claims or demands that the Software Product and Cloud Services Offerings (or any portion thereof) violate 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 defense 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 defense of the claim, at BlueCat's expense.

9.2. **Exceptions to BlueCat's Indemnification Obligations.** Notwithstanding Section 9.1, BlueCat shall be under no obligation to indemnify or defend Customer if any infringement claim or demand by a third party arises as a result of any: (a) access or use of the Software Product and Cloud Services Offerings in violation of or inconsistent with this Agreement or the Documentation; (b) modification to the Software Product and Cloud Services Offerings by a party other than BlueCat or its authorized agents, which modification has resulted in the claim or demand by the third party; (c) combination of the Software Product and Cloud Services Offerings with any computer program, software, hardware or equipment where such claim of infringement would not exist without such combination; (d) use of a superseded version of the Software or Ancillary Cloud Services Software where use of a then-current version would avoid any claim of infringement; or (e) access to or use of the Software Product and Cloud Services Offerings after BlueCat notifies Customer to discontinue such access or use.

9.3. **Additional Infringement Remedies.** 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 offending Software Product and Cloud Services Offering or applicable portion thereof; (b) replace or modify the offending Software Product and Cloud Services Offering or applicable portion thereof so that it is non-infringing; or (c) terminate this Agreement either entirely or only as it relates to the offending Software Product and Cloud Services Offering in question or the applicable portion thereof and upon return of the Software Product and Cloud Services Offering in question or the applicable portion thereof or certification of destruction, refund to Customer the pro rata unused portion of any prepaid fees allocable to such part(s) of the Software Product and Cloud Services Offerings that is (are) terminated. For Software, licensed on a perpetual basis, such refund shall be based on the unamortized or unexpensed portion of the purchase price allocated to that portion of the Software, based on a three-year straight line amortization.

9.4. **Sole Remedy.** *Sections 9.1 and 9.3 shall constitute Customer's sole remedy from BlueCat in respect of infringement claims and demands.*

9.5. **Customer's Indemnification Obligation.** At its own cost, Customer shall indemnify and defend BlueCat, its Affiliates and their licensors against any and all third party claims or demands related to (a) Customer's or any Authorized User's alleged or actual access to and/or use of the Software Product and Cloud Services Offerings; (b) Customer Data; (c) unauthorized disclosure or exposure of Personal Data; or (d) breach of Customer's obligations set out in Article 2, Article 3, or Article 4 of this Agreement. The foregoing indemnification obligations apply provided that (i) BlueCat has promptly notified Customer of such claim and Customer is not prejudiced by any delay by BlueCat; (ii) Customer shall have full control over the defense of the claim, provided

that any settlement or resolution entered into by Customer shall not require any admission of liability or any payment by BlueCat; (iii) BlueCat has not made any admission against Customer's interests or has not agreed to any settlement of any claim or demand without Customer's consent; and (iv) BlueCat shall cooperate with Customer in the defense of the claim, at Customer's expense.

## **10. LIABILITY; LIMITATIONS AND EXCLUSIONS**

10.1. **LIMITATIONS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, AND EXCEPT FOR BLUECAT'S INDEMNITY OBLIGATIONS SET FORTH IN SECTION 9.1, BLUECAT'S AGGREGATE LIABILITY TO CUSTOMER WILL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID BY CUSTOMER TO BLUECAT IN RELATION TO THE OFFENDING SOFTWARE PRODUCT AND CLOUD SERVICES OFFERING PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE NOTIFICATION OF ANY CLAIM BY CUSTOMER; PROVIDED, THAT BLUECAT'S AGGREGATE LIABILITY TO CUSTOMER FOR BREACH OF SECTION 7 "CONFIDENTIALITY, NON-DISCLOSURE" WILL NOT EXCEED THREE (3) TIMES THE TOTAL OF ALL AMOUNTS PAID BY CUSTOMER TO BLUECAT PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE NOTIFICATION OF ANY CLAIM BY CUSTOMER REGARDING SUCH BREACH OF SECTION 7.

10.2. **EXCLUSIONS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, 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 GOODWILL, LOST PROFITS, LOST DATA OR LOST CONTENT) WHATSOEVER ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT.

10.3. **APPLICATION.** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS ARTICLE 10 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.

10.4. **Customer Acknowledgements.** Customer acknowledges and agrees that it is responsible for the backup of its data (including Customer Data) and for ensuring that all necessary Appliance, Software, and Ancillary Cloud Services 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 earlier of expiry of the applicable Subscription Period or this Agreement. The Software Product and Cloud Services Offerings have been designed, manufactured and tested for use in general office and business environments. BlueCat has not tested or certified its Software Product and Cloud Services Offerings 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 Software Product and Cloud Services Offerings 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 Software Product and Cloud Services Offerings in High Risk Activities; and (c) BlueCat has no liability or obligation to Customer related to any third party software or service, whether preloaded on any Appliance or provided or made available in conjunction with the Software Product and Cloud Services Offerings, and none of the warranties, remedies or other obligations of BlueCat contained in this Agreement shall apply to such third party software or services.

## **11. SUBSCRIPTION PERIODS; AGREEMENT TERM; TERMINATION AND SUSPENSION**

11.1. **Subscription Periods; Automatic Renewal.** Unless otherwise indicated in the applicable Purchase Order, Subscription Periods will automatically renew for periods of the same length as the initial Subscription Period, at the then current fee for the applicable Software Product and Cloud Services Offerings and Professional Services and may not be cancelled with less than sixty (60) days' notice prior to the expiration of the

then-current period.

11.2. **Term of Agreement.** This Agreement is effective during the period commencing as of the Effective Date and expires on the date that the last Purchase Order hereunder expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.

11.3. **Termination for Breach.** A Party may terminate this Agreement and any outstanding Purchase Order or Subscription 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 any of the Material Provisions and such breach is not cured within thirty (30) days of written notice of such breach. BlueCat may terminate this Agreement or any outstanding Purchase Order or Subscription (including any obligations to provide Support and Professional Services) upon non-payment of any fees by Customer or any suspension of Cloud Services pursuant to Section 11.4 for thirty (30) days or more.

11.4. **Suspension of Cloud Services.** In the event that BlueCat, acting reasonably, suspects or learns of any of the following described circumstances, then BlueCat may immediately suspend Customer's access to and use of the Cloud Services, in addition to any other remedies BlueCat may have: (a) any breach of the Material Provisions; (b) Customer's failure to cooperate with BlueCat's reasonable investigation of any suspected violation of this Agreement; (c) access or manipulation of the Cloud Services without BlueCat's consent; (d) any circumstance that requires suspension of the Cloud Services in order to protect the Service, BlueCat, or its customer's data; or (e) suspension required by law.

11.5. **Termination Obligations.** Upon the earlier of termination of this Agreement, or termination or expiration of any outstanding Purchase Order or Subscription Period, Customer shall (a) delete all instances of Software Products, Ancillary Cloud Services Software, and any Documentation and upon request, certify to such destruction; (b) cease to access and use the Cloud Services and any Documentation; (c) confirm in writing compliance with Section 7.2; and (d) return all Appliances to BlueCat. With respect to Cloud Services, BlueCat shall make Customer Data available to Customer for download for thirty (30) days following termination and BlueCat shall destroy all Customer Data (except for any aggregated anonymized information based on Customer Data) upon the expiry of such thirty (30) day period. Section 11.5(a) does not apply to Software Products licensed on a perpetual basis in the event that Customer terminates this Agreement pursuant to Section 11.3.

11.6. **Survival.** Notwithstanding the termination or expiry 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 5.1, 5.4, 6.4, 8, 9, 10, 11.5 and 12.

## 12. MISCELLANEOUS PROVISIONS

12.1. **Audit; Monitoring.** BlueCat reserves the right to audit and monitor Customer's use of the Cloud Services and compliance with this Agreement, including the Acceptable Use Policy.

12.2. **Feedback.** Customer may from time to time provide suggestions, comments or other feedback to BlueCat with respect to the Software Products and Cloud Services Offering and Professional Services (collectively, "**Feedback**"). Customer shall, and hereby does, grant to BlueCat a non-exclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty free, fully paid license to use and exploit the Feedback for any purpose. Feedback, even if designated as confidential by Customer, shall not create any confidentiality obligation for BlueCat.

12.3. **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.

12.4. **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 such Affiliate agrees to be bound by the terms of this Agreement and Customer remains responsible for Affiliate's compliance with this



Agreement, including payment of all fees.

12.5. **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.

12.6. **Entire Agreement; Amendment; Headings.** 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. 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.

12.7. **Waiver; Severability.** 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. 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.

12.8. **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.

12.9. **Rights and Remedies.** Except as expressly set out in this Agreement regarding the Service Level Schedule remedies and in Article 6 and Section 9.4, 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. The Parties agree that in the event of any breach or threatened breach of the Material Provisions by Customer, money damages would be an inadequate remedy and the affected Party shall be entitled to seek injunctive relief, without the need to post a bond or other security.

12.10. **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.

12.11. **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 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.

12.12. **Export Controls.** Customer acknowledges and agrees that the Software Product and Cloud Services Offerings and any Software are subject to export controls under U.S., Canadian and other export control laws. 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 component of the Software Product and Cloud Services Offering, including any Software, to any prohibited or restricted destination, person, or entity, or (b) access or use or allow any Authorized User, Affiliate or third party to access or use the Software Product and Cloud Services Offerings in a manner prohibited or restricted by export control laws. Customer shall comply with all applicable export controls laws at all times.

12.13. **US Government End User.** The Software Product and Cloud Services Offerings are each a "commercial item" as that term is defined in Federal Acquisition Regulation ("FAR") 2.101, consisting of "technical data", "commercial computer software", "commercial computer software documentation" and/or "commercial services" as such terms are defined in FAR 2.101 or used in FAR 12.211 and 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire only the rights set out in this Agreement for the Software Product and Cloud Services Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the Software Product and

Cloud Services Offerings is prohibited except to the extent expressly permitted by the terms of this Agreement. To the extent allowed by applicable law, this US Government End User provision is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in computer software or technical data. Terms and conditions herein that are prohibited by federal law or procurement regulation are not enforceable against the U.S. government.

12.14. **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.

12.15. **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"

### DEFINITIONS

In the 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) **"Access Methods"** means the user identifiers and passwords for the Cloud Service issued by Customer to Authorized Users pursuant to this Agreement;
- (b) **"Acceptable Use Policy"** means BlueCat's acceptable use policy listed on BlueCat's website located at <https://www.bluecatnetworks.com>, as such policy may be updated by BlueCat from time-to-time;
- (c) **"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;
- (d) **"Agreement"** means this Master Agreement, all schedules annexed hereto, each Purchase Order, and any other document incorporated by reference herein;
- (e) **"Ancillary Cloud Services Software"** means any application program interfaces, or other software applications, provided by BlueCat for download as part of the Cloud Services;
- (f) **"Appliance"** means any physical computer hardware component sold by BlueCat where the Software is resident or installed;
- (g) **"Authorized User"** means any employees and agents of Customer who Customer gives access to the Cloud Services pursuant to this Agreement;
- (h) **"BlueCat Customer Care Support Handbook"** means the support handbook available upon request, and at the Customer Care Portal, in each case as may be updated from time to time by BlueCat in its sole discretion;
- (i) **"Cloud Services"** means the cloud services made available from BlueCat for subscription by Customer, as well as any Ancillary Cloud Services Software and any Support for the Cloud Services. "Cloud Services" exclude Third Party Tools. BlueCat's current Cloud Services offerings are listed on BlueCat's website located at <https://www.bluecatnetworks.com>, as such list may be updated by BlueCat from time to time;
- (j) **"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, information technology networks, including all technical information, data, documentation, code, security measures and procedures 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. Non-public features of the Cloud Services shall be considered Confidential Information. In addition, Documentation shall be considered Confidential Information. 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;
- (k) **"Customer Care Portal"** means the Customer Care portal available at <https://care.bluecatnetworks.com>;
- (l) **"Customer Data"** means the IP addresses, hostnames and DNS query logs and any other information that is uploaded or transmitted by Customer to the Cloud Services;

- (m) **“Documentation”** means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the Software Products and Cloud Services, made available in electronic format from BlueCat via the Customer Care Portal, and any revisions, updates and supplements thereto, as such documentation may be amended by BlueCat from time to time or embedded in any Software Product and Cloud Services Offering;
- (n) **“Effective Date”** is defined in the first paragraph of this Agreement;
- (o) **“e-Learning”** means BlueCat’s computer based training courses made available to Customer as a Cloud Service;
- (p) **“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;
- (q) **“Material Provisions”** means Sections 2, 3, 4, 5, 7, 8, 10.4, 12.4, 12.13 and 12.14;
- (r) **“Party”** means either BlueCat or Customer and **“Parties”** refers to both BlueCat and Customer;
- (s) **“Personal Data”** means any information that pertains to a specific person and that can be linked to such person, including, without limitation, any information which is subject to privacy laws or other similar laws in the jurisdiction in which Customer or any Authorized User accesses or uses the Cloud Services; provided, however, that an IP address shall not be considered Personal Data;
- (t) **“Professional Services”** means professional services provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Software Products;
- (u) **“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 any Software Product and Cloud Services Offerings to be purchased by Customer, any applicable Subscription Period(s), and any Professional Services to be purchased by Customer, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement;
- (v) **“Software Product and Cloud Services Offerings”** means the following products and services provided or made available by BlueCat: Software Products, Cloud Services, and Documentation related to the foregoing;
- (w) **“Service Level Schedule”** means the service level schedule related to BlueCat’s DNS Edge Cloud Service, as may be updated from time to time, and which is available on BlueCat’s website located at <https://www.bluecatnetworks.com/services-support/customer-care/license-agreements/>;
- (x) **“Service Results”** means any information, statistics, results, feeds, graphs, analysis and reports computed and generated by and from the Cloud Services;
- (y) **“Software”** means the then current object code version of the computer program or application licensed by BlueCat to Customer pursuant to this Agreement, as evidenced either on an Appliance or available for download, in each case, as part of a Software Product;
- (z) **“Software Products”** means any and all software products offered by BlueCat for license. Software Products may include any Software, whether embedded on an Appliance or made available for download onto Customer’s operated equipment, as well as Support and Documentation for Software Products. BlueCat’s current Software Product offerings are listed on BlueCat’s website located at <https://www.bluecatnetworks.com>, as such list may be updated by BlueCat from time to time;

- (aa) **“SOW”** means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer;
- (bb) **“Subscription”** means a subscription for the Subscription Period to (i) with respect to Software Products, license and use Software Products, and, to the extent ordered, to receive Support, ordered and paid for by Customer pursuant to one or more Purchase Orders; and (ii) with respect to Cloud Services, to access and use the Cloud Services, and to receive Support for such Cloud Services, ordered and paid for by Customer pursuant to one or more Purchase Orders;
- (cc) **“Subscription Period”** mean the time period of each Subscription set out in the applicable Purchase Order and commences upon delivery of the applicable Software Product or Cloud Service. If no time period is set out in a Purchase Order, the Subscription Period will be the twelve (12) month period commencing upon delivery of the applicable Software Product or Cloud Service;
- (dd) **“Support”** means (i) for Software Products, the maintenance services relating to updates, upgrades, patches, bug fixes and other improvements to the Software and the technical support services as described in the BlueCat Customer Care Support Handbook and (ii) for DNS Edge Cloud Services, the support services set out in the Service Level Schedule; and
- (ee) **“Third Party Tools”** means the third party tools, applications, services and content with which the Cloud Services interoperate.

## SCHEDULE "B"

### ADDITIONAL E-LEARNING TERMS AND CONDITIONS

1. **e-Learning Services.** All e-Learning Services to be provided by BlueCat are made available 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.** Subscriptions to the 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.

## SCHEDULE "C"

### ADDITIONAL PROFESSIONAL SERVICE TERMS AND CONDITIONS

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

1. **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 "C") unless explicitly stated in the SOW.
2. **Time and Materials.** Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis. 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.
3. **Expenses.** Unless explicitly stated in a SOW, Customer shall reimburse BlueCat for all reasonable and documented expenses, including travel, parking, accommodations and meals.
4. **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.
5. **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.
6. **Delivery Dates.** Delivery dates in the SOW are estimates only and are not binding completion dates.
7. **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.
8. **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.
9. **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 the Software upon the same terms and conditions as set forth in the End User Agreement.
10. **Warranty.** For a period of thirty (30) days from the performance of the Professional Services, BlueCat warrants that the Professional Services are performed in a professional manner using qualified and experienced personnel familiar with BlueCat Software. Any warranty claims must be reported to BlueCat within thirty (30) days of the related Professional Services.
11. **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.

12. **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.
13. **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.
14. **Expiry.** Unless otherwise agreed, a SOW expires if the project is not commenced within six (6) months.
15. **Termination.** For any termination for convenience by Customer upon ten (10) business days' notice or less, or undue delay by Customer, such as failing to provide requested information, which result in scheduling changes, Customer shall be responsible for fees of all Professional Service resources that are not redeployed and all non-cancellable expenses which are incurred.



## SCHEDULE "D"

### ADDITIONAL MANAGED SERVICES TERMS AND CONDITIONS

1. **Managed Services for End Customers.** The Parties acknowledge that the Customer is purchasing certain Software Products in order to manage or host DNS records ("**Managed Services**") for its end user customer ("**End Customer**"). Customer shall obtain in writing each End Customer's agreement and acknowledgement that the Software Products are for such End Customer's internal use only. Customer shall use the Software Products only for providing Managed Services to End Customers.
2. **Transfer of License for Managed Services.** In the event of any termination of the relationship between Customer and the End Customer, Customer may transfer to End Customer or if instructed to do so by End Customer, transfer to a replacement provider, this Agreement including the license(s) for the Software. Should Customer's transfer of the Software Products be to a replacement provider, such replacement provider's license to the Software Products and/or Services shall be solely and exclusively for use in that replacement provider's provision of Software and/or Services to End Customer. In order to effect such a transfer, Customer shall provide BlueCat with prior written notice of the transfer and shall execute, and arrange for End Customer to execute, an assignment agreement whereby End Customer and, if applicable, its replacement provider, agree to comply with the terms and conditions of this Agreement.
3. **Restrictions on Use for Managed Services.** If Customer is using any of the Software Products to provide Managed Services, then the following additional terms shall apply: (a) Customer shall indemnify and defend BlueCat, its Affiliates and their licensors against any and all third party claims or demands related to the use of Software Products as part of Customer's Managed Services, including, without limitation, from End Customers; or (b) Customer shall ensure each of its End Customers using Software Products as part of Customer's Managed Service offering signs and returns the Simplified EULA which is available upon request from BlueCat.