

BLUECAT™

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement BlueCat, and the company indicated below ("**Company**"), effective as of the later date of signature indicated below ("**Effective Date**").

Company's Full Legal Name:	
Jurisdiction of Incorporation:	
Mailing Address:	
Contact Person (name and title):	
Telephone:	
Email:	

1. **Purpose.** BlueCat and Company desire to engage in discussions concerning a potential commercial transaction (the "**Purpose**").

2. "**BlueCat**" means:

BlueCat Networks (USA) Inc., located at 156 W. 56th Street, 3rd Floor, New York, New York, 10106 with respect to Companies located in the United States of America and Japan;

BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Companies located outside the United States of America and Japan; and

BlueCat Federal USA, Inc., located at 11710 Plaza America Drive, Suite 120, Reston, Virginia 20190 USA, with respect to Federal Government Companies and customers located in the United States of America.

3. **Confidential Information.** In evaluating the Purpose, the parties are likely to disclose Confidential Information to each other. "**Confidential Information**" as used in this Agreement shall mean any and all information of a party known or used in its business relating to its products, customers, marketing, research and development, business and finances, including all technical information, research, designs, data, documentation, diagrams, 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. 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; (iv) been approved for public release by the written authorization of the disclosing party; or (v) been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient. 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.

4. **Non-Disclosure.** Each of the parties agrees that it will not: (a) make use of the Confidential Information except to evaluate and carry out the Purpose; 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 carry out the Purpose and only to those of its personnel who have agreed to be bound by confidentiality obligations substantially similar to those of the recipient party in this Agreement.

5. **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. 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 and no further Confidential Information of the disclosing party is in the possession or control of the recipient party.

6. **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. **Right to Disclose.** The disclosing party confirms that it is authorized to make the disclosure contained in its Confidential Information.
8. **No Warranty.** All Confidential Information is provided "AS IS". No warranty, express, implied or otherwise, regarding the accuracy or performance of the Confidential Information is provided.
9. **Evaluation Terms.** If BlueCat makes available to Company any product for evaluation purposes, the parties agree as follows:
- i. Company is granted a limited, non-exclusive, non-transferable, non-assignable license to use the products solely for the purpose of evaluating the products in a non-commercial, internal lab environment and not in any production or commercial environment. Company shall not copy, distribute, or make the product available to any third party, reverse-engineer, disassemble, or export the product, except as expressly permitted by BlueCat in writing. All intellectual property rights in the product shall remain the exclusive property of BlueCat or its licensors.
 - ii. All information received or derived by Company through evaluation of the product is BlueCat Confidential Information and subject to the terms of this Agreement.
 - iii. The product is provided on an "as is" basis, and BlueCat expressly disclaims any warranties. BlueCat's liability for any claims related to the evaluation, whether in contract, tort, or otherwise, shall be limited to the amount Company paid for the evaluation, if any. Company shall be responsible to BlueCat for all damages arising from unauthorized use or misuse of the product.
 - iv. The evaluation license is effective for a term of thirty (30) days from the date of access by Company to the product, unless a longer period is agreed to by BlueCat in writing. Upon expiration or termination of this period, Company must immediately cease using the product, delete all copies of the software, return any hardware provided by BlueCat, and discontinue access to any services.
 - v. BlueCat will provide initial setup and installation assistance and ongoing technical support during normal business hours.
10. **Waiver; Severability.** The waiver by the disclosing party of a breach of any provision of this Agreement by the recipient shall not operate or be construed as a waiver of any other or subsequent breach by recipient. If any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or invalidate any other provision of this Agreement.
11. **Term and Termination.** This Agreement and the confidentiality obligations contained herein shall commence on the Effective Date and shall terminate upon expiration of five (5) years from the date of the last disclosure of Confidential Information for information that is not computer software, and is perpetual for Confidential Information that is computer software. If the Confidential Information consists of computer software disclosed in object code form, the receiving party will not reverse engineer, reverse compile, or disassemble such object code, or take any other steps to derive a source code equivalent thereof.
12. **Governing Law.** 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.
13. **Injunctive Relief.** The parties agree that any disclosure or use of Confidential Information contrary to this Agreement may cause the disclosing party irreparable harm for which damages may not be adequate compensation. Therefore, the parties agree that the disclosing party is entitled to seek equitable relief, including an injunction, in order to stop any breach or threatened breach of this Agreement.
14. **Personal Information.** Each party acknowledges that the disclosing party may be subject to internal policies and laws which govern and restrict the collection, storage, processing, dissemination and use of personal information, including information about customers, suppliers and personnel (collectively, "PI"). The recipient party agrees not to collect, store, process, disseminate or use any PI obtained from the disclosing party, except to the extent otherwise expressly directed by the disclosing party in writing. The parties further acknowledge that it may, from time to time, collect, store, process, disseminate or use PI relating to the other party. Disclosing party consents to the collection, storage, processing, dissemination or use of its PI by recipient party for the purpose of administering this Agreement.
15. **Successors, Assigns and Affiliates.** This Agreement shall be binding upon the respective successors, assigns and affiliates of the parties and each party shall be jointly and severally liable for any breach of this Agreement by its affiliates.
16. **Miscellaneous Provisions.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior or contemporaneous discussions or agreements between them related to Confidential Information. This Agreement may be executed in counterparts and delivered via facsimile or electronic transmission.

IN WITNESS WHEREOF, authorized representatives of BlueCat and the Company have signed this Agreement below.

BLUECAT	COMPANY
	Name:
Authorized Signing Officer	Title:
Date:	Date:
Email: <i>legal@bluecatnetworks.com</i>	Email: