



MASTER AGREEMENT

This Master Agreement is entered into by BlueCat, as defined in Schedule “A”, and the company indicated below (“**Customer**”), effective as of the later date of signature indicated below (“**Effective Date**”).

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

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

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 BlueCat Offerings and other ancillary purchases 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 in writing. No terms in any form of Customer Purchase Order, other than the identification, price, quantity and license model of the BlueCat Offerings, the Subscription Period, if applicable, the applicable pricing, and the address for invoicing and delivery, if applicable, shall be binding on BlueCat, unless specifically stated and agreed to by the Parties in writing.

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 Products identified on any Purchase Order up to the Entitlement, subject at all times to the terms and conditions set forth in this Agreement.

2.2. **Duration of License.** Software Products 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 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.

2.3. **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.** Subject to the terms and condition of this Agreement, Customer may remotely access and use the Cloud Services on a non-exclusive, non-transferable, non-assignable basis up to the Entitlement for the applicable Subscription Period identified on a Purchase Order.

3.2. **Service Levels, Sole Remedy.** BlueCat will make the Cloud Service available in accordance with the applicable 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 applicable BlueCat Offering; (b) Customer has breached or continues to breach this Agreement; and/or (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 applicable BlueCat Offering (e.g. security recommendations emanating from the applicable BlueCat Offering). The remedies listed in the Service Level Schedule are Customer's sole remedy and BlueCat's sole obligation for any failure of the Cloud Service. The Cloud Services are otherwise provided "as is", per the disclaimer in Section 6.4.

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

3.4. **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.

3.5. **Updates and Modifications.** 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.

3.6. **Ancillary Services Software.** BlueCat grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable and limited license to use the Ancillary Service Software during the applicable Subscription Period solely for Customer's internal business purposes. In addition, BlueCat shall provide Support for the Ancillary Service Software during the applicable Subscription Period. Customer's right to use such software and to receive Support for such software ceases when the right to access and use Cloud Services, as applicable, ends. At such time, each copy of the Ancillary Service Software must be promptly uninstalled or BlueCat may disable the Ancillary Service Software.

3.7. **APIs.** In the event that BlueCat makes available any APIs to Customer as part of the BlueCat Offerings, then Customer may access such APIs on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such APIs in accordance with such specifications, restrictions and guidance as BlueCat may stipulate from time to time. In addition, APIs regarding BlueCat Gateway are subject to the requirements detailed at the following address: <https://quay.io/repository/bluecat/gateway> and Customer agrees to comply with such requirements. BlueCat may from time to time on reasonable notice require Customer at Customer's own cost to take such steps as are required to integrate any modifications or updates BlueCat makes to APIs. BlueCat reserves the right to restrict Customer access to the APIs if BlueCat reasonably determine, in BlueCat sole discretion, that the volume of queries originating from Customer use of the APIs is unduly burdening any API.

3.8. **Adaptive Applications.** In the event that BlueCat makes Adaptive Applications available to Customer, Customer may access such Adaptive Applications on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer acknowledges that Adaptive Applications may include third party software obtained via a free and open source licensing agreement from third parties. Customer shall use Adaptive Applications in accordance with their specifications. BlueCat may provide Customer with source code in connection with Customer's use of the Adaptive Applications. Customer agrees not to alter or otherwise modify the Adaptive Application source code. BlueCat shall provide Support for the Adaptive Applications during the applicable Subscription Period, however BlueCat's obligation to provide Adaptive Application Support shall cease in the event that Customer alters or otherwise modifies the Adaptive Application source code, unless BlueCat agrees otherwise in writing.

3.9. **Adaptive Plug-Ins.** Customer acknowledges that Adaptive Plug-Ins may include third party software obtained via a free and open source software licensing agreement from third parties. In the event that BlueCat makes Adaptive Plug-Ins available to Customer, Customer may access such Adaptive Plug-Ins on a non-exclusive, non-transferable, non-assignable basis for the applicable Subscription Period identified on a Purchase Order, subject at all times to the terms and conditions of this Agreement. Customer is responsible for making and maintaining all necessary arrangements to access, use and interface with such Adaptive Plug-Ins in accordance with such specifications, restrictions, and guidance as BlueCat may stipulate from time to time. BlueCat shall use reasonable commercial efforts to provide support for the Adaptive Plug-Ins during the applicable Subscription Period.

4. **ADDITIONAL TERMS & RESTRICTIONS**

4.1. **License and Subscription Models.** The BlueCat Offerings are provided or made available based on the Entitlement identified in the applicable Purchase Order. Usage of the BlueCat Offerings may not exceed the applicable Entitlement. Where Customer's usage exceeds its Entitlement, Customer will be invoiced for any over usage at the then-current list price.

4.2. **Acceptable Use Policy.** Customer agrees to, and agrees 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. **Suspension of Perpetual Licenses.** If Customer is transitioning from existing BlueCat perpetual licenses to subscription licenses, upon delivery of the subscription licenses, all perpetual licenses being replaced are suspended during the Subscription Period.

4.4. **Appliances.** Upon payment of applicable additional fees set out in the Purchase Order, BlueCat shall provide the Appliances identified in the Purchase Order.

4.5. **E-Learning.** If Customer orders the E-Learning Cloud Service pursuant to a Purchase Order, the terms and conditions in Schedule "B" will apply.

4.6. **Professional Services.** Upon payment of applicable 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".

4.7. **Managed Services.** If Customer is a provider of managed services, then the terms and conditions in Schedule "D" will apply.

4.8. **Hosted Services.** If Customer purchases Hosted Services pursuant to a Purchase Order, the terms and conditions in Schedule "E" will apply.

5. INVOICES, DELIVERY, ACCESS AND PAYMENT

5.1. **Invoices.** Upon the delivery of any BlueCat Offering, BlueCat shall issue Customer an invoice. 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.

5.2. **Payment Terms, No Refund.** All invoices are due, and Customer agrees to pay each such invoice, in full thirty (30) days from the date of invoice without deduction or set off. Except as otherwise permitted in this Agreement, once paid, 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. Should Customer terminate (or not renew prior to contract end date) annual Support services and subsequently re-instates them, Customer may be subject to the then-current reinstatement fee.

5.3. **Delivery, Risk of Loss, Access.** (a) For Software Products or Ancillary Service Software 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 or for any other Ancillary Service Software, BlueCat shall arrange for virtual delivery of such Software by making it 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 by making such Cloud Services available for use by providing login credentials to Customer, at which point delivery will be deemed complete.

6. LIMITED WARRANTIES FOR SOFTWARE AND APPLIANCES, DISCLAIMER

6.1. **Software Product Warranty; Ancillary Service Software Warranty.** For a period of thirty (30) days following delivery, all ordered Software Products and Ancillary Service Software will perform substantially in accordance with its Documentation and will be free from known viruses (as identified using commercially reasonable steps and antivirus software). Such warranty does not apply: (a) to any change or service to such Software made by any party other than BlueCat or its authorized agent; (b) to the operation of such Software with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) if such Software was used in a manner other than as contemplated in this Agreement or the Documentation; or (d) to 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 any other Software Product or any Ancillary Service Software, deliver a replacement copy of such 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 item 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 Section 6.

6.4. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, SCHEDULE "C" OR SCHEDULE "E", BLUECAT DOES NOT REPRESENT OR WARRANT THAT THE BLUECAT OFFERINGS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY OR ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF ANY OF THEM. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.2, THIS SECTION 6, AND SCHEDULE "C", THE BLUECAT OFFERINGS ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLUECAT HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE), INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INFRINGEMENT, CURRENCY, RELIABILITY, SECURITY, OR UNINTERRUPTED USE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, BLUECAT EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF ANY OF THE BLUECAT OFFERINGS IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

7. CONFIDENTIALITY, NON-DISCLOSURE AND NON-SOLICITATION

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.

7.5. **Non-Solicitation.** For so long as Customer is receiving BlueCat Offerings from BlueCat and for a period of one year thereafter, Customer will not directly or indirectly (a) solicit, request or otherwise cause any of BlueCat's other customers to terminate its relationship with BlueCat; and/ or (b) solicit, employ or engage any BlueCat employees or cause any of them to terminate his or her relationship with BlueCat.

7.6. **Remedies.** Customer understands and agrees that (a) the restrictions in section 7.5 above are reasonable and properly required for the protection of the business and property of BlueCat; and (b) BlueCat will suffer irreparable harm in the event of any breach of Customer's obligations contained in section 7.5 above, and accordingly, BlueCat shall be entitled, without proof of damage, to apply for and obtain injunctive relief (without the posting of any bond or provision of any undertakings), in any court of competent jurisdiction, to enforce any provision of section 7.5 above upon the breach or threatened breach thereof, to an accounting of all earnings, profits or other benefits acquired by as a result of such breach, and to any other legal or equitable remedy for such breach.

8. OWNERSHIP, INTELLECTUAL PROPERTY, DATA, PRIVACY

8.1. **Ownership.** As between the parties, all ownership and Intellectual Property Rights in and to the BlueCat Offerings belong to BlueCat, its Affiliates or its licensors. Customer receives no title or ownership in any of the foregoing. The Software Products and any Ancillary Service 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. **BlueCat Data.** Customer acknowledges that BlueCat and its Affiliates may collect and process BlueCat Data and the BlueCat Offerings may automatically send BlueCat Data to BlueCat and its Affiliates. All Intellectual Property Rights in and to BlueCat Data belong to BlueCat. BlueCat may use BlueCat Data for its own internal purposes, such as to develop, test, improve, increase service and product value, train machine learning or other artificial intelligence algorithms, optimize the BlueCat Offerings and/or publish aggregate information, subject in all cases to applicable laws and provided that BlueCat shall not disclose any data that identifies the Customer or any individual.

8.3. **Customer Data.** All ownership rights in and to Customer Data belong to Customer. Customer hereby consents and grants to BlueCat a non-exclusive, worldwide right to use, process and transmit the Customer Data so that BlueCat may (i) provide or administer the applicable BlueCat Offering, (ii) monitor compliance with this Agreement, and (iii) manage its relationship with the Customer. Customer has sole responsibility for, and BlueCat disclaims all liability for, the Customer Data. Customer represents and warrants that Customer has all rights in the Customer Data that are necessary and sufficient to grant the rights contemplated by this Agreement. If Customer Data includes any Personal Data, BlueCat will process such Personal Data pursuant to the terms of its Privacy Statement, available at <https://www.bluecatnetworks.com/privacy/>, and the parties agree that the Data Processing Agreement forms a part of this Agreement and is incorporated herein by reference.

8.4. **Third Party and Open-Source Software.** BlueCat Offerings may contain third-party components, including open-source software, as described in the Documentation. The applicable third-party terms, including open-source license terms, described in the Documentation will control with respect to the third-party components.

9. INDEMNIFICATION

9.1. **BlueCat's Indemnification Obligations.** BlueCat will defend Customer against third party claims that the BlueCat Offerings (or any portion thereof) violate a third party's Intellectual Property Rights in Canada, the United States or Japan and will indemnify Customer against 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 in writing 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 by a third party arises as a result of any: (a) access or use of the BlueCat Offerings in violation of or inconsistent with this Agreement or the Documentation; (b) modification to the BlueCat Offerings by a party other than BlueCat or its authorized agents,

which modification has resulted in the claim ; (c) combination of the BlueCat Offerings with any computer program, software, hardware or equipment where the claim 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 the claim; or (e) access to or use of the BlueCat 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 BlueCat Offering or applicable portion thereof; (b) replace or modify the offending BlueCat 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 BlueCat Offering in question or the applicable portion thereof and upon return of the BlueCat 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 BlueCat Offerings that is (are) terminated. For Software licensed on a perpetual basis, such refund shall be based on the unamortized or un-expensed 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 BlueCat Offerings; (b) Customer Data; (c) unauthorized disclosure or exposure of Personal Data belonging to or under the control or custody of Customer; or (d) breach of Customer's obligations set out in Section 2, Section 3, or Section 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.** THE TOTAL AGGREGATE LIABILITY OF BLUECAT AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS TO CUSTOMER WILL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID BY CUSTOMER TO BLUECAT IN RELATION TO THE OFFENDING BLUECAT OFFERING PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM; PROVIDED, THAT THE TOTAL AGGREGATE LIABILITY OF BLUECAT AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS AND SUBCONTRACTORS TO CUSTOMER FOR DAMAGES ARISING FROM BLUECAT'S BREACH OF SECTION 3.3 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 IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM (THE "**SECURITY CAP**"). FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THESE MAXIMUM LIABILITY AMOUNTS.

10.2. **EXCLUSIONS.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY OF THE FOLLOWING ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT: (A) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY OR PUNITIVE DAMAGES; (B) ANY LOST SALES, SAVINGS, REVENUE, PROFITS, GOODWILL, USE , DATA OR CONTENT; OR (C) BUSINESS INTERRUPTION.

10.3. **CARVE-OUTS.** THE LIMITATIONS ON AND EXCLUSIONS FROM LIABILITY IN THIS SECTION 10 DO NOT APPLY TO (A) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS IN SECTION 7 (PROVIDED THAT THE SECURITY CAP SHALL APPLY IN THE EVENT OF BREACH OF SECTION 7 BY BLUECAT CAUSED BY BLUECAT'S BREACH OF SECTION 3.3); (B) A PARTY'S INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS UNDER SECTIONS 9.1 AND 9.5; OR (C) A BREACH BY CUSTOMER OF ITS PAYMENT OBLIGATIONS HEREIN OR BREACH OF BLUECAT'S INTELLECTUAL

PROPERTY RIGHTS.

10.4. **APPLICATION.** THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 10 APPLY (A) TO ALL CAUSES OF ACTION, (B) WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FOR NEGLIGENCE OR 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.

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 one (1) year periods at the then current fee for the applicable BlueCat Offerings and may not be cancelled with less than sixty (60) days' written notice prior to the expiration of the then-current Subscription 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 of this Agreement and such breach is not cured within thirty (30) days of written notice of such breach. Notwithstanding the foregoing, BlueCat may terminate this Agreement or any outstanding Purchase Order or cease providing any BlueCat Offerings 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 of this Agreement; (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 BlueCat Offerings, 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, return or destroy all instances of Software Products, Ancillary Service Software, Appliances and any Documentation and, upon request, certify to compliance with this Section 11.5(a); (b) cease to access and use the Cloud Services and any Documentation; and (c) upon request, confirm in writing compliance with Section 7.2. With respect to Cloud Services, BlueCat shall make Customer Data available to Customer for download for thirty (30) days following termination and BlueCat may destroy all 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 4.3, 5.1, 5.2, 6.4, 7, 8, 9, 10, 11.5, 11.6 and 12.

12. MISCELLANEOUS PROVISIONS

12.1. **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. During the Subscription Period and for twelve (12) months after its expiry or termination, Customer will maintain complete and accurate

records of use of the BlueCat Offerings to confirm compliance with this Agreement. Upon reasonable advance notice, and no more than once per twelve (12) month period, Customer will, within 30 days from BlueCat's notice, allow BlueCat and/or its auditors access to such records and any applicable books, systems, Software Product, Ancillary Service Software and accounts during Customer's normal business hours.

12.2. **Orders through Resellers.** Section 5 shall not apply to orders placed through a reseller. All other terms and conditions in this Agreement shall apply to orders placed through a reseller.

12.3. **Assignment; Subcontractors.** 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. BlueCat may use subcontractors to perform its obligations under this Agreement provided BlueCat shall remain responsible for the performance of its subcontractors.

12.4. **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.

12.5. **Entire Agreement, Amendment and 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.

12.6. **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.

12.7. **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.

12.8. **Rights and Remedies.** Except as expressly set out in this Agreement, 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 of this Agreement 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.

12.9. **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.

12.10. **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.

12.11. **Export Controls.** Customer acknowledges and agrees that the BlueCat Offerings 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 BlueCat Offering 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 BlueCat Offerings in a manner

prohibited or restricted by export control laws. Customer shall comply with all applicable export controls laws at all times.

12.12. US Federal and State Government Customers. The BlueCat 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 BlueCat Offerings. Any further use, modification, reproduction, release, performance, display, disclosure, decompiling, or reverse engineering of any of the BlueCat 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.

12.13. 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.

12.14. 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.

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 located at <https://www.bluecatnetworks.com/license-agreements/>, as may be updated by BlueCat from time to time;
- (c) **"Adaptive Application"** means application tools provided by BlueCat to Customer designed to facilitate or enhance the use of BlueCat Offerings, as may be designated in writing by BlueCat from time to time.
- (d) **"Adaptive Plug-In"** means a plug-in integration designated in writing by BlueCat which may increase functionality of the BlueCat Offerings.
- (e) **"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;
- (f) **"Agreement"** means this Master Agreement, all schedules annexed hereto and any other document incorporated by reference herein;
- (g) **"Ancillary Service Software"** means any software provided by BlueCat that is required to be installed and executed in order to facilitate Customer's use of the Cloud Services;
- (h) **"API"** means BlueCat owned or licensed application programming interface made available by BlueCat as part of the applicable BlueCat Offerings;
- (i) **"Appliance"** means any physical computer hardware component sold by BlueCat where Software or any Ancillary Service Software is resident or installed;
- (j) **"Authorized User"** means any employees and agents of Customer, who Customer gives access to the Cloud Services pursuant to this Agreement;
- (k) **"BlueCat"** means:
 - i. BlueCat Networks (USA) Inc., located at 156 W. 56th Street, 3rd Floor, New York, NY, 10019 USA, with respect to Customers located in the United States of America and Japan;
 - ii. BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Customers located outside the United States of America and Japan;
 - iii. BlueCat Federal USA, Inc. located at 201 N. Union Street, Suite 210, Alexandria VA, 22314 USA, with respect to Federal and State Government Customers located in the United States of America; or
 - iv. for the purposes of a particular Purchase Order, such other BlueCat Affiliate noted in the Purchase Order.
- (l) **"BlueCat Customer Care Support Handbook"** means the support handbook available from BlueCat, as may be updated from time to time by BlueCat in its sole discretion;
- (m) **"BlueCat Data"** means (i) usage data, performance data, technical data, set-up and configuration data, and other data associated with Customer's use of the BlueCat Offerings or the performance of the BlueCat

Offerings, (ii) data, information, statistics, results, feeds, graphs, analysis and reports computed and generated by or from the Software Products or Cloud Services, (iii) information, metrics, logs, inventory reports and issues identified regarding devices that the Software Products or Cloud Services might be connected to, and (iv) all data provided by Customer through access or use of the BlueCat Offerings that has been anonymized, aggregated, or de-identified. BlueCat Data is not Customer Data.

- (n) **“BlueCat Offerings”** means the Software Products, Cloud Services, Support, Professional Services and any other products or services made available by BlueCat;
- (o) **“Cloud Services”** means a software-as-a-service offering hosted by or on behalf of BlueCat and made available by BlueCat for subscription by Customer, as well as any Ancillary Service Software and any Support for the Cloud Services, and any software made available for access and use as part of the Cloud Services as set out at <https://www.bluecatnetworks.com/license-agreements/>;
- (p) **“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;
- (q) **“Customer Data”** means data or information provided by Customer to BlueCat through access or use of the BlueCat Offerings. Customer Data excludes BlueCat Data;
- (r) **“Data Processing Agreement”** means the applicable Data Processing Agreement located at <https://www.bluecatnetworks.com/license-agreements/>, as may be updated by BlueCat from time to time;
- (s) **“Documentation”** means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the BlueCat Offerings, made available in electronic format from BlueCat, and any revisions, updates and supplements thereto, as such documentation may be amended by BlueCat from time to time or embedded in any BlueCat Offering;
- (t) **“Entitlement”** means the specific metrics, duration and quantity of the Software Products or Cloud Services acquired as described at <https://www.bluecatnetworks.com/license-agreements/> and identified in the applicable Purchase Order
- (u) **“Effective Date”** is defined in the first paragraph of this Agreement;
- (v) **“e-Learning”** means BlueCat’s computer based training courses made available to Customer as a Cloud Service;
- (w) **“Hosted Services”** means the hosted external DNS services available from BlueCat from time to time;
- (x) **“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;

- (y) **“Party”** means either BlueCat or Customer and “Parties” refers to both BlueCat and Customer;
- (z) **“Personal Data”** means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (aa) **“Professional Services”** means professional services provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Software Products or Cloud Services;
- (bb) **“Purchase Order”** means an order schedule, a sales quote issued by BlueCat, a SOW, or any other document confirming any BlueCat Offerings to be purchased by Customer and any applicable Subscription Period(s) and Entitlements, issued or accepted by BlueCat;
- (cc) **“Service Level Schedule”** means the service level schedule related to Cloud Service, as may be updated by BlueCat from time to time and published at <https://www.bluecatnetworks.com/license-agreements/>;
- (dd) **“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;
- (ee) **“Software Products”** means the Software products offered by BlueCat for license as set out at <https://www.bluecatnetworks.com/license-agreements/> and any Adaptive Application made available by BlueCat;
- (ff) **“SOW”** means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer;
- (gg) **“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;
- (hh) **“Subscription Period”** mean the time period of each Subscription set out in the applicable Purchase Order and commences upon earliest delivery of the applicable BlueCat Offering. 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 BlueCat Offering; and
- (ii) **“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 Cloud Services, the support services set out in the Service Level Schedule and the BlueCat Customer Care Support Handbook.

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 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 this 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 Offerings. 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. The foregoing remedies

are BlueCat's sole obligation and Customer's sole remedy in the event of a valid warranty claim under Section 10.

13. **Independent Contractor.** The manner and means used by BlueCat to perform the Professional Services are in the sole discretion and control of BlueCat.
14. **Expiry.** Unless otherwise agreed, a SOW expires if the project is not commenced within six (6) months.
15. **Termination.** Any termination of Professional Services purchased in a Purchase Order shall require the written consent of BlueCat. If BlueCat agrees, in its sole discretion, to any termination of such Professional Services, or in the event of undue delays 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 may purchase certain Software Products in order to provide a managed service ("**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, the license(s) for the applicable Software Products. 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 EUA which is available upon request from BlueCat.

SCHEDULE "E"

HOSTED EXTERNAL DNS SERVICE TERMS AND CONDITIONS

1. **Hosted External DNS Services.** Subject to payment of Hosted Services fees, BlueCat shall provide the Hosted Services upon the terms and conditions set forth herein.
2. **Term.** Hosted Services are 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, Hosted Services fees are non-refundable.
3. **Monitor of Use.** BlueCat reserves the right to monitor Customer's use of the Hosted Services to ensure compliance with the terms herein. BlueCat shall invoice Customer for any over-usage of the Hosted Services at BlueCat's then-current price.
4. **Customer Warranties.** Customer represents and warrants that it is the registrant or duly authorized representative with respect to any domain names submitted to BlueCat in connection with the Hosted Services and that it has all right, title and interest to use the data which Customer provides to BlueCat to perform the Hosted Services. Customer further acknowledges and warrants that (a) it is entirely responsible for all content and information directly or indirectly delivered to or passed through BlueCat by the Customer, its customers or end users, and (b) BlueCat exercises no control over and accepts no responsibility for such content or information.
5. **BlueCat Warranty.** BlueCat warrants that the Hosted Services will be delivered substantially as described in the Service Levels identified below. BlueCat does not warrant the Hosted Services against malfunction or cessation of internet services by internet providers or of any of the networks that form the internet which may make the Hosted Services temporarily or permanently unavailable.
6. **Warranty Remedy.** Upon a valid deficiency claim by Customer pursuant to Section 5 above, BlueCat shall provide a credit for future Hosted Services as set forth in Section 8 below. The foregoing remedies are BlueCat's sole obligation and Customer's sole remedy in the event of a valid warranty claim under Section 5.
7. **Customer Indemnity.** At its own cost, Customer shall indemnify and defend BlueCat, its affiliates and licensors against any and all third party claims or demands that any information, data or other content passing through the Hosted Services to or from Customer, its customers or end users or resulting from or in connection with Customer's or its customer's or end user's use of the Hosted Services: (a) infringe any third party intellectual property rights; (b) violates BlueCat's Acceptable Use Policy; (c) is defamatory, libelous, slanderous, obscene or unlawful or violates a third party's rights, privacy or enjoyment of the Hosted Services; provided: (i) BlueCat has promptly notified Customer of such claim and Customer is not prejudiced by any delay by BlueCat, or if Customer is prejudiced by any delay by BlueCat, Customer's obligation to indemnify shall be reduced to the extent prejudiced by the delay; (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 and 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.
8. **Service Level Agreement.**
 - (a) During the term of this Agreement, BlueCat shall provide Customer with access to Resolution Services without any Service Outages each month (the "**Performance Objective**"). "**Resolution Services**" means the ability to receive and answer well-formed DNS queries along all IP addresses on standard ports with 100% availability.
 - (b) "**Service Outages**" means that the Resolution Services were available less than 100% and shall specifically exclude (i) unavailability of the Resolution Services due to Customer's misuse of the services, negligent or unlawful acts committed by Customer or its agents, acts or omissions of

Customer's domain name registrar, unavailability of the Customer's network, and force majeure events; and (ii) suspension of the services by BlueCat in accordance with the terms herein. BlueCat, in its sole and reasonable discretion, shall determine whether an event is considered a Service Outage.

- (c) Upon Service Outages lasting, in aggregate, less than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one day of Resolution Services. Upon Service Outages lasting, in aggregate, more than four hours during a calendar month, Customer shall be entitled to a credit to be applied towards the next monthly invoice equal to the pro-rated charge for one week of Resolution Services.
- (d) All Service Outages and all claims for credit must be reported by Customer to BlueCat within thirty days of the event giving rise to the claim. Customer shall provide to BlueCat all relevant details and documentation supporting its claim of a Service Outage to allow BlueCat to investigate the claim.
- (e) Upon failure by BlueCat to maintain 99.9% uptime (as measured on a monthly basis) of Resolution Services for three consecutive months, Customer may terminate the Hosted Services.
- (f) Credits may only be used towards Hosted Services fees. Customer's sole and exclusive remedy in the event BlueCat fails to meet the Performance Objectives is to receive credits as set forth herein and BlueCat shall have no further liability to Customer.