



**MASTER PROFESSIONAL SERVICES AGREEMENT**

This Master Professional Services Agreement is entered into by BlueCat Networks (USA) Inc., with respect to Customers located in the United States of America, and BlueCat Networks, Inc., with respect to Customers located outside the United States of America, in either case, “BlueCat” and the company indicated below (“Customer”), effective as of the later date indicated below.

<b>Customer:</b>	Full legal name
<b>Jurisdiction of Incorporation</b>	jurisdiction
<b>Mailing address:</b>	Address 1 2 3
<b>Contact Person:</b>	Name and Title
<b>Telephone:</b>	Phone number
<b>Email:</b>	<u>Email</u>
<b>Website:</b>	<a href="http://www.website.com">www.website.com</a>

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

Whereas Customer desires to engage BlueCat to provide certain services, in each case as more fully described herein and in the applicable Statement of Work;

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.

<b>BlueCat Networks, Inc. /BlueCat Networks (USA) Inc.</b>	<b>Customer:</b>
	<b>Print Name: NAME</b>
<b>Authorized Signing Officer</b>	<b>Title: TITLE</b>
<b>Date:</b>	<b>Date:</b>

**For Notices:**

Address: 4100 Yonge Street, Suite 300  
Toronto, Ontario M2P 2B5  
Canada

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

Phone: 416-646-8400

Phone: \_\_\_\_\_

Fax: 416-225-3324

Fax: \_\_\_\_\_

Email: legal@bluecatnetworks.com

Email: \_\_\_\_\_

## 1. DEFINITIONS AND SCHEDULES

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

- (a) **"Agreement"** means this Master Professional Services Agreement between BlueCat and Customer and each SOW;
- (b) **"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, including the Service Points, any software applications made available for download, and any software resident or installed in any Appliance;
- (c) **"Appliance"** means any physical computer hardware component sold by BlueCat where Software or any Ancillary Service Software is resident or installed;
- (d) **"Cloud Services"** means the DNS Edge cloud services 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;
- (e) **"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 Products 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;

- (f) **“Deliverable”** means the output rendered as a result of the Professional Service as identified in a SOW;
- (g) **“Documentation”** means all standard user guides, on-line user guides, operating manuals and release notes for the operation of the Product, made available in hard copy or 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 Product;
- (h) **“e-Learning”** means BlueCat’s computer based training courses made available to Customer from BlueCat from time to time;
- (i) **“Intellectual Property Rights”** means all proprietary 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;
- (j) **“Party”** means either BlueCat or Customer and “Parties” refers to both BlueCat and Customer;
- (k) **“Product”** means any and all software, hardware and related services available from BlueCat for purchase or license by Customer from time to time, including, without limitation: (a) all Software licensed by BlueCat to Customer pursuant to this Agreement, whether embedded on an Appliance or made available for download; (b) all related Documentation; (c) Maintenance and Support; (d) Professional Services; and (e) Hosted Services;
- (l) **“Professional Services”** means professional services (and where appropriate, e-Learning) provided by BlueCat to its customers in connection with the purchase, configuration and/or implementation of Products;
- (m) **“Purchase Order”** means an order schedule issued by BlueCat or Customer, a quote issued by BlueCat, a SOW issued by BlueCat, an invoice issued by BlueCat or any other document confirming the Products to be purchased or licensed by Customer, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement;
- (n) **“Service Point”** means the Software that the Customer deploys in their infrastructure that facilitates “first hop” capabilities in their DNS solution;
- (o) **“Software”** means the then current object code version of the computer program licensed by BlueCat to Customer, as evidenced either on an Appliance or available for download; and
- (p) **“SOW”** means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Customer, including the Deliverables.

## 2. PROFESSIONAL SERVICES

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

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

**2.3. Customer Cooperation.** Customer and BlueCat shall cooperate in good faith to complete the Professional Services in a timely and professional manner. Customer acknowledges that failure to (i) adhere to schedules or complete tasks within Customer's control, (ii) provide timely access to facilities, equipment, technology or personnel and (iii) provide complete and accurate information may delay completion of the Professional Services. BlueCat shall not be liable for any delays or inability to complete the Professional Services to the extent caused by Customer's non-compliance with this section.

### **3. E-LEARNING**

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

**3.2. Unique Users.** Licenses 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.

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

**3.4. Collection of Data.** Some activities within an e-Learning course may request users to submit information that is tabulated and stored in a database. The data obtained is used to produce statistics that are integral to the educational value of these activities. Where the requested data is personal in nature, a user's specific responses remain confidential and are not associated with a name or e-mail address. BlueCat will not disclose personally identifiable information associated with Customer's use of the website (ie., name, address, access code) except to third parties under confidentiality obligations and engaged for a legitimate purpose (ie., audit purposes).

**3.5. Consent to Data Transfer.** If Customer is located in the European Union, Canada or other jurisdiction with similar data transfer regulations, Customer acknowledges that by registering for e-Learning, Customer is explicitly consenting to the transfer and storage of a user's personal information to countries outside the EU, Canada or Customer's or user's resident jurisdiction, including the United States. If Customer fails to provide this consent, Customer will not be permitted to access any course for which registration is required.

### **4. PAYMENT**

**4.1. Invoices.** Unless otherwise agreed, BlueCat will invoice Customer for services performed and expenses incurred on a monthly basis. All invoices are due in full thirty (30) days from the date of invoice without deduction or set off. All applicable sales and use taxes shall be identified on the invoice and are the responsibility of the Customer. In the event of payment after the due date, interest shall be payable on the overdue amount at the rate of one and one half (1.5%) percent per month, calculated and compounded monthly, or the maximum rate permitted by law, whichever is less, calculated from the due date to the date of payment.

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

**4.3. Prepaid Services.** E-Learning and other 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.

## **5. CONFIDENTIALITY, NON-DISCLOSURE**

**5.1. Non-Disclosure.** Each of the Parties agrees that it will not: (a) make use of the Confidential Information of the disclosing Party other than to perform its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the disclosing Party to any person or entity, other than its own personnel to the extent necessary to give effect to this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations no less protective than those set forth in this Agreement.

**5.2. Return of Confidential Information.** Upon the termination of this Agreement, or at the disclosing Party's request, the recipient Party shall deliver to the disclosing Party all files, documents, computer programs and other media (and all copies and reproductions of any of the foregoing) in its possession or control that contain Confidential Information of the disclosing Party. 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.

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

**5.4. Right to Disclose.** The disclosing Party confirms that it is authorized to make the disclosures contained in its Confidential Information.

## **6. INTELLECTUAL PROPERTY**

**6.1. Ownership.** All Intellectual Property Rights belong to BlueCat, its affiliates or its licensors. No rights to the Software are being sold or licensed to Customer pursuant to this Agreement.

**6.2. 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. The Deliverables are not "work made for hire" and any Intellectual Property Rights in the Deliverables remain with BlueCat. The Deliverables are licensed to Customer in connection with BlueCat Software upon the same terms and conditions as set forth in the End User Agreement.

## **7. WARRANTIES**

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

**7.2. Exceptions to Warranty.** The warranty set forth in this Section 7 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.

**7.3. 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.

**7.4. WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, THERE ARE NO REPRESENTATIONS OR WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED, ARISING UNDER COMMON LAW, STATUTE OR OTHERWISE, RELATING TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. LIMITATION OF LIABILITY**

**8.1. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND ANY SOW, BLUECAT'S AGGREGATE LIABILITY TO CUSTOMER WILL NOT EXCEED THE TOTAL OF ALL AMOUNTS PAID BY CUSTOMER TO BLUECAT IN RELATION TO THE OFFENDING SERVICE PUSUANT TO THIS AGREEMENT IN THE SIX (6) MONTHS PRECEEDING THE NOTIFICATION OF ANY CLAIM BY CUSTOMER.

**8.2. EXCLUSIONS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT AND ANY SOW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLOARY OR PUNITIVE DAMAGES OR FOR ANY LOST SALES, LOST REVENUE, LOST PROFITS OR LOST DATA, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FOR FUNDAMENTAL BREACH, HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR HEREIN FAILS ITS ESSENTIAL PURPOSE OR IF BLUECAT IS ADVISED IN ADVANCE OF THE DAMAGES IN QUESTION.

## **9. TERMINATION**

**9.1. Term.** This Agreement will begin on the last date indicated above in the signature panel, will remain in effect for one (1) year from such date, and will renew for successive annual periods unless terminated by either party in accordance with this Agreement.

**9.2. Termination for Breach.** A Party may terminate this Agreement and any SOW if (a) the other Party is in breach of a material term of this Agreement, including, without limitation, non-payment of fees, and such breach is not cured within thirty (30) days of written notice of such breach, or (b) the other Party 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.

## **10. CHANGE ORDERS, SCHEDULING AND DELIVERY**

**10.1. 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.

**10.2. 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.

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

## **11. MISCELLANEOUS PROVISIONS**

**11.1. 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.

**11.2. Survival.** Notwithstanding the termination of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 5, 6, 7 and 8.

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

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

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

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

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

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

with such employee or contractor. Any general advertisement by Customer not directed to a BlueCat employee or contractor shall not violate this section.

**11.9. Force Majeure.** Except for payment and confidentiality obligations, neither Party shall be liable for any delay or failure to perform its obligations in this Agreement directly attributable to circumstances beyond its reasonable control.

**11.10. 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.

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

**11.12. Counterparts and Delivery by Facsimile.** 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 facsimile or email transmission will constitute valid and effective delivery of an original executed copy.

**END OF AGREEMENT**