



PARTNER AGREEMENT

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

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

WHEREAS BlueCat is a developer, manufacturer and marketer of software, hardware products, and services, and BlueCat wishes to engage Partner to resell BlueCat products and services;

NOW THEREFORE in consideration of the foregoing recitals, the mutual covenants of the parties in this Agreement, and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), the parties hereto have caused this Partner Agreement to be executed, as of the Effective Date, by their respective representatives duly authorized on their behalf.

BLUECAT	PARTNER
	Name:
Authorized Signing Officer	Title:
Date:	Date:
Email: legal@bluecatnetworks.com	Email:

1. DEFINITIONS & SCHEDULES

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

- (a) **"Affiliate"** means a Party's direct or indirect parent or subsidiary corporation (or other entity), or any corporation (or other entity) with which the Party is under common control;
- (b) **"Agreement"** means this partner agreement between BlueCat and Partner and all schedules annexed hereto, as the same may be amended from time to time in accordance with the provisions hereof;

- (c) **“BlueCat”** means:
- i. BlueCat Networks, Inc., located at 4100 Yonge Street, 3rd Floor, Toronto, Ontario, M2P 2B5 Canada, with respect to Partners located outside the United States of America and Japan;
 - ii. BlueCat Networks (USA) Inc., located 156 W. 56th Street, 3rd Floor, New York, NY, 10019 USA, with respect to Partners located in the United States of America and Japan;
 - iii. BlueCat Federal USA, Inc. located at 12110 Sunset Hills Rd #600, Reston, VA 20190 USA with respect to Federal Government Partners 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
- (d) **“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 and made available in the BlueCat Customer Care Portal;
- (e) **“BlueCat Marks”** means all trademarks, trade names, service marks, service names and logos used by BlueCat or its Affiliates at any time;
- (f) **“Confidential Information”** means any and all information disclosed by the disclosing Party to the recipient Party pursuant to this Agreement relating to its products, services, customers, marketing, research and development, business and finances, including all technical information, data, documentation, code, prototypes and copies thereof, which is either explicitly marked or noted at the time of disclosure as confidential or which a reasonable party would deem to be non-public and confidential having regard to the circumstances surrounding disclosure. Confidential Information shall not include information which a recipient Party can establish to have: (i) become publicly known through no action on the recipient's part; (ii) been lawfully known by the recipient prior to receipt; (iii) been independently developed by the recipient without reference to any information received from the disclosing Party; or (iv) been approved for public release by the written authorization of the disclosing Party. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception;
- (g) **“Documentation”** means all standard user guides, operating manuals and release notes for the operation of the Product, available in hard copy or electronic format, from BlueCat including via the Customer Care portal at <https://care.bluecatnetworks.com>, and any revisions, updates and supplements thereto, as approved and amended by BlueCat from time to time;
- (h) **“End User”** means a Person that purchases any Product, including but not limited to Maintenance and Support and/or Professional Services, from Partner for internal use and excluding any Person that purchases for further resale or distribution;
- (i) **“End User Agreement”** means the applicable end user agreement governing the license or subscription, purchase or use of the Product, Maintenance and Support and Professional Services, available at <https://bluecatnetworks.com/legal-documents/end-user-agreement/>;
- (j) **“Federal Government Partner”** means a Partner who resells Product to End Users affiliated with the United States Federal Government;
- (k) **“Intellectual Property Rights”** means all proprietary rights in the Products, BlueCat Marks or otherwise existing in the BlueCat business and brand, 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;
- (l) **“Maintenance and Support”** means (i) the maintenance services relating to updates, upgrades, patches, bug fixes and other improvements to the Products and (ii) the technical support services relating to the Products provided by BlueCat, both as described in the BlueCat Customer Care Support Handbook;
- (m) **“Partner Portal”** means the internet site maintained by BlueCat for Partners available at <https://partners.bluecatnetworks.com>;
- (n) **“Partner Program”** means, collectively, the partner guides, policies, benefits, and obligations governing Partner's participation in the BlueCat partner program, as set forth in this Agreement and the Partner Portal as updated by BlueCat from time to time;
- (o) **“Party”** means either BlueCat or Partner and “Parties” should be interpreted accordingly;

- (p) **“Person”** includes an individual, corporation, partnership, joint venture, trust, unincorporated organization, government or any agency of instrumentality thereof or any other juridical entity recognized by law;
- (q) **“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;
- (r) **“Product”** means any and all of the software, hardware and services available from BlueCat for purchase, license, subscription, and/or resale by Partner pursuant to this Agreement;
- (s) **“Professional Services”** means professional services provided by BlueCat to End Users in connection with the purchase and implementation of Products;
- (t) **“Purchase Order”** means an order schedule issued by BlueCat or Partner, a quote issued by BlueCat, a Statement of Work issued by BlueCat, an invoice issued by BlueCat or any other document indicating the Products to be purchased by the Partner, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement; and
- (u) **“Territory”** means the geographical area or markets identified in Schedule “A” and as may be amended from time to time upon mutual agreement of the parties.

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

Schedule "A" Territory and Additional Requirements

2. LICENSE

2.1 Partner License. BlueCat hereby grants to Partner the non-exclusive, non-transferable, non-assignable right and license to sell, market and promote the Products to End Users in the Territory during the Term, subject to the terms and conditions set forth in this Agreement and the applicable requirements in the Partner Program. All rights not expressly granted to Partner in this Agreement are reserved by BlueCat. Given the technical nature of our Products, Partner will not, directly or indirectly, without the prior written consent of BlueCat market, distribute or sell Products to third party resellers, agents, sales representatives or service providers for further resale. BlueCat may specify partner requirements from time to time in the Partner Program and Partner agrees to comply with all applicable requirements.

2.2 Documentation License. BlueCat hereby grants to Partner the non-exclusive, non-transferable, non-assignable right to reproduce the Documentation in electronic or paper format solely in conjunction with the resale of Products to End Users.

2.3 BlueCat Marks. BlueCat hereby grants to Partner a non-exclusive, non-transferable, non-assignable right and license to use, copy, display and advertise BlueCat’s name and BlueCat Marks in the Territory during the Term for the purpose of carrying out Partner’s obligations under this Agreement.

2.4 End User Agreement. All Products resold by Partner must be sold or made available pursuant to the terms and conditions set forth in the End User Agreement and Partner shall enter into written agreements with End Users such that End Users are bound by the End User Agreement. Partner may not amend or deviate from the terms and conditions set forth in the End User Agreement without BlueCat’s express written consent, which consent may be withheld by BlueCat in its sole discretion. Partner shall promptly notify BlueCat in writing of any violation or deviation from the End User Agreement of which Partner becomes aware, whether by the Partner or an End User and furthermore, Partner shall reasonably cooperate with BlueCat in the enforcement of the End User Agreement. If BlueCat permits Partner to use the Products for its internal use, Partner’s use is subject to the End User Agreement. Partner shall not make or pass on any additional warranties or representations regarding the Products beyond those provided by BlueCat in the End User Agreement.

2.5 Non-Exclusivity, Deal Registration. Nothing in this Agreement prevents BlueCat from: (i) appointing other resellers or distributors within the Territory; (ii) marketing, selling, or distributing Products directly to End Users; or (iii) maintaining direct sales channels for the marketing, selling and distribution of the Products. BlueCat will abide by the pricing and other incentives set out from time to time in the Partner Program with respect to registered deals.

3. PRODUCT MARKETING, TRAINING

3.1 Marketing Effort. Partner shall use commercially reasonable efforts, consistent with market practice in the Territory and the guidelines set out in the Partner Program, to market and sell the Products to End Users. Partner shall be knowledgeable about the Products and shall provide End Users with accurate and current information about the Products. Partner shall not make any guarantees, representations or commitments with respect to the specifications, warranties, features or capabilities of the Products which are inconsistent with the Documentation.

3.2 Training and Certification. BlueCat may make available to Partner sales, product and/or marketing training and certifications for the Products. If specified in the Partner Program, Partner personnel may be required to complete mandatory training and achieve certain certifications. Any travel and other expenses related to any training or classes are Partner's sole responsibility.

4. REPORTING, PRICING, FULFILLMENT AND PAYMENT

4.1. Business Plans. BlueCat and Partner shall develop a mutually acceptable business plan appropriate for the Territory and the Term, which plan may include, resale strategy, annual sales targets and marketing activities as set out in the Partner Program. The business plan may be updated by the Parties annually.

4.2. Price List. BlueCat's standard selling prices for the Products are set forth in BlueCat's price list and may be updated from time to time.

4.3 Partner Discounts. Partner shall be entitled to receive certain discounts or margin as set out in the Partner Program. BlueCat may change the discounts or margin applicable to Partner at any time by providing Partner with not less than thirty (30) days prior notice directly or through the Partner Portal. Any Partner Purchase Order accepted by BlueCat prior to such notice shall not be subject to the discount or margin changes, except for any changes due to material increases in BlueCat's costs. Any End User pricing or margin from BlueCat shall be solely recommended and will not be binding on Partner in any way. Nothing in this Agreement or the Partner Program shall place any restrictions on Partner with respect to the prices it charges End Users for the Products and Partner may determine such prices in its absolute and sole discretion.

4.4 Payment Terms. Partner shall pay BlueCat the amounts set forth on the applicable price list for Products, less available Partner discounts, if any, without deduction or set off by Partner for shipping charges, insurance charges, customs duties, import duties, customs clearance charges, taxes and withholding taxes. Payment in full shall be due within thirty (30) days following the date of invoice and must be made in United States currency unless otherwise specified. 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.

4.5 Creditworthiness. Upon request, Partner shall provide BlueCat with sufficient information to establish Partner's ability to pay for the Products. Partner shall also provide BlueCat with such assurances and security as BlueCat may reasonably request to secure payment for the Products. BlueCat hereby reserves, and Partner hereby grants to BlueCat, a purchase money security interest in each Product sold under this Agreement. If Partner disposes of such Product to another party prior to Partner paying the full amount due to BlueCat for such Product, then the security interest will be satisfied by payment in full of BlueCat's purchase price.

4.6 Purchase Orders. All Purchase Orders are subject to the terms and conditions set forth in this Section 4 and elsewhere in this Agreement. If any terms and conditions affixed to any Purchase Order delivered by Partner conflict with the terms and conditions of this Agreement, BlueCat's acceptance of Partner's Purchase Order and delivery of the Products is solely on the express understanding and condition that this Agreement contains the only terms and conditions that will apply to such Purchase Order and BlueCat hereby objects to and rejects any conflicting or additional terms and conditions. Partner shall have no right of return on the sale of any Product.

4.7 Offer and Acceptance. Subject to Section 4.6 above, a Purchase Order provided by Partner to BlueCat shall constitute an offer to BlueCat expressly limited to the identified Product, the price, the quantity, the address for invoicing, the delivery date and the delivery address, and then only to the extent that such terms and conditions are consistent with the terms and conditions of this Agreement. BlueCat reserves the right, in its sole discretion, to accept or reject any Purchase Order for the purchase of Products.

4.8 Delivery and Risk of Loss. All Products shall be shipped to Partner FCA shipping point from BlueCat's facility. The risk of loss or damage shall pass to Partner upon delivery of same to a common carrier from BlueCat's facility. Claims for shortages must be made in writing within five (5) days following receipt of shipment by Partner. Partner is responsible for all freight charges associated with the shipment of Products and the appropriate amount shall be added to the Partner's invoice and paid by Partner.

5. EVALUATION AND NFR UNITS

5.1 Evaluation Units. BlueCat may loan Partner certain Products ("**Evaluation Units**") under a limited, non-exclusive, non-transferable, non-assignable license for the exclusive purpose of allowing Partner to evaluate the Evaluation Unit for (a) its own evaluation purposes, or (b) on behalf of an End User, on a trial basis and further limited to the site(s) to which originally shipped. Evaluation Units may not be resold at any point in time and are not subject to stock rotation or return privileges. Evaluation Units, laboratory units and cold spares are to be used only for non-commercial, non-production environments. All such units are provided "as is" and BlueCat makes no warranties of any kind, express or implied. In connection with each Evaluation Unit, Partner shall fulfill the following evaluation requirements:

- i. Register the evaluation opportunity with BlueCat by providing the full legal name and address of the End User; and
- ii. At the end of the evaluation period, (i) confirm whether the End User has elected to purchase the Product upon the terms and conditions set forth in the End User Agreement, and (ii) confirm whether the Evaluation Unit has been returned.

5.2 Evaluation Warranty. PARTNER ACKNOWLEDGES AND AGREES THAT THE EVALUATION UNIT IS PROVIDED "AS IS". BLUECAT MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EVALUATION UNIT. IN NO EVENT WILL BLUECAT BE LIABLE FOR ANY DIRECT OR INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT HOWEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY OF LIABILITY. BLUECAT HAS ADVISED PARTNER TO TEST AND EVALUATE THE EVALUATION UNIT IN AN INTERNAL NON-PRODUCTION LABORATORY ENVIRONMENT ONLY.

5.3 NFR Units. Partner may purchase certain Products solely for Partner's internal, non-production purposes, such as training and demonstrations, and not for resale ("**NFR Units**"). NFR Units must be purchased by Partner. NFR Units are sold "as is" with no representations, warranties or indemnities. NFR Units may not be sold at any time. If NFR Units are used as Evaluation Units by the Partner, then Partner agrees to comply with the terms set out in Sections 5.1 and 5.2 with respect to Evaluation Units.

6. PROPRIETARY RIGHTS

6.1 No Rights to Intellectual Property Rights. Partner acknowledges that all Intellectual Property Rights and the goodwill associated therewith belong exclusively to BlueCat and/or its licensors and except for the limited license granted in Section 2.1, Partner shall not acquire any right, title or ownership in the Intellectual Property Rights. Partner shall not (a) modify the Products in any manner; (b) use the Products in any manner or for any purpose not specifically permitted by this Agreement; and/or (c) decompile, disassemble or otherwise reverse engineer any of the Products or authorize others to do so.

6.2 Protection of Intellectual Property Rights. Partner agrees not to remove, modify or deface any BlueCat Marks from the Products or any display screens, labeling or packaging for the Products or any other materials provided by BlueCat. Partner shall comply with all instructions issued by BlueCat relating to the form and manner in which the BlueCat Marks may be used. Partner agrees to promptly notify BlueCat of any imitation by others of the Products or any infringement by others of BlueCat's Intellectual Property Rights and to co-operate with BlueCat in the protection of its Intellectual Property Rights.

6.3 Indemnification by BlueCat. BlueCat agrees to defend Partner against any and all claims or demands by a third party that the Product violates such third party's intellectual property rights in Canada, the United States, Japan, the European Economic Area, and in the Territory; provided: (a) Partner has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay by Partner; (b) BlueCat shall have full control over the defence of the claim, provided that any settlement or resolution entered into by BlueCat shall not require any admission of liability or any payment by Partner; (c) Partner has not made any admission against BlueCat's interests and has not agreed to any settlement of any claim or demand without BlueCat's express consent; and (d) Partner shall cooperate with BlueCat in the defense of the claim, at BlueCat's expense. The foregoing indemnity shall constitute Partner's sole remedy from BlueCat in respect of infringement claims and demands.

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

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

7. NON-SOLICITATION

During the Term and for one (1) year thereafter, Partner will not directly or indirectly solicit, employ or engage any BlueCat employees or cause any of them to terminate their relationship with BlueCat, except as a result of general solicitations not aimed at BlueCat employees.

8. ADDITIONAL REPRESENTATIONS AND WARRANTIES

8.1 Ability to Conduct Business. Partner will use its best efforts to resell the Products throughout the Territory during the Term in a manner consistent with this Agreement and the Partner Program. Partner shall, at all times during the Term and at its own expense, obtain and maintain such permits and approvals as are required for Partner to conduct business as contemplated in this Agreement. Partner shall employ staff who are appropriately trained to facilitate the conduct of business as contemplated in this Agreement and the Partner Program. Partner shall commit resources and effort as required for Partner to comply with this Agreement generally and specifically, the requirements set out in the Partner Program. Partner shall comply with all applicable laws.

8.2 Maintenance Renewal. Partner shall use commercially reasonable efforts to ensure that all End Users renew the Products. At the request of BlueCat, Partner shall provide details of each renewal End User.

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

8.4 Audit Rights. Partner shall maintain true and correct records pertaining to its performance of this Agreement in sufficient detail to permit BlueCat to determine whether Partner has fully complied with this Agreement. Partner shall make such records available to BlueCat upon reasonable notice.

8.5 Insurance. Partner shall maintain during the Term, at its own expense, comprehensive general liability insurance including products liability in the minimum amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate. Upon request, Partner shall provide BlueCat with a certificate of insurance evidencing same.

8.6 Confidentiality; Non-Disclosure. Each Party acknowledges and agrees that it will not: (a) make use of the Confidential Information of the other Party except to carry out its obligations under this Agreement; or (b) in any way disclose any Confidential Information of the other Party to any person or entity, other than its Affiliates and its own personnel to the extent necessary to carry out this Agreement and only to those of its personnel who have agreed to be bound by confidentiality obligations substantially similar to those set out in this Agreement. Each Party agrees to use reasonable efforts and no less than industry standard to protect the Confidential Information of the other Party.

8.7 BlueCat Warranty. BlueCat represents and warrants that it has the right to grant the license in Section 2.1 to Partner.

8.8 FCPA. Each Party represents and warrants that it will perform this Agreement in a manner consistent with and comply with all requirements of the Foreign Corrupt Practices Act ("**FCPA**"), the Corruption of Foreign Public Officials Act (Canada), the UK Bribery Act and all other applicable anti-bribery and anti-corruption laws and regulations. Each Party will not make or cause to be made any payment or offer of anything of value to any government official or political party or candidate on behalf of such party or in connection with this Agreement or any Purchase Order unless such payment or offer is approved in writing in advance the other Party's legal department. In that regard, each Party will provide all information requested by the other Party with respect to the proposed offer or payment.

8.9 Privacy and Personal Data Protection. During the Term, each Party shall comply with all applicable laws, rules and regulations regarding privacy and the protection of Personal Data. Each Party agrees to implement commercially reasonable technical and organizational security procedures to preserve the security and confidentiality of Personal Data exchanged pursuant to this Agreement.

9. INDEMNITIES AND LIMITATION OF LIABILITY

9.1 Partner's Indemnity. Partner shall indemnify and defend BlueCat from and against any and all suits, actions, damages, costs, losses, expenses (including without limitation, court costs, arbitration fees, penalties, fines, amounts paid in settlement of claims and reasonable legal fees and investigation expenses) and other liabilities arising from or in connection with any breach by Partner of any of Partner's covenants, representations and warranties contained in this Agreement.

9.2 WARRANTIES EXCLUSION. NOTWITHSTANDING ANY OTHER TERMS OF THIS AGREEMENT TO THE CONTRARY, BLUECAT PROVIDES NO WARRANTY OR INDEMNITY REGARDING THE PRODUCTS OR THEIR PERFORMANCE, EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED PURSUANT TO THE END USER AGREEMENT. BLUECAT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INDEMNITIES, COVENANTS AND CONDITIONS, ORAL OR WRITTEN, EXPRESS, IMPLIED, WHETHER ARISING UNDER CUSTOM, COMMON LAW OR STATUTE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BLUECAT DOES NOT WARRANT THAT THE PRODUCTS WILL OPERATE WITHOUT ERROR OR INTERRUPTION, THAT THEY WILL BE ABLE TO IDENTIFY OR FILTER OUT ALL KNOWN SPAM, SOFTWARE VIRUSES OR OTHER PROGRAMMING ROUTINES THAT MIGHT CAUSE DAMAGE TO PARTNER OR ITS END USERS, THAT THEY WILL SATISFY ALL OF THE NEEDS OF PARTNER OR ITS END USERS, OR THAT THEY WILL OPERATE WITH ALL COMBINATIONS OF HARDWARE AND SOFTWARE WITH WHICH THEY MAY BE USED.

9.3 LIMITATION OF LIABILITY. EXCEPT FOR BLUECAT'S INDEMNIFICATION OBLIGATIONS IN SECTION 6.3, PARTNER'S INDEMNIFICATION OBLIGATIONS IN SECTION 9.1, PARTNER'S BREACH OF SECTION 6.1 OR OF ITS PAYMENT OBLIGATIONS TO BLUECAT, EITHER PARTY'S LIABILITY FOR DEATH OR BODILY INJURY, OR EITHER PARTY'S FRAUD OR WILFUL MISCONDUCT, NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN, EACH PARTY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT AND THE PRODUCTS WILL NOT IN ANY EVENT EXCEED THE TOTAL OF ALL SUMS PAID TO BLUECAT BY PARTNER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS REFERRED TO IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FORM OF ANY ACTION, WHETHER PURSUANT TO STATUTE, CONTRACT, TORT, EQUITY OR ANY OTHER FORM OF ACTION.

9.4 DAMAGES. EXCEPT FOR PARTNER'S OBLIGATIONS TO BLUECAT PURSUANT TO SECTIONS 6.1 AND 9.1 AND BLUECAT'S OBLIGATIONS TO PARTNER PURSUANT TO SECTION 6.3, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST REVENUE OR LOST PROFITS OR FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES.

10. TERMINATION

10.1 Term. This Agreement shall commence on the Effective Date and remain in effect for a period of twelve (12) months. The Agreement will automatically renew thereafter for additional twelve (12) month terms, unless either party gives the other written notice of non-renewal at least thirty (30) days before the automatic renewal date.

10.2 Termination for Breach. Either Party may terminate this Agreement prior to the expiry of the Term if (a) the other Party is in breach of a material term of this Agreement and such breach is not cured within thirty (30) days of written notice of such breach, 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.

10.3 Termination for Convenience. Either Party may terminate this Agreement for any reason whatsoever at any time upon providing to the other Party no less than sixty (60) days written notice of its intention to terminate.

10.4 Effects of Termination. Upon the termination of this Agreement:

- (a) Each Party shall forthwith pay all sums owing to the other hereunder or subsequently becoming due;
- (b) Partner shall return to BlueCat all Confidential Information, advertising, informational and technical material provided by BlueCat;
- (c) Each Party shall refrain from further use of the other Party's Confidential Information, shall immediately deliver to the other Party such other Party's Confidential Information then in its possession or control, and shall deliver a certificate of a corporate officer attesting that all such Confidential Information has been returned;
- (d) Partner shall cease using BlueCat's Mark and refrain from holding itself out as a partner of BlueCat or the Products;
- (e) If requested by BlueCat and solely at BlueCat's option and discretion, Partner shall return to BlueCat all Products remaining unsold and in its possession or control at the price paid by Partner plus the reasonable cost of return; provided however, that BlueCat may reject any of the returned Products that are not in new, marketable condition; and
- (f) If BlueCat so elects solely at its option and discretion, BlueCat may assume the liability for providing Maintenance and Support to End Users who have valid support contracts. If so requested by BlueCat, Partner shall provide BlueCat, from time to time, with a complete list of such End Users and details of their support contracts and shall cooperate with BlueCat in communicating the transition of the Maintenance and Support from Partner to BlueCat.

Termination of this Agreement shall have no effect on the rights and obligations of the parties accruing prior to the termination of this Agreement, including, without limitation, a valid End User Agreement entered into with End Users and Purchase Orders accepted by BlueCat. The termination of this Agreement shall not give rise to any liability on the part of BlueCat to pay any amounts to Partner resulting from such termination, including but not limited to loss of profits, goodwill or commission or other compensation.

10.5 Survival. Notwithstanding the expiry or termination of this Agreement, all obligations which either expressly or by their nature are to continue after the expiry or termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 6, 7, 9, 10.4 and 11.

11. MISCELLANEOUS PROVISIONS

11.1 Maintenance and Support. BlueCat will provide Maintenance and Support directly to End Users in accordance with the End User Agreement. BlueCat has no obligation to provide any Maintenance and Support to Partner. Partner will refer the End User to BlueCat for all technical support required by the End User. Partner acknowledges that BlueCat shall provide Maintenance and Support only for Products for which BlueCat has been paid the applicable license and support fees.

11.2 Assignment. Without the prior written consent of BlueCat, Partner 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) Partner remains responsible for Affiliate's compliance with this Agreement, including payment of all fees.

11.3 Entire Agreement, Amendment. This Agreement and the Partner Program contain 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.

11.4 No Other Relationship/Obligations; No Third Party Beneficiaries. This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership, or other form of a business organization or agency relationship, and the relationship of the parties shall be that of independent contractors. Neither Party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, express or implied, on behalf of the other Party, except as expressly provided herein. Nothing in this Agreement is intended to confer on any Party (including, without limitation, any End User) other than BlueCat and Partner any benefits, rights or remedies.

11.5 Currency. All dollar amounts are expressed in United States currency.

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 Notices. Any notice required or otherwise provided for in this Agreement shall be given to BlueCat or Partner, as the case may be, at the physical or email address set forth on the first 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 individual with whom the Parties typically communicate.

11.8 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.

11.9 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 Language. The parties acknowledge and agree that the English language shall be the controlling language of this Agreement.

11.11 Governing Law. Regardless of the place of execution or performance or the domicile of the parties, if Partner 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 Partner 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 Partner 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 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.

11.12 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.

11.13 Counterparts and Delivery by Facsimile or Email. 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.

11.14 Press Releases; Marketing. BlueCat may refer to Partner and use its logo for the limited purpose of identifying it as a partner in sales and marketing materials.

SCHEDULE "A"

TERRITORY AND ADDITIONAL REQUIREMENTS

1. TERRITORY:

2. ADDITIONAL REQUIREMENTS (if applicable):
