

Attachment A – BlueCat Networks

1. DEFINITIONS AND EXHIBITS

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 End User Agreement between BlueCat and Ordering Activity, all exhibits annexed hereto, each Purchase Order and SOW and any other document incorporated by reference herein;
- (c) **"Appliance"** means any physical computer hardware component sold by BlueCat where the Software is resident or installed;
- (d) **"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. When the end user is an instrumentality of the U.S. Government, neither this End User Agreement nor the GSA Schedule Price List shall be deemed "confidential information." Confidential Information shall not include information which a recipient Party can establish to have: (a) become publicly known through no action on the recipient's part; (b) been lawfully known by the recipient prior to receipt; (c) been independently developed by the recipient without reference to any information received from the disclosing Party; (d) been approved for public release by the written authorization of the disclosing Party; or (e) been required to be disclosed in response to a valid order issued by a court, governmental or regulatory body with jurisdiction over the recipient. Specific information received shall not be deemed to fall within the exceptions to Confidential Information set forth above merely because it is embraced by general information within the exception. BlueCat recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor;
- (e) **"Documentation"** means all standard user guides, operating manuals and release notes for the operation of the Product, available in hard copy or electronic format, and any revisions, updates and supplements thereto, as approved and amended by BlueCat from time to time;
- (f) **"e-Learning"** means BlueCat's computer based training courses;
- (g) **"Intellectual Property Rights"** means all intellectual property and other proprietary, 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;

- (h) **"Maintenance and Support"** means the maintenance services relating to updates, upgrades, patches, bug fixes and other improvements to the Software and the technical support services relating to the Products provided by BlueCat as described in the Customer Care Support Handbook;
- (i) **"Party"** means either BlueCat or Ordering Activity and "Parties" should be interpreted accordingly;
- (j) **"Product"** means any and all software, hardware and related services available from BlueCat for purchase or license by Ordering Activity identified in a Purchase Order and may include, without limitation: (a) all Software licensed by BlueCat to Ordering Activity pursuant to this Agreement, whether embedded on an Appliance, or made available for download or use; (b) cloud services; (c) all related Documentation; (d) Maintenance and Support; (e) Professional Services; (f) e-Learning; and (g) Threat Protection.
- (k) **"Professional Services"** means professional services (and where appropriate, e-Learning) provided by BlueCat to its Ordering Activities in connection with the purchase and implementation of Products;
- (l) **"Purchase Order"** means an ordering document issued by Ordering Activity confirming the Products to be purchased or licensed by Ordering Activity, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement;
- (m) **"Software"** means the then current object code version of the computer program licensed by BlueCat to Ordering Activity pursuant to this Agreement, as evidenced either on an Appliance or available for download or use;
- (n) **"SOW"** means a statement of work setting out the details of the Professional Services to be provided by BlueCat to Ordering Activity; and
- (o) **"Threat Protection"** means BlueCat's DNS security feed.

1.2. **Exhibits.** The following exhibits are attached to and form a part of this Agreement:

Exhibit "A" – Additional Professional Service and e-Learning Terms and Conditions

2. BLUECAT SOFTWARE AND SERVICES

2.1. **Grant of License.** BlueCat hereby grants to Ordering Activity a non-exclusive, non-transferable, non-assignable, non-sublicenseable, perpetual license to use the Software identified on any Purchase Order accepted by BlueCat and paid for by Ordering Activity, subject at all times to the terms and conditions set forth in this Agreement.

2.2. **Documentation License.** BlueCat hereby grants to Ordering Activity the non-exclusive, non-transferable, non-assignable right to use and reproduce the Documentation in electronic or paper format, subject at all times to the terms and conditions set forth in this Agreement.

2.3. **Acceptable Use.** Ordering Activity shall use the Products for internal use only. Ordering Activity shall not: (a) modify, translate or copy any Software or Documentation; (b) reverse engineer, decompile or disassemble the Software, create derivative works based on the Software or Documentation, or attempt to derive the source code of the Software; (c) rent, lease or use the Software to operate a service bureau or application service provider; (d) use the Software on equipment not provided by BlueCat or explicitly approved by BlueCat or in the Documentation; (e) use the Software in any application where a failure could cause personal injury or death or damages to property; (f) remove any proprietary notices, labels or marks on the Products; or (g) use the Software or any Product in a manner inconsistent with the Documentation or this Agreement.

2.4. **Maintenance and Support.** Upon issuance of applicable ordering document for Maintenance and Support, BlueCat shall provide the Maintenance and Support described in the BlueCat Ordering Activity Care Support Handbook, available upon request and at the Ordering Activity Care portal <https://care.bluecatnetworks.com>; for informational purposes. Maintenance and Support can be renewed annually.

2.5. **Professional Services.** Subject to a SOW accepted by BlueCat, BlueCat shall provide the Professional Services described in the SOW upon the terms and conditions set forth in the underlying GSA Schedule Contract, GSA Customer Purchase Order, this Agreement and in Exhibit "A".

2.6. **Training.** Subject to a SOW accepted by BlueCat, BlueCat shall provide the instructor-led training described in the SOW upon the terms and conditions set forth in this Agreement and in Exhibit "A".

2.7. **Threat Protection.** Upon issuance of a Purchase Order for Threat Protection, BlueCat shall provide Ordering Activity access to the Threat Protection security feed. Threat Protection is licensed on a subscription basis per DNS/DHCP active instance. Threat Protection can be renewed annually by executing a new purchase order.

3. **RESERVED.**

4. **WARRANTIES**

4.1. **Software Warranty.** Upon: delivery of the Appliance or Software and for a period of thirty (30) days thereafter, the Software shall be free from material defects, free from material errors, free from all known viruses (as identified using commercially reasonable steps and current antivirus software) and will perform substantially in accordance with the Documentation.

4.2. **Exceptions to Software Warranty.** The Software warranties set forth in Section 4.1 do not apply upon any of the following: (a) any change or service to the Software or Appliance made by any party other than BlueCat or its authorized agent; (b) the operation of the Software or Appliance with software or hardware not approved by BlueCat, its authorized agent or as specified in the Documentation; (c) the Software or Appliance was used in a manner other than as contemplated in this Agreement or the Documentation; and (d) failure by Ordering Activity to report a warranty claim within the warranty period specified in Section 4.1.

4.3. **Software Remedy.** Upon a valid software warranty claim by Ordering Activity, BlueCat shall, in its sole discretion: (a) in the case of a defective Appliance, repair or replace the Appliance, (b) in the case of virtual Software, deliver a replacement copy of the Software, or (c) where (a) and (b) are not successful after a reasonable remedy period, refund all fees paid by Ordering Activity and attributable to the Software giving rise to the warranty claim.

4.4. **Hardware Warranty.** Any applicable hardware warranty is described in the BlueCat Ordering Activity Care Support Handbook.

4.5. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 4 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THERE ARE NO REPRESENTATIONS OR WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESS OR IMPLIED (WHETHER ARISING UNDER COMMON LAW, STATUTE, COURSE OF DEALING OR TRADE, OR OTHERWISE) RELATING TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OR CONDITION OF QUALITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. NO WRITTEN OR ORAL INFORMATION OR ADVANCE GIVEN BY BLUECAT WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION.

5. **RESERVED.**

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 to Customer.

7. **RESERVED.**

8. **RESERVED.**

9. **MISCELLANEOUS PROVISIONS**

9.1. **Evaluation Units; Laboratory Units; Cold Spares.** 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. All evaluation units are governed by a separate evaluation agreement available from BlueCat.

9.2. **Reserved.**

9.3. **Third Party Software.** The use of any third party software resold by BlueCat to Ordering Activity is governed by the terms of the license agreement between such licensor and BlueCat. BlueCat does not provide any warranties, and has no liability or obligations to the Ordering Activity, related to the third party software.

9.4. **Reserved.**

9.5. **Reserved.**

9.6. **Reserved.**

9.7. **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.

9.8. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any party other than BlueCat, Ordering Activity and their permitted assigns any benefits, rights or remedies.

9.9. **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.

9.10. **Reserved.**

9.11. **Reserved.**

9.12. **Non-Solicitation.** During the provision of any Professional Services pursuant to a SOW and for a period of six (6) months thereafter, Ordering Activity shall not, either directly or indirectly: (a) solicit any BlueCat employee or contractor who provided services to Ordering Activity 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 Ordering Activity not directed to a BlueCat employee or contractor shall not violate this Section.

9.13. **Reserved.**

9.14. **Reserved.**

9.15. **US Government End User.** Each Product is a "commercial item" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are defined in FAR 12.212, and is provided to the U.S. Government only as a commercial end item. Government end users acquire the rights set out in this Agreement for each Product consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in FAR 12.212;. Use of each Product and related documentation is further restricted by the terms and conditions of this Agreement.

9.16. **Reserved.**

9.17. **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.

9.18. **Reserved.**

EXHIBIT "A"

ADDITIONAL PROFESSIONAL SERVICE AND E-LEARNING TERMS AND CONDITIONS

In addition to the terms and conditions set forth in Attachment A, which continue to apply to Professional Services and e-Learning to the extent not inconsistent herewith, the following terms and conditions apply specifically to Professional Services and e-Learning provided by BlueCat:

1. **Instructor-Led Training Courses.** All instructor-led training courses to be provided by BlueCat to Ordering Activity shall be described in a SOW signed by both Parties and referencing the Agreement. Each SOW must be consistent with the terms of this Agreement (including this Exhibit "A") unless specifically stated in the SOW. All Instructor-Led Training Courses are provided in accordance with the terms of the underlying GSA Schedule Contract and applicable GSA Customer Purchase Order.

2. **Professional Services.** All Professional Services to be provided by BlueCat to Ordering Activity 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 Exhibit "A") unless explicitly stated in the SOW. All Professional Services are provided in accordance with the terms of the underlying GSA Schedule Contract and applicable GSA Customer Purchase Order.
3. **Time and Materials.** Unless explicitly stated in the SOW, all Professional Services are performed on a "time and material" basis.
4. **Expenses.** Ordering Activity shall reimburse BlueCat for all reasonable and documented expenses, including travel, parking accommodations, and meals in accordance with FTR/JTR as applicable. Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable Purchase Order.
5. **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.
6. **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.
7. **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.
8. **Reserved.**
9. **Reserved.**
10. **Limited License re. Deliverables.** BlueCat is not providing or licensing any BlueCat Software to Ordering Activity 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 Ordering Activity in connection with BlueCat Software upon the same terms and conditions as set forth in the End User Agreement.
11. **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.
12. **Exceptions to Warranty.** The warranty set forth in Section 11 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 Ordering Activity to report a deficiency within the specified warranty period.
13. **Warranty Remedy.** Upon a valid deficiency claim by Ordering Activity, BlueCat shall remedy the deficiency within a reasonable period of time and failing that, BlueCat shall refund all Professional Services fees paid by Ordering Activity and attributable to the deficiency giving rise to the warranty claim.

14. **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.
15. **Expiry.** Unless otherwise agreed, a SOW expires if not implemented within twelve (12) months.
16. **Reserved.**

Terms specific to e-Learning and Instructor-Led Training:

1. **e-Learning Services.** 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 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.** Licenses to 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. Ordering Activity 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.