



## RESELLER AGREEMENT

THIS RESELLER AGREEMENT GOVERNS RESELLER'S RIGHT TO PURCHASE PRODUCTS AND SERVICES FOR RESALE TO END USERS, UNLESS RESELLER HAS PREVIOUSLY ENTERED INTO A NEGOTIATED RESELLER AGREEMENT WITH BLUECAT.

This Reseller Agreement is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (the "**Effective Date**") entered into by BlueCat Networks (USA) Inc., located at 1000 Texan Trail, Suite 105, Grapevine, Texas 76051 USA, with respect to Resellers located in the United States of America, and BlueCat Networks, Inc., located at 4101 Yonge Street, Suite 501, Toronto, Ontario, M2P 1N6 Canada, with respect to Resellers located outside the United States of America, in either case, "**BlueCat**", the company indicated below ("**Reseller**").

<b>Reseller (full legal name):</b>	
<b>Jurisdiction of incorporation:</b>	
<b>Mailing address:</b>	
<b>Contact person (name and title):</b>	
<b>Telephone:</b>	
<b>Email:</b>	
<b>Website:</b>	

WHEREAS BlueCat is a developer, manufacturer and marketer of software and hardware products and services in the DNS, DHCP and IPAM markets and BlueCat wishes to engage Reseller to act as a reseller of BlueCat products and services;

AND WHEREAS Reseller wishes to resell BlueCat products and services to End Users on the terms and conditions set forth below;

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 Reseller Agreement to be executed, as of the Effective Date, by their respective representatives duly authorized on their behalf.

### BLUECAT

By: \_\_\_\_\_  
Name: Vivian Leung  
Title: General Counsel  
Date: \_\_\_\_\_

### RESELLER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## 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 reseller agreement between BlueCat and Reseller and all schedules annexed hereto, as the same may be amended from time to time in accordance with the provisions hereof;
- (c) **"BlueCat Marks"** means all trademarks, trade names, service marks, service names and logos used by BlueCat at any time;
- (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 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;
- (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, 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;
- (f) **"End User"** means a Person that purchases any Product, including Maintenance and Support and Professional Services, from Reseller for internal use;
- (g) **"EUA"** means the applicable end user agreement between BlueCat and each End User governing the license or subscription, purchase or use of the Product, Maintenance and Support and Professional Services, as approved and amended by BlueCat from time to time and made available at <https://www.bluecatnetworks.com/services-support/support/license-agreements/>;
- (h) **"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;

- (i) **"Maintenance and Support Program"** means the maintenance services (including renewals) relating to updates, upgrades, patches, bug fixes and other improvements to the Products and the technical support services relating to the Products provided by BlueCat as described in the BlueCat Customer Care Support Handbook;
- (j) **"Partner Portal"** means the internet site maintained by BlueCat for Resellers;
- (k) **"Partner Program"** means, collectively, the partner program, policies, benefits, and obligations governing Reseller's participation in the partner program, as set forth in this Agreement and the Partner Portal;
- (l) **"Party"** means either BlueCat or Reseller and "Parties" should be interpreted accordingly;
- (m) **"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;
- (n) **"Personal Data"** means any information that pertains to a specific person and that can be linked to such person, including, without limitation, any information which is subject to privacy laws or other similar laws in the jurisdiction in which Customer or any authorized users access or use the Service; provided, however, that an IP address shall not be considered Personal Data;
- (o) **"Product"** means any and all of the software, hardware and services available from BlueCat for purchase, license, subscription, and/or resale by Reseller pursuant to this Agreement;
- (p) **"Purchase Order"** means an order schedule issued by BlueCat or Reseller, 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 End User, in each case, as accepted by BlueCat and consistent with the terms and conditions of this Agreement;
- (q) **"Resale License"** means the rights and licenses granted by BlueCat to Reseller pursuant to Article II of this Agreement;
- (r) **"Professional Services"** means professional services provided by BlueCat to End Users in connection with the purchase and implementation of Products;
- (s) **"Term"** means the period of time during which BlueCat has granted the Resale License to Reseller, as identified in the Partner Program and as may be amended, renewed or extended from time to time upon mutual agreement of the parties; and
- (t) **"Territory"** means the geographical area or markets in which BlueCat has granted the Resale License to Reseller, as initially 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. RESALE LICENSE**

**2.1 Product License.** BlueCat hereby grants to Reseller, and its Affiliates, the non-exclusive, non-transferable, non-assignable right and license to sell, market, promote and distribute the Products to End Users in the Territory during the Term, subject to the terms and conditions set forth in this Agreement. All rights not expressly granted to Reseller in this Agreement are reserved by BlueCat.

**2.2 Documentation License.** BlueCat hereby grants to Reseller the non-exclusive, non-transferable, non-assignable right to reproduce the Documentation in electronic or paper format solely in conjunction with (a) the resale of Products to End Users and (b) the provision of First Line Support to End Users, in either case, in the Territory during the Term, subject to the terms and conditions set forth in this Agreement.

**2.3 Further License.** For greater clarity, the Resale License includes the grant by BlueCat to Reseller of the non-exclusive, non-transferable, non-assignable right and license to sell and market Maintenance and Support and Professional Services to End Users in the Territory during the Term, subject to the terms and conditions set forth in this Agreement.

**2.4 BlueCat Marks.** In conjunction with the Resale License, BlueCat hereby grants to Reseller 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 Reseller's obligations under this Agreement.

**2.5 End User Agreement.** Reseller shall have agreement in place with each End User which governs the terms and conditions for the sale and use of the Products, which terms and conditions shall be substantially similar and no less protective of BlueCat's rights as those set forth in this Agreement, as applicable, and the EUA. All Products must be distributed and sold pursuant to the terms and conditions set forth in the EUA. Reseller may not amend or deviate from the terms and conditions set forth in the EUA without BlueCat's express written consent, which consent may be withheld by BlueCat in its sole discretion. Reseller shall promptly notify BlueCat in writing of any violation or deviation from the EUA, whether by the Reseller or an End User and furthermore, Reseller shall cooperate fully with BlueCat in the enforcement of the EUA. Reseller shall be fully liable and, pursuant to Section 9.1, shall indemnify BlueCat for any breach of this section by Reseller and any End User. In addition, Reseller agrees to use the Products only in accordance with the EUA and the acceptable uses and other terms and conditions described therein.

## **3. PRODUCT MARKETING**

**3.1 Marketing Effort.** Reseller shall use commercially reasonable efforts, consistent with market practice in the Territory and the guidelines set out in the Partner Program, to market, sell and distribute the Products to End Users. Reseller shall be knowledgeable about the Products and shall provide End Users with accurate and current information about the Products.

## **4. REPORTING, PRICING, FULFILLMENT AND PAYMENT**

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

**4.3 Price List.** BlueCat's standard selling prices for the Products are set forth in BlueCat's price list available on the Partner Portal and may be updated from time to time. BlueCat may change its price list at any time by the giving of not less than thirty (30) days prior notice to Reseller.

**4.4 Reseller Discounts.** Reseller shall be entitled to receive certain discounts from BlueCat's then current standard price list for the Products as set out in the Partner Program. Based on Reseller's then current partner tier, level BlueCat may change the discounts applicable to Reseller at any time by providing Reseller with not less than thirty (30) days prior notice. All Reseller discounts on the Products shall be calculated with reference to BlueCat's territory specific selling prices in effect at the time that the relevant Purchase Order is received by BlueCat. All discounts shall be at BlueCat's sole discretion.

**4.5 Payment Terms.** Reseller shall pay BlueCat the amounts set forth on the applicable price list for Products, less available Reseller discounts, if any, without deduction or set off by Reseller 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.

**4.6 Creditworthiness.** Upon request, Reseller shall provide BlueCat with sufficient information to establish Reseller's ability to pay for the Products. Reseller shall also provide BlueCat with such assurances and security as BlueCat may reasonably request to secure payment for the Products. BlueCat hereby reserves, and Reseller hereby grants to BlueCat, a purchase money security interest in each Product sold under this Agreement. If Reseller disposes of such Product to another party prior to Reseller 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.

**4.7 Purchase Orders.** All Purchase Orders are subject to the terms and conditions set forth in this Article IV and elsewhere in this Agreement. If any terms and conditions affixed to any Purchase Order delivered by Reseller or an End User conflict with the terms and conditions of this Agreement, BlueCat's acceptance of Reseller's or End User'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. Reseller shall have no right of return on the sale of any Product.

**4.8 Offer and Acceptance.** Subject to Section 4.7 above, a Purchase Order provided by Reseller 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.

**4.9 Delivery and Risk of Loss.** All Products shall be shipped to Reseller FOB shipping point from BlueCat's manufacturer's address. The risk of loss or damage shall pass to Reseller upon delivery of same to a common carrier. BlueCat shall notify Reseller promptly upon becoming aware of an anticipated delay in delivery. Claims for shortages must be made in writing within five (5) days following receipt of shipment by Reseller. Reseller is responsible for all freight charges associated with the shipment of Products and the appropriate amount shall be added to the Reseller's invoice and paid by Reseller.

## 5. EVALUATION AND NFR UNITS

**5.1 Evaluation Units.** BlueCat may loan Reseller certain Products ("**Evaluation Units**") under a limited, non-exclusive, non-transferable, non-assignable license for the exclusive purpose of allowing Reseller 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, Reseller shall fulfill the following evaluation requirements:

- 1) Register the evaluation opportunity with BlueCat by providing the full legal name and address of the End User; and
- 2) 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 EUA, and (ii) confirm whether the Evaluation Unit has been returned.

**5.2 Evaluation Warranty.** RESELLER ACKNOWLEDGES AND AGREES THAT IT IS RESPONSIBLE FOR ENSURING THAT END USERS ARE AWARE AND UNDERSTAND 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 RESELLER TO TEST AND EVALUATE THE EVALUATION UNIT IN AN INTERNAL NON-PRODUCTION LABORATORY ENVIRONMENT ONLY.

**5.3 NFR Units.** Reseller may purchase certain Products solely for Reseller's internal, non-production purposes, such as training and demonstrations, and not for resale ("**NFR Units**"). NFR Units must be purchased by Reseller. 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 Reseller, then Reseller 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.** Reseller 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 this Agreement, Reseller shall not acquire any right, title or ownership in the Intellectual Property Rights.

**6.2 Protection of Intellectual Property Rights.** Reseller 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. Reseller shall comply with all instructions issued by BlueCat relating to the form and manner in which the BlueCat Marks may be used. Reseller 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 Reseller against any and all claims or demands by a third party that the Product violates such third party's intellectual property

rights in Canada or the United States; provided: (a) Reseller has promptly notified BlueCat of such claim and BlueCat is not prejudiced by any delay by Reseller; (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 Reseller; (c) Reseller 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) Reseller shall cooperate with BlueCat in the defence of the claim, at BlueCat's expense.

**6.4 Exceptions to Indemnification.** Notwithstanding Section 6.3, BlueCat shall be under no obligation to indemnify Reseller 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 Reseller; (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 and the EUA; or (e) the use of a superseded version of Product where use of the then-current version of Product would avoid any claim of infringement.

**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 Reseller 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 reasonable 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 Reseller 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**

**7.1 Non-Solicitation.** During the Term and for one year thereafter, Reseller will not, within the Territory, directly or indirectly: (a) offer products or services which compete with BlueCat's Products to BlueCat customers and potential customers with whom Reseller had direct contact or involvement on behalf of BlueCat; (b) solicit, request or otherwise cause any of BlueCat's customers to terminate its relationship with BlueCat; and (c) solicit, employ or engage any BlueCat employees or cause any of them to terminate his or her relationship with BlueCat.

**7.2 Remedies.** Reseller understands and agrees that: (a) the time and geographic limitations outlined in Section 7.1 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 Reseller's obligations contained in Section 7.1 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 7.1 upon the breach or threatened breach thereof, to an accounting of all earnings, profits or other benefits acquired by Reseller as a result of such breach, and to any other legal or equitable remedy for such breach.

## **8. ADDITIONAL REPRESENTATIONS AND WARRANTIES**

**8.1 Ability to Conduct Business.** Reseller 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. Reseller shall, at all times during the Term and at its own expense, obtain and maintain

such permits and approvals as are required for Reseller to conduct business as contemplated in this Agreement. Reseller shall employ staff who are appropriately trained to facilitate the conduct of business as contemplated in this Agreement and the Partner Program. Reseller shall commit resources and effort as required for Reseller to comply with this Agreement generally and specifically, the requirements set out in the Partner Program. Reseller shall comply with all applicable laws.

**8.2 Maintenance Renewal.** Reseller shall use commercially reasonable efforts to ensure that all End Users annually renew the Maintenance and Support Program. At the request of BlueCat, Reseller shall provide details of each renewal End User.

**8.3 Export Controls.** Reseller 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, Reseller 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. Reseller shall comply with all applicable export controls laws at all times.

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

**8.5 Insurance.** Reseller 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 five million dollars (\$5,000,000) annual aggregate. Reseller shall name BlueCat as an additional insured on the insurance policy and shall provide BlueCat with a certificate of insurance evidencing same annually on the anniversary of the Effective Date.

**8.6 Confidentiality; Non-Disclosure.** Reseller acknowledges and agrees that it will not: (a) make use of the Confidential Information except to carry out its obligations under this Agreement; or (b) in any way disclose any Confidential Information to any person or entity, other than 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 of Reseller set out in this Agreement. Reseller agrees to use reasonable efforts and no less than industry standard to protect the Confidential Information.

**8.7 BlueCat Warranty.** BlueCat represents and warrants that: (a) it has the right to grant the Resale License to Reseller, (b) it owns or properly licenses all Intellectual Property Rights in the Products, and (c) to the best of its knowledge and belief, the Intellectual Property Rights in the Products do not infringe upon any third party's patent, trademark, copyright or other intellectual property rights.

**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 FCPA prohibits the parties from paying or offering anything of value to a government official or political party or candidate for the purpose of corrupting the exercise of an individual's duties and attempting to influence that individual to provide business to or retain such party's business. 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 Reseller's Indemnity.**

(a) Reseller 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 Reseller of any of Reseller's covenants, representations and warranties contained in this Agreement.

(b) Reseller 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 claims by an End User in connection with the Products and the Resale License granted herein.

**9.2 NO WARRANTIES. 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 TO AN END USER PURSUANT TO THE EUA. 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 RESELLER OR ITS END USERS, THAT THEY WILL SATISFY ALL OF THE NEEDS OF RESELLER 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, NOTWITHSTANDING ANYTHING ELSE CONTAINED HEREIN, BLUECAT'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT AND THE PRODUCTS WILL NOT IN ANY EVENT EXCEED THE LESSER OF: (A) THE TOTAL OF ALL SUMS PAID TO BLUECAT BY RESELLER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY; OR (B) FIVE HUNDRED THOUSAND DOLLARS (\$500,000). THE LIMITATIONS REFERRED TO IN THIS PARAGRAPH SHALL APPLY TO ALL INDEMNITY OBLIGATIONS, ACTS OR OMISSIONS OF BLUECAT, AND REGARDLESS OF THE FORM OF ANY ACTION, WHETHER PURSUANT TO STATUTE, CONTRACT, TORT, EQUITY OR ANY OTHER FORM OF ACTION.**

**9.4 LOST PROFITS, CONSEQUENTIAL DAMAGES. EXCEPT FOR RESELLER'S OBLIGATIONS TO BLUECAT PURSUANT TO SECTIONS 6.2, 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 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.

**10.2 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 three (3) months written notice of its intention to terminate.

**10.3 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) Reseller shall return to BlueCat all 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) Reseller shall cease using BlueCat's Mark and refrain from holding itself out as a reseller of BlueCat or the Products;
- (e) If requested by BlueCat, Reseller shall return to BlueCat all Products remaining unsold and in its possession or control at the price paid by Reseller 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, BlueCat may assume the liability for providing Maintenance and Support to End Users who have valid support contracts. If so requested by BlueCat, Reseller 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 Reseller 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, valid EUAs entered into with End Users and Purchase Orders accepted by BlueCat.

**10.4 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 and 9.

## **11. MISCELLANEOUS PROVISIONS**

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

**11.2 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, with the exception of the confidentiality obligations between the parties, which is subject to a separate confidentiality agreement. No amendment or modification of this Agreement shall be effective or binding unless agreed to in writing by both parties.

**11.3 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.

**11.4 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 Reseller 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 Reseller, 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 Reseller 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 Reseller 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 Reseller 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 Reseller and use its logo for the limited purpose of identifying it as a partner in sales and marketing materials.

**[REMINDER OF PAGE BLANK]**

## **SCHEDULE "A"**

### **TERRITORY AND ADDITIONAL REQUIREMENTS**

**1. TERRITORY:**

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**2. ADDITIONAL REQUIREMENTS (if applicable):**

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