

X-SERIES HARDWARE WARRANTY: TERMS AND CONDITIONS

THESE HARDWARE TERMS AND CONDITIONS (THE “AGREEMENT”) CONSTITUTE A LEGAL AGREEMENT BETWEEN BLUE COAT SYSTEMS, INC. (IF YOU ARE LOCATED IN NORTH AMERICA OR LATIN AMERICA) OR BLUE COAT SYSTEMS INTERNATIONAL SARL (IF YOU ARE LOCATED OUTSIDE NORTH AMERICA AND LATIN AMERICA) AND THE PURCHASER OF BLUE COAT HARDWARE (“CUSTOMER”). COLLECTIVELY, ALL BLUE COAT ENTITIES ARE REFERRED TO AS “BLUE COAT.” BY INSTALLING AND USING THE HARDWARE, YOU REPRESENT THAT YOU HAVE BEEN AUTHORIZED TO ACCEPT AND ACKNOWLEDGE YOUR ACCEPTANCE OF THESE TERMS ON BEHALF OF THE CUSTOMER. IF YOU ARE NOT SO AUTHORIZED OR DO NOT AGREE TO THESE TERMS, THEN BLUE COAT IS UNWILLING TO PERMIT THE INSTALLATION AND USE OF THE HARDWARE. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, YOU MAY NOT INSTALL OR USE THE HARDWARE, AND YOU MUST RETURN THE HARDWARE WITH THE ORIGINAL PACKAGE AND THE PROOF OF PAYMENT TO THE PLACE YOU OBTAINED IT WITHIN FORTY-EIGHT (48) HOURS FROM THE TIME OF DELIVERY OF THE HARDWARE FOR A FULL REFUND OF THE PURCHASE PRICE PAID BY YOU FOR THE HARDWARE.

1. Definition

As used in this Agreement, the term “Hardware” means the Blue Coat-supplied X Series appliance (chassis and software processing module); and any software processing modules; related power supplies; and other ancillary Blue Coat-provided components, exclusive of any such components that may be purchased separately by Customer.

2. Limited Warranty

Blue Coat warrants that for a period of one year from the date of shipment by Blue Coat’s designated distributor that the Hardware shall be free from defects in materials and workmanship. Except as for the foregoing, the Hardware is provided **AS IS**. This limited warranty extends only to Customer as the original purchaser of the Hardware. Customer’s sole and exclusive remedy and the entire liability of Blue Coat and its suppliers under this limited warranty will be, at Blue Coat’s option, repair or replacement of the Hardware, or a refund of that portion of the purchase price allocable thereto by Blue Coat or its designee, provided that Blue Coat or its designee shall have received from

Customer during the applicable warranty period written notice of the alleged warranty breach. Replacement Hardware or parts thereof will be furnished on an exchange basis and may be refurbished or contain refurbishable parts. From time to time, Blue Coat and/or its designee, at its or their sole discretion, may provide an expanded hardware warranty (which may include advance replacement services) or additional maintenance offerings, pursuant to a separate maintenance agreement entered into with Customer. In no event does Blue Coat warrant that the Hardware is error free or that Customer will be able to operate the Hardware without problems or interruptions. No oral or written information or advice given by Blue Coat, its employees or its distributors or resellers shall create a warranty or in any way increase the scope of Blue Coat’s liability hereunder.

Customer shall be responsible for shipment of the nonconforming Hardware to Blue Coat or its designee pursuant to shipping authorization provided by Blue Coat or its designee, at Customer’s expense. Customer shall bear the risk of loss of, or damage to, the Hardware during

its transportation to and from Blue Coat’s or its designee’s facility.

This warranty does not apply if the Hardware (a) has been altered, except by Blue Coat, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Blue Coat, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultrahazardous activities.

3. Disclaimer of Warranties; Limitation of Liability

Except as provided in section 2 above, there are no warranties, express, implied or arising from custom, course of dealing or trade usage, and Blue Coat specifically disclaims any implied warranties of title, non-infringement, merchantability and fitness for a particular purpose. Blue Coat’s express warranties will not be enlarged, diminished or affected by and no obligation or liability will arise out of Blue Coat’s rendering of technical or other advice or service in connection with the Hardware.

To the extent permitted by applicable law, in no event shall Blue Coat or its licensors be liable to Customer or any third party for indirect, incidental, special, consequential, exemplary, multiple or punitive damages, whether foreseeable or unforeseeable, of any kind whatsoever (including, without limitation, lost profits, loss of goodwill, loss or damaged data, loss of use of the Hardware, downtime or costs of substitute equipment) arising from the sale, delivery and/or use of the Hardware or any other act or omission of Blue Coat in connection with this Agreement regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise even if Blue Coat has been advised of the possibility of such damages.

In no event will Blue Coat be liable for damages hereunder in excess of aggregate amounts actually received by Blue Coat for the Hardware. This limitation of liability is cumulative and not per incident. The limitations in this section 3 shall apply notwithstanding the failure of essential purpose of any limited remedy.

4. Use, Export, Re-export, & Transfer Controls

Customer hereby acknowledges that the Hardware is subject to export controls under the laws and regulations of the United States. Customer agrees to comply with all laws and regulations governing the use, export, re-export, and transfer of the Hardware and will obtain all U.S. and local authorizations, permits, or agreements required pursuant to such laws and regulations. Customer specifically represents and warrants that it will not export or re-export

the Hardware to any country to which the United States has embargoed or restricted the export of goods or services, including but not limited to Cuba, Iran, North Korea, Sudan, or Syria, nor to nationals of those countries, nor to any other restricted destinations or persons.

5. Software Terms

In connection with the Hardware, Blue Coat will also make available certain software, whether pre-installed on the Hardware, on CD-ROM or other media, and/or through electronic software download. Terms and conditions applicable to any such software are set forth in the separate applicable end user software license agreement made available with the software.

6. General

Agreement; Amendment. This Agreement supersedes all prior and contemporaneous agreements, representations, warranties and understandings and contains the entire agreement between the parties with respect to its subject matter. No amendment, modification, termination, or waiver of any provision of this Agreement or consent to any departure from this Agreement shall be effective unless it is in writing and signed by a duly authorized representative of each party.

Purchase Orders. Customer agrees that any purchase order submitted is for administrative purposes only and that in the event of a conflict between this Agreement and any purchase order, this Agreement shall prevail.

Governing Law. This Agreement and all acts and transactions pursuant hereto and the

rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of i) the state of California and the United States without regard to its conflict of law principles if Customer is located in North America and Latin America; or ii) Switzerland without regard to its conflict of law principles if Customer is located outside North America and Latin America. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The original of this Agreement has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum or to have this Agreement written in any language other than English.

Assignment. Customer may not assign or otherwise transfer its rights or obligations under this Agreement without receiving the express prior written consent of Blue Coat. For purposes of this section, transfer of this Agreement pursuant to a merger, consolidation or other change in control of Customer or transfer or sale of all or substantially all of Customer's assets or stock shall be deemed to constitute an assignment by Customer of this Agreement. Any purposed assignment in violation of this section shall be null and void. Blue Coat may assign this Agreement and its rights and obligations hereunder, in its sole discretion. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.