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iii. **Passwords and Access.** Licensee is responsible for all activities that occur under Licensee’s User accounts. Licensee is responsible for maintaining the security and confidentiality of all User usernames and passwords. Licensee agrees to notify Licensor immediately of any unauthorized use of any cPacket Product username or password or account or any other known or suspected breach of security.

1.6 **License Period.** The license period (“License Period”) means either (i) a fixed term, the specifics for which will be as set forth in the applicable purchase order; or (ii) perpetual, as agreed upon by the parties and as set forth in the applicable purchase order, unless this EULA is terminated, as provided for in Section 17.1. If the License Period is for a fixed term, this EULA will commence on the date of first use by Licensee of the cPacket Product (“Effective Date”) and shall continue until the earlier to occur of the expiration of the License Period or the termination of this Agreement, as provided for in Section 17.1. If the License Period is not for a fixed term, but is perpetual, this Agreement shall commence on the Effective Date and shall continue in effect until terminated as set forth in Section 17.1. In the case of additional concurrent authorized users of the cPacket Product who are authorized and added after the initial payment of Fees, the term of their usage of the cPacket Product shall be coterminous with the preexisting then-current term. If Licensee purchases an upgrade, the term of the EULA shall be the specific term set forth in the new Activation Key issued for the upgrade.

[THE FOLLOWING SECTION 2 IS APPLICABLE TO A CPACKET ON-SITE SOFTWARE SUBSCRIPTION LICENSE]

2. **On-Site Software Subscription License.**

2.1 **For Subscription Purchase only/ Grant of License.** – FOR CLOUD-BASED LICENSE, SEE SECTION 3.

i. **Subscription.** Subject to the terms and conditions of this EULA and any relevant Order, setting forth the descriptions, quantities, prices, payment terms and such other associated terms and conditions as agreed to by the parties for the purchase of the cPacket Product, Licensee may purchase a subscription (“Subscription(s)”) for (i) a specified number of devices, (ii) an agreed upon fee (each a “Fee” and, collectively, the “Fees”) and (iii) a specified term (“Term”). Except as set forth in Section 5, below, and

unless otherwise set forth in an Order, all undisputed payments are due net thirty (30) days from the date of invoice.

ii. **License Period.** The License Period of each Subscription shall automatically renew for a subsequent period(s) of the same length as the current License Period set forth in an Order (each a “Renewal Period”) and each Renewal Period shall automatically renew for the same length, unless either party gives the other written notice of termination at least sixty (60) days prior to expiration of the then-current License Period.

iii. **Installation and Retention.** Licensee may install and use the cPacket Product on an authorized network server(s) or cPacket appliance product, but only for use as herein permitted by Licensor at the time of first installation. Licensor’s Hardware may be provided to Licensee with the cPacket Product (“cPacket Server”) and can only be used for running and extracting data collected by cPacket Product during the License Period of the applicable Order. Upon expiration or termination of the applicable Order, Licensee will be permitted to retain the cPacket Server in the manner as set forth in Section 20, below. In addition, Licensee can run one copy of the object code version of the cPacket Product on one machine or instrument solely as integrated with, and for running and extracting data from, cPacket Product and Licensee may make copies of the cPacket Product for backup purposes only.

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[THE FOLLOWING SECTION 3 IS APPLICABLE TO A CPACKET CLOUD-BASED LICENSE]

3. Software As A Service (SaaS) License.

3.1 SaaS Purchase/Grant of License.

i. **License.** Subject to the terms and conditions of this EULA and any relevant Order, Licensor grants Licensee a license to access and use the cPacket Product during the Term via the Internet under and subject to the terms of this Agreement. The cPacket Product shall be hosted in a manner and at a location as determined by Licensor from time to time and in its sole discretion. Licensor will host or outsource hosting to a cloud service such as Amazon Web Services (AWS). Licensor reserves the right to switch hosting services, in addition to making changes and updates to the functionality, documentation and/or hosting of the cPacket Product from time to time.

ii. **License Period Renewal.** **The License Period of each cloud-based license shall automatically renew for a subsequent period(s) of the same length as the current License Period set forth in an Order and each Renewal Period shall automatically renew for the same length, unless either party gives the other written notice of termination at least sixty (60) days prior to expiration of the then-current License Period.**

iii. **Storage and Access.** Licensee is licensed during the License Period to store, print, and display licensor content ("Licensor Content") and to permit Users to access it only in connection with use of the cPacket Product. No other use of Licensor Content is permitted. Licensee will maintain and will require its Users to maintain Licensor Content as Confidential Information (as defined below) of Licensor.

3.2 Licensee Data.

i. **Licensor's Property.** All license data ("Licensee Data") submitted by Licensee to Licensor, whether posted by Licensee or by Users, will remain the sole property of Licensee or such Users to the full extent provided by law.

ii. **Licensee Data.** Licensee will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Licensee Data. Licensor may aggregate anonymous statistical data regarding use and functioning of its system by its various Users. Such aggregated statistical data will be the sole property of Licensor.

iii. **Privacy Policy.** Licensor's terms and conditions as well as privacy policy can be found on Licensor's website and via the following link: <https://www.cpacket.com/privacy-policy/>

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3.4 Off cloud and on-premises data transfers and backups. Licensee is responsible for any charges incurred from full or partial backup of Licensee Data.

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4.1 Professional Services. Licensee may retain Licensor to perform professional services ("Professional Services") as the parties may agree upon in writing in an Order Licensor will use reasonable efforts to carry out the Professional Services stated in the Order and to provide any resulting functionality in the cPacket Product made available

online to Licensee and Licensee's Users. Except as the parties otherwise agree in an Order, Professional Services and the results thereof are made available "AS IS."

4.2 Time and Materials. Unless otherwise agreed to in writing in an Order, Professional Services are provided by Licensor on a time and materials basis at Licensor's then applicable rates and subject to such deposit or advance payment as Licensor may require. Maintenance and support of code or functionality created by means of Professional Services will likewise be on an Order basis under this Section unless otherwise agreed in writing. The code and functionality made or provided under this Section and all interests therein, including copyrights and trademarks, will be Licensor's property. Access to the results of Professional Services will be available as part of the cPacket Product during the License Period unless otherwise agreed in writing.

5. Fees.

5.1 Fees and Use of Account. Licensee agrees to pay fees as set forth in the applicable Order or as Licensor and Licensee otherwise agree in writing (the "Fees"). Subject to the Fee structure and calculations, as stated in such Order, and except as otherwise agreed to by the parties in such Order, a User account may not be shared or used by more than one User.

5.2 Payment of Fees. Licensor will invoice Licensee for Fees due and owing upon receipt of a purchase order from Licensee, payment for which will be due either (i) net thirty (30) days from invoice date; or (ii) if Licensee is electing to pay via credit card, Licensee's credit card will be charged simultaneously with the creation of Licensee's invoice. Licensee's account will be considered delinquent (in arrears) if payment of Fees in full is not received by the due date specified on the invoice. Amounts due are exclusive of all applicable taxes, levies, or duties, and Licensee will be responsible for payment of all such amounts. All amounts are payable in U.S. dollars. If Licensee believes that any specific charge under this Agreement is incorrect, in order to be considered for a credit, Licensee must contact Licensor in writing within 30 days of invoice date setting forth the nature and amount of the requested correction in order for Licensor to determine, in its sole discretion, what, if any, credit is due to Licensee.

5.3 Non-Payment. In addition to other applicable remedies, Licensor reserves the right to suspend and/or terminate Licensee's access to the cPacket Product and/or terminate this Agreement, upon fourteen (14) calendar days' written or electronic notification, in the event Licensee's account becomes delinquent (falls into arrears). Written or electronic notification will go to Licensee's designated billing contact, as set forth herein or in the applicable Order, the first day that payment is delinquent.

5.4 Fee for Delinquency. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection, including reasonable attorneys' fees and court costs. Licensee will be charged all applicable Fees, including Fees for all Users then authorized, during any period of suspension.

5.5 Account Information Submitted to Licensor. Licensee agrees to provide Licensor with applicable billing and contact information as Licensor may reasonably require, including Licensee's legal company name, street address, email address, and name and telephone number of an authorized billing contact, as well as the name, User name and password of any authorized representative of Licensee. This contact information will be provided for in the applicable Order. Licensee agrees to update any account and

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17.1 Generally. A party may terminate this EULA for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Without prejudice to any of Licensor's other rights, Licensor may terminate this EULA and any applicable Order(s) if Licensee fails to comply with any term(s) or condition(s) of this EULA and/or any Order(s).

17.2 Refund or Payment upon Termination. If this Agreement is terminated by Licensee in accordance with Section 17.1, Licensor will refund Licensee any prepaid Fees, specifically excluding any payment by Licensee for Hardware, covering the remainder of the term of an Order(s) after the effective date of termination. If this Agreement is terminated by Licensor in accordance with Section 17.1, Licensee will remain obligated to pay any unpaid fees covering the remainder of the term of any Order(s). In no event will termination relieve Licensee of its obligation to pay any fees payable to Licensor for the period prior to the effective date of termination.

17.3 Obligations upon Termination. Upon the expiration or termination of this EULA for any reason, this Agreement and any license for cPacket Product will immediately terminate. If any Hardware is in Licensee's possession, to include, but not be limited to Licensor's Server, it may be retained by Licensee. Upon termination, Licensee will make no further use of the cPacket Product and, within 10 days, Licensee will, at Licensor's option, either destroy or permanently erase all copies of Licensor's Confidential Information. Upon any termination of this Agreement, Licensee will still be obligated to pay all Fees not in dispute and any expenses that have accrued pursuant to this EULA prior to the effective date of termination. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 14-19 will survive the expiration or termination of this Agreement.

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19. Miscellaneous.

19.1 Support. During installation of any cPacket Product, information related to the installation may be sent via e-mail to Licensor. This information will not be revealed or sold to any 3rd party, and is only used to benefit the end-user for technical support.

19.2 Marketing. Licensor reserves the right to use the Licensee's corporate logo on the cPacket.com web site.

19.3 Changes to Rules and Regulations. Licensor reserves the right to revise the terms and conditions of this EULA at any time to ensure compliance with any applicable rules, regulations or laws and Licensee is deemed to be apprised of and bound by any such changes to the terms and conditions resulting from changes to rules, regulations or laws.

19.4 Overall Compliance. Licensee and Licensee's purchase of a Subscription, license of the cPacket Product and/or use of the cPacket Product will comply with this Agreement and all legal requirements applicable hereto.

19.5 Third Party Engagement. If Licensee wishes to engage any third-party, or request that Licensor engage any third-party on Licensee's behalf, to perform any services in connection with Licensee's Subscription, Licensee shall be required to obtain written permission from Licensor and shall be held primarily liable for any and all acts and/or omissions of any such third-party.

19.6 Unauthorized Access or Use. Licensee shall use commercially reasonable efforts to prevent unauthorized access to or use of the cPacket Product, and notify Licensor promptly of any such unauthorized access or use.

19.7 Authority. Licensee represents and warrants that it has the legal power and authority to enter into this Agreement. Licensee represents and warrants that it has not falsely identified itself or provided any false information to gain access to the cPacket Product.

19.8 Disposition of License. Licensee shall not sell, resell, rent, or lease Licensee's license (whether it be through a Subscription, or otherwise) unless as otherwise set forth in this EULA or an Order.

19.9 Violations of Rules and Regulations. Licensor reserves the right to seek all remedies available at law and in equity for violations of the terms and conditions of this EULA.

19.10 Force Majeure. Licensors will not be held liable or responsible to Licensee, nor be deemed to have defaulted under or breached this Agreement, for failure or delay in fulfilling or performing any of its obligations under this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of Licensors (a "Force Majeure Event") including, but not limited to, any act of God, fire, natural disaster, pandemic, accident, terrorism, war, acts of war (whether war be declared or not), insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances or any acts, omissions or delays in activity by any governmental authority. If Licensors is prevented or delayed in performing because of a Force Majeure Event it will promptly notify Licensee of the circumstances giving rise to the Force Majeure Event and, if possible, provide a projected duration of the Force Majeure Event. If a Force Majeure Event continues for longer than three consecutive months, either party will thereafter have the option of terminating this Agreement immediately upon written notice to the other party without any resulting liability for early termination.

19.11 Entire Agreement. This EULA, together with any applicable Order, constitutes and incorporates the parties' entire agreement with respect to the subject matter hereof, and supersedes any and all prior oral and written agreements, understandings and quotations. In the event of a conflict between the terms and conditions of this EULA and an Order, the terms and conditions of this Agreement shall govern. No waiver, alteration, modification, or cancellation of any of the provisions of this EULA shall be binding unless made in writing and signed by both of the parties hereto.

19.12 Choice of Law; Jurisdiction; Venue. This EULA is governed by the laws of the State of California without regard to its principles governing conflicts of law. Any claims or legal actions by one party against the other shall be commenced and maintained in an appropriate state or federal court located in Santa Clara County, California, and both parties hereby submit to the jurisdiction and venue of any such court.

19.13 Confidentiality. Each party hereto acknowledges that by reason of its relationship with the other party hereunder, it may have access to confidential information and materials concerning the other party's business, technology, and/or products that is confidential to the other party ("Confidential Information"). Each party's Confidential Information is of substantial value to the party, which value could be impaired if such information was disclosed to third parties or used in violation of this EULA. Written or other tangible Confidential Information must at the time of disclosure be identified and labeled as Confidential Information belonging to the disclosing party. When disclosed orally or visually, Confidential Information must be identified as confidential at the time of the disclosure, with subsequent confirmation in writing within fifteen (15) days after disclosure. Each party agrees that it will not use in any way for its own account or the account of any third party, such Confidential Information, except as authorized under this EULA, and will protect Confidential Information at least to the same extent as it protects its own Confidential Information and to the same extent that a reasonable person would protect such Confidential Information. Neither party may use the other party's Confidential Information except to perform its duties or exercise its rights under this EULA. The Confidential Information restrictions will not apply to Confidential Information that is (i) already known to the receiving party at the time of access hereunder, (ii) becomes publicly available through no wrongful act of the

receiving party, (iii) independently developed by the receiving party without benefit of the disclosing party's Confidential Information, (iv) has been rightfully received from a third party not under obligation of confidentiality or (v) is required to be disclosed by law, provided the party compelled to disclose the Confidential Information provides the party owning the Confidential Information with prior written notice of disclosure adequate for the owning party to take reasonable action to prevent such disclosure, where reasonably possible. Unless otherwise agreed to by both parties, upon termination of this EULA or an applicable addendum, each party will return the other party's Confidential Information.

19.14 Audit. During the License Period for the cPacket Product and for a period of three (3) years after its expiration or termination, Licensee will take reasonable steps to maintain complete and accurate records of Licensee's use of the cPacket Product sufficient to verify compliance with this EULA. No more than once per twelve (12) months period, Licensor will allow Licensor and its auditors the right to examine such records and any applicable books, systems, and accounts, upon reasonable advanced notice, during Licensee's normal business hours. If the audit discloses underpayment of license fees, Licensee will pay such license fees plus the reasonable cost of the audit within thirty (30) days of receipt of written notice.

19.15 No Assignment or Transfers by Licensee. Licensee shall not sub-license, assign or otherwise transfer the rights granted herein without the prior express written consent of Licensor. If Licensor grants any such consent, Licensee shall be solely responsible for the conduct of all assignees of Licensee, and the granting of such consent shall in no way modify or affect the duties of Licensee to Licensor under this Agreement. Licensor may assign this Agreement to an affiliate or to a third party in the event of a sale or a merger by Licensor. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefits of the parties, and their respective successors and assigns.

19.16 Severance. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all the other provisions shall remain in full force and effect.

19.17 Headings. The headings used in this Agreement are intended for convenience only and shall not be deemed to supersede or modify any provisions.

19.18 Waiver. The waiver by Licensor of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for breach of Licensor's proprietary rights in the cPacket Product, no action, regardless of form, arising out of this Agreement may be brought by Licensee more than two (2) years after the cause of action has accrued.