cPacket Networks, Inc.

TERMS and CONDITIONS

Version 2

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This CUSTOMER AGREEMENT (this "**Agreement**") is entered into as of the listed in the Order (as defined below) ("**Effective Date**") by and between **CPACKET NETWORKS, INC**., with a principal place of business at 480 N. McCarthy Blvd, Suite 100, Milpitas, CA 95035 ("**cPacket**"), and the party identified as "**Customer**" below. This Agreement consists of one or more mutually executed Orders that reference this Agreement (each, an "**Order**") and the Terms and Conditions attached hereto ("**Terms**"). In the event of a conflict between these Terms and the Order the terms on the Order shall prevail. Each of Customer and cPacket may be referred to individually as a "**Party**" and collectively as the "**Parties**". The Parties may from time to time enter into additional Orders, which will be part of this Agreement.

1. Definitions

1.1. "**Documentation**" means the installation guides and operation manuals provided with the Hardware and Software in printed, electronic, or online form documentation.

1.2. "**Fees**" means the fees described in the Order.

1.3. "**Hardware**" means any hardware purchased by Customer from cPacket pursuant to an Order.

1.4. "**Intellectual Property Rights**" means all copyrights, trade secret rights, patents, patent applications, trademark rights, moral rights, contract rights, and other proprietary rights.

1.5. "**Product**" means: (a) the Hardware, together with any Software; or (b) the Subscription Solution.

1.6. "**Software**" means the software, in object code format, that is installed on the Hardware and provided to Customer under this Agreement, and any updates or upgrades thereto that are provided by cPacket to Customer hereunder.

1.7. "**Subscription Software**" means the Software provided to Customer as part of a Subscription Solution.

1.8. "**Subscription Period**" means, for any Subscription Solution, the Initial Subscription Term, and any Renewal Subscription Terms (defined below) for such Subscription Solution. The "Initial Subscription Term" will commence on the date of shipment of the applicable Subscription Hardware and continue for a period of one (1) year.

1.9. "**Subscription Solution**" means any Subscription Solution consisting of Software that is offered by cPacket on a subscription basis.

1.10. "**Support Period**" means: (a) for any Subscription Solution, the Subscription Period; and (b) for any Purchased Hardware, the applicable Support Term.

1.11. "**Support Services**" means the support and maintenance services provided by cPacket for Products, as more fully described in Section 5.

2. Orders

cPacket will process orders for Products and Support Services in accordance with Orders executed into by both parties. cPacket's failure to object to provisions contained in **any communication from Customer, including any purchase order, will not be deemed a waiver** of any provision herein. Any additional or different terms proposed by Customer are deemed material, are objected to, and are hereby rejected. No order will be binding upon cPacket until cPacket accepts such order in writing, and further provided that cPacket will have no liability to Customer with respect to any Orders that are not accepted. No partial shipment of Hardware requested pursuant to any Order will constitute acceptance of the entire Order. Customer agrees that terms set forth on any purchase order from Customer, whether pre-printed or otherwise, will be null and void and have no effect.

3. Hardware

3.1. **Shipment**. Hardware will be shipped on an EXW cPacket's point of shipment (INCOTERMS 2000) basis. Risk of loss to the Hardware will pass from cPacket to Customer, and the Hardware will be deemed accepted as soon as the Hardware is made available to the common carrier at cPacket's point of shipment, the carrier acting as Customer's agent. Customer will be the importer of record for all such Hardware outside the United States. All shipments will be made using the carrier designated by Customer, from a list of approved carriers provided by cPacket. cPacket will package Hardware for ground and air shipment only, in accordance with its commercial standards. cPacket will use commercially reasonable efforts to meet the delivery dates set forth in the Order, but such dates are non-binding estimates only and Customer will have no claim against cPacket for any delays that may occur despite cPacket's application of its commercially reasonable efforts. cPacket reserves the right to make deliveries in installments which will not relieve Customer of its obligation to accept and pay for remaining deliveries. cPacket reserves the right to make shipments at any time up to five (5) days prior to the requested delivery date and Customer will not reject tendered Hardware for the sole reason of such early delivery. Customer agrees to examine, or cause to be examined, all Hardware shipped by cPacket promptly upon receipt thereof, and to immediately file, or cause to be filed, a claim with the carrier upon delivery for any damage to or shortage in the Hardware, and to notify cPacket within ten (10) days after receipt of the Hardware of any such claim pertaining thereto. All such claims will be deemed waived unless presented to cPacket in writing or by electronic transmission within ten (10) days after such receipt. All orders are otherwise deemed non-cancelable and non-refundable unless explicitly agreed to by cPacket. In such case cancellation terms will be mutually agreed to in writing by cPacket and Customer.

3.2. **Commercial Sales; No Resale**. Customer represents and warrants that Customer will

purchase Products hereunder solely for use in commercial applications and that the sale is not subject to a government contract or private consumer laws or regulations; Customer will not make any claims in violation of the foregoing representation and warranty.

4. Software License

All Software will remain the sole and exclusive property of cPacket or cPacket's licensors, and no title to Software or any intellectual property contained therein will pass to Customer. The Software will be licensed pursuant to this Section 4.

4.1 **Perpetual Software License for Hardware**. Subject to the terms and conditions of this Agreement, cPacket hereby grants Customer a non-exclusive, non-transferable, perpetual non-sublicensable right and license to: (a) install and operate the Software, solely on the Hardware on which it is embedded to process data from the applicable Hardware, in accordance with the Documentation, and for Customer's internal business purposes; and (b) make copies of the related Documentation in connection with its use of the Software. The foregoing license grants will be for the life of the applicable Hardware.

4.2 **Subscription Software License for Hardware**. Subject to the terms and conditions of this Agreement, cPacket hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right and license during the Subscription Period to: (a) install and operate the Subscription Software, solely on the Hardware on which it is embedded to process data from the applicable Hardware, in accordance with the Documentation, and for Customer's internal business purposes; and (b) make copies of the related Documentation in connection with its use of the Subscription Software.

4.3 **Subscription SaaS Software License**. Subject to the terms and conditions of this Agreement, cPacket hereby grants Customer during the Subscription Period a non-exclusive, non-transferable, non-sublicensable right and license during the Subscription Period to: access and use the Software on a cloud-based service, in accordance with the Documentation, and for Customer's internal business purposes; and (b) make copies of the related Documentation in connection with its use of the Software.

4.4 **Restrictions**. Customer will not use the Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement. Customer will not copy, modify, or disassemble, or permit others to copy, modify, or disassemble, the Software, nor may Customer modify, adapt, translate, reverse engineer (except to the extent permitted by applicable law provided that Customer must first request such information from cPacket and cPacket may either provide such information or impose reasonable conditions, including a fee, on such use to ensure that cPacket's rights are protected), decompile, or otherwise attempt to derive source code from the Software. Customer will not transfer possession of the Software except as part of, or with, the Hardware, such transfer being subject to the restrictions

contained herein. Customer may not sublicense, assign, or otherwise transfer the Software, and Customer will retain on all copies of the Software all copyright and other proprietary notices or legends included by cPacket and/or its licensors on the Software. Customer further acknowledges that the Software contains proprietary and valuable information of cPacket and/or its licensors and is considered to be trade secrets of cPacket and/or its licensors. Customer hereby acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use source code. All rights not expressly set forth hereunder are reserved by cPacket.

4.5 **Open Source Software**. Certain items of software provided with the Subscription Solution may be subject to "open source" or "free software" licenses ("Open Source Software"). The Open Source Software is not subject to the terms and conditions of this Agreement other than this Section 4.5 and Sections 7 and 8. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, cPacket makes such Open Source Software, and cPacket's modifications to that Open Source Software, available by written request at cPacket's address specified in the Order.

5. Maintenance and Support

5.1 **Support Services**. During the Support Period, cPacket will provide to Customer technical support during the times and in accordance with the service levels that are applicable for the level of Support Services purchased by Customer. A more detailed description of the Support Services for the level purchased by Customer may be appended to the Support Services are specific to a specific Product (each, a "**Covered Product**").

(a) **Purchased Hardware**. Any Support Services for Purchased Hardware must be purchased in periods of twelve (12) consecutive months and will initially commence upon delivery of the Purchased Hardware or, if later, upon acceptance of the Order for the Support Services, and will automatically expire at the end of the period of time for which the applicable fees have been paid unless the applicable fees for the renewal term have been paid (each, a "**Support Term**"). If Customer does not continuously maintain Support Services for Purchased Hardware , before Customer may resume the Support Services it will pay to cPacket the applicable support fees that were not previously paid for the unsubscribed period, plus a 20% reinstatement fee on such amount.

5.2 **Software Updates**. During the Support Period, cPacket will make available to Customer any updates, patches, upgrades, and modifications to the Software on the Covered Products that cPacket generally releases or makes available at no additional cost to cPacket's other customers subscribing to the same level of Support Services. For clarity, the foregoing does not include any updated or new version of any Hardware.

5.3 **Customer's Responsibility**. In connection with cPacket's provision of the Support Services, Customer will: (a) supply cPacket with access to and use of information, facilities, and personnel reasonably required by cPacket to render the Support Services; and (b) reasonably perform any tests or procedures recommended by cPacket for the purpose of identifying and/or resolving any problems. Customer's delay or failure to satisfy the foregoing will relieve, for the duration of the delay or failure, cPacket's obligations with respect to the Support Services requested.

5.4 **Limitations**. Unless otherwise agreed by the Parties, cPacket will have no obligation to provide Support Services with respect to any error or fault in a Covered Product resulting from the fault or negligence of Customer or a third party, improper or unauthorized use of a Covered Product, repair of a Covered Product by a party other than cPacket or its authorized contractor, a force majeure event such as power failure or electric power surge; or use of a Covered Product in combination with equipment or software not supplied by cPacket or recommended in the Documentation.

6. Fees

6.1 **Prices**. During the Term, Customer may order any Products, Subscription Solutions, or Support Services with respect to which cPacket has otherwise provided a price quote by submitting to cPacket a written order. The annual subscription fee for the Subscription Solution will be referred to as the "**Subscription Fee**". Prices for Hardware exclude costs of freight, insurance, and similar charges for the transport of the Hardware; such costs will be paid by Customer.

6.2 **Invoices**. Customer agrees to pay all amounts in accordance with the Orders. Unless otherwise set forth on the applicable Order, invoices will be due and payable within 30 calendar days of the invoice date. cPacket will invoice Customer for the amounts set forth in the Orders as follows:
(a) For Hardware, upon shipment of the Hardware;
(b) For any Subscription Solution: on the first day of the Subscription Period and each anniversary thereof, the Subscription Fee for the ensuing year; and
(c) For Support Services for Hardware, upon execution of the Order for such Support Services and thirty (30) days prior to each anniversary thereof.

6.3 **Payment**. All Fees are non-refundable. Notwithstanding Section 6.2 cPacket's credit terms are determined at the sole discretion of cPacket and may be modified based on Customer's credit status with cPacket at the time Customer submits an Order. Upon cPacket's reasonable request, Customer will furnish cPacket with financial or other information sufficient to enable cPacket to determine Customer's current creditworthiness and willingness to pay. Without limitation of cPacket 's remedies for nonpayment or late payment, Customer will pay interest on overdue amounts at the rate of one and a half percent (1.5%) per month. Customer will be

responsible for all reasonable costs (including attorneys' fees) incurred by cPacket in the collection of any overdue amount. All payments will be made in U.S. dollars. Customer hereby grants a security interest in any Purchased Hardware furnished hereunder and the proceeds therefrom including accounts receivable, to secure full payment of the purchase price to cPacket. Customer agrees to execute any financing statements or other documents cPacket requests to protect its security interest.

6.4 **Taxes and Fees**. Customer is responsible for, and all prices are exclusive of, any sales, use, value-added or other taxes, and any tariffs, duties, VAT, fees or other charges, imposed by any government authority and based on the value or amount of Products sold or licensed or Support Services provided under this Agreement, and any penalties or interest related thereto ("Taxes"), with the exception of any taxes based on the net income of cPacket. If any such Taxes are paid by cPacket, cPacket will invoice Customer for such amounts and Customer will immediately pay cPacket upon receipt of such invoice. Customer will make all payments required hereunder to cPacket free and clear of, and without reduction for, any withholding taxes.

7. Audit

Customer will create and maintain complete and accurate records of all use of any Subscription Solution. Customer will promptly provide a copy of such records upon request by cPacket. cPacket reserves the right to periodically audit Customer to ensure Customer's compliance with the terms and conditions of this Agreement. Upon prior written notice, cPacket may visit Customer, and Customer will cooperate and make available to cPacket or its representatives any records and access to its facilities as necessary to verify compliance with the terms of this Agreement. The cost of any requested audit will be solely borne by cPacket, unless such audit discloses an underpayment of any Subscription Fee, in which case Customer will pay the cost of the audit. Customer will promptly pay such amounts as are necessary to rectify such underpayment, together with interest. Such inspection and auditing rights will extend throughout the Term and for a period of one (1) year after the termination of any Subscription Period hereunder.

8. Ownership

8.1 **Products**. Except for the limited rights granted herein, cPacket and its licensors and suppliers own and retain Intellectual Property Rights in and to the Products and Documentation, including the architecture and design of the Hardware and any derivatives thereof. Notwithstanding anything to the contrary and for the avoidance of doubt, the Software and Documentation are licensed and not sold. Customer's possession, installation, or use of the Hardware does not transfer to Customer any title to the Intellectual Property Rights in the

Products, and Customer will not acquire any Intellectual Property Rights in the Products except as expressly set forth in this Agreement. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of cPacket or its suppliers on the Software, Hardware, or Documentation.

8.2 **Feedback**. Customer may, at Customer's sole discretion, provide feedback to cPacket regarding the use, operation and functionality of the Product or any element thereof ("**Feedback**"). Such Feedback may include information about operating results, known or suspected bugs, errors or compatibility problems and user-desired features and suggestions for improvement. Should Customer elect to provide Feedback to cPacket, Customer hereby assigns to cPacket all rights in the Feedback and agrees that cPacket will have the right to use such Feedback and related information in any manner it deems appropriate.

9. Warranty and Disclaimer

9.1 **Limited Warranty**. cPacket warrants that (a) Hardware will remain substantially free from defects in material and workmanship under normal use and service for ninety (90) days from the date of shipment and, (b) except for the Subscription Solution, the Software will conform in all material respects to the specifications set forth in the applicable Documentation for one year from the date of shipment or transmission (the applicable period, the "**Warranty Period**"). For any Subscription Solution, the Warranty Period will be the Subscription Period. cPacket does not warrant that operation of the Hardware and Software will be error-free or uninterrupted. cPacket will, at its option, repair or replace any defective Hardware or provide a workaround or correction for any nonconforming Software, provided that (a) Customer gives cPacket prompt written notice of the defect or nonconformity within the Warranty Period specified above; (b) cPacket is able to confirm the defect or nonconformity, and (c) Customer returns defective Hardware at its expense to cPacket in accordance with cPacket's standard parts exchange procedures. If cPacket determines that it is unable to correct the defect or nonconformity, cPacket may require Customer to return the Product and refund the upfront purchase price paid for it, less depreciation on a straight line basis over a three-year period (and, for any Subscription Solution, refund the amounts prepaid but unused for the Product), and in which case the rights licensed to Customer for such Product will terminate.

9.2 **Return Procedures**. Customer may, at its own risk and expense, return the allegedly defective Hardware (in the same packaging conditions in which it was delivered) directly to cPacket during the Warranty Period, provided Customer first notifies cPacket in writing of the alleged defect and requests a return material authorization ("RMA") number. Within five (5) days after its receipt of the RMA number, Customer may ship to cPacket, and will include a notation of the RMA number, sufficient information to identify the original Order, and a brief statement explaining the alleged defect. Any Hardware returned to cPacket without an authorized RMA number may be returned to Customer, freight collect. Any repaired or replaced Hardware will be shipped to Customer at cPacket's expense and risk. Any repair or replacement will not extend the Warranty Period. If cPacket determines that any returned

Hardware fully conforms to the foregoing warranties, cPacket will return the Hardware to Customer at Customer's expense and risk, along with a written statement setting forth the basis for cPacket's conclusion that the returned Hardware was not defective, and Customer agrees to pay cPacket's reasonable costs of handling and testing.

9.3 **Exclusions**. This warranty does not apply to defects or errors in the Product caused by: (a) Customer's failure to follow cPacket's installation, operation, or maintenance instructions, procedures, or Documentation; (b) Customer's mishandling, misuse, negligence, or improper installation, deinstallation, storage, servicing, or operation of the Product; (c) modifications or repairs not made by cPacket or a cPacket-certified individual; or (d) power failures, surges, fire, flood, accident, actions of third parties or other events outside cPacket's reasonable control (each a "**Warranty Exclusion**"). Customer will have no right to reject, return, or receive a refund for any Products after the Products have been shipped by cPacket. The limited warranty does not cover third party software, including the operating system added to the cPacket Hardware through the factory integration process or the reloading of software. In addition, should Customer break the internal warranty seal without written consent from cPacket, the warrant under this Section 9 will be null and void.

9.4 **EXCLUSIVE REMEDY**. THIS WARRANTY AND THE REMEDIES IN THIS SECTION 9: (A) CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND CPACKET'S ENTIRE LIABILITY FOR DEFECTIVE OR NONCONFORMING PRODUCTS OR ANY BREACH OF WARRANTY AND (B) ARE BETWEEN CPACKET AND CUSTOMER (AS THE ORIGINAL PURCHASER) AND MAY NOT BE TRANSFERRED OR ASSIGNED, BY OPERATION OF LAW OR OTHERWISE, WITHOUT CPACKET'S PRIOR WRITTEN CONSENT.

9.5 **DISCLAIMER OF WARRANTIES**. EXCEPT FOR THE LIMITED EXPRESS WARRANTIES ABOVE, CPACKET SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF CONDUCT OR USAGE OF TRADE. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE PRODUCTS OTHER THAN AS PROVIDED IN THIS SECTION.

10. *Limitation of Liability*

EXCEPT WITH RESPECT TO SECTION 11, NEITHER PARTY WILL BE LIABLE FOR ANYINDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE PRODUCTS, INCLUDING LOST PROFITS, LOST DATA, COST OF CAPITAL, COST OF SUBSTITUTE FACILITIES OR HARDWARE, DOWNTIME COSTS OR CLAIMS OF CUSTOMERS, WHETHER OR NOT SUCH PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH RESPECT TO SECTION 11, THE LIABILITY OF EACH PARTY UNDER THIS AGREEMENT OR THE PRODUCTS, WHETHER ARISING OUT OF BREACH OF CONTRACT (INCLUDING BREACH OF

WARRANTY) OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) WILL IN NO EVENT EXCEED THE AGGREGATE AMOUNT PAID OR PAYABLE BY CUSTOMER TO CPACKET FOR THE PRODUCTS FROM WHICH SUCH LOSS OR DAMAGE DIRECTLY AROSE. THE FOREGOING PROVISIONS WILL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11. Intellectual Property Indemnity

11.1 **Indemnification**. cPacket will defend or settle at its own expense any suit or proceeding which may be brought by a third party against Customer alleging that a Product infringes any United States patent or copyright, or incorporates any misappropriated trade secrets (a "Claim"). cPacket will pay all damages and costs finally awarded against Customer on account of such Claim or agreed to in a monetary settlement of such Claim; provided, however, that Customer: (a) promptly notifies cPacket in writing of the Claim; (b) grants cPacket sole control of the defense and settlement of the Claim; and (c) provides cPacket with all timely assistance, information, and authority required for the defense and settlement of the Claim.

11.2 **Further Remedy**. If any Product becomes the subject of a Claim, or in cPacket's opinion is likely to become the subject of a Claim, cPacket may at its option, either (a) procure for Customer the right to continue using the Product, (b) modify or replace the Product to make it noninfringing, or (c) require Customer to return the Product and refund the upfront purchase price paid for it, less depreciation on a straight line basis over a three-year period (and, for any Subscription Solution, refund the amounts prepaid but unused for the Product), and in which case the rights licensed to Customer for such Product will terminate.

11.3 **Exclusion**. cPacket will have no liability regarding any claim arising out of (a) use of other than a current, unaltered release of the Product, unless the infringing portion is also in the then current, unaltered release; (b) use of the Product in combination with non-cPacket hardware, software, information, design, specification, instruction, software, data, or material, if the infringement was caused by such use or combination; or (c) any modification or derivation of the Product not specifically authorized in writing by cPacket.

11.4 **Sole Remedy**. THE FOREGOING STATES THE SOLE AND EXCLUSIVE REMEDY FOR CUSTOMER AND CPACKET'S ENTIRE LIABILITY RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE PRODUCT.

12. Term

12.1 **Term**. The initial term of this Agreement will commence on the Effective Date and continue as long as a Support Period or Subscription Period remains in effect under an Order.

12.2 **Subscription Renewal**. Unless otherwise set forth in the applicable Order, the Initial Subscription Term will automatically renew for successive one (1) year periods unless either Party provides at least thirty (30) days prior written notice of its intent not to renew (each such renewal, a "**Renewal Subscription Term**"). The Initial Subscription Term or a Renewal Subscription Term may be referred to as a "**Subscription Term**."

12.3 **Termination**. **Either Party may terminate this Agreement by providing written notice to the other Party if there is no Order in effect**. In addition, each Party may terminate this Agreement immediately following the occurrence of any of the following events and written notice to the other party:
(a) If the other party becomes insolvent under local law, makes a general assignment for the benefit of creditors, is adjudicated bankrupt or insolvent, files a voluntary petition in bankruptcy or for a reorganization or to effect a plan or other arrangement with its creditors, files an answer to a creditor's petition or other petition against it for an adjudication in bankruptcy or thereof, or applies for or permits the appointment of a receiver, trustee, or custodian for any substantial portion of its properties or assets;
(b) If an order is entered by any court approving an involuntary petition seeking reorganization of the other party, or appointing a receiver, trustee, or custodian for any substantial portion of its assets or business or if for any reason the other party voluntarily or involuntarily suspends transaction of its business or ceases to function as a going concern; or
(c) the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt by the breaching party of written notice from the non-breaching party describing such breach.

12.4 **Effect of Termination**. Termination will not relieve Customer of its obligation to pay all fees and charges accrued or otherwise owed under the Agreement. Upon any termination of this Agreement, Customer (a) will immediately discontinue all use of the Subscription Solution; (b) will delete and/or return to cPacket any copies thereof; and (c) will promptly pay to cPacket all amounts due and remaining payable hereunder. The following Sections will survive expiration or termination of this Agreement: 3.2, 4 (if applicable), 6, 7, 8, 9.5, 9.6, 11, 12.4, 12.5, 13, 14, and 15.

12.5 **Self-Help**. Customer agrees that cPacket may include in the Subscription Solution and utilize self-help code in connection with enforcing its rights at the end of the Subscription Period, including, as applicable, an electronic means for cPacket to: (a) retrieve or delete copies of Software used on Subscription Hardware; (b) prevent or restrict use, performance or functionality of Software used on Subscription Hardware; or (c) discontinue access to Software used on Subscription Hardware. Customer accepts and authorizes all such usage.

13. Confidential Information

13.1 **Obligation**. By virtue of this Agreement, the parties may have access to information that is confidential to the other Party ("**Confidential Information**"). Confidential Information is limited

to the Products, terms and pricing under this Agreement, and all information clearly identified as confidential or which by its nature is confidential. A party's Confidential Information does not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. Customer will not disclose the results of any benchmarking or other tests of the Software or Hardware to any third party without cPacket's prior written approval. The parties will hold each other's Confidential Information in confidence during the term of this Agreement and for a period of three (3) years after termination of this Agreement. Notwithstanding the foregoing, the parties will hold each other's Confidential Information that is a trade secret under applicable law in confidence indefinitely. The parties will not make each other's Confidential Information available in any form to any third party for any purpose except to the extent necessary to exercise its rights under this Agreement, and will treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. It will not be a breach of this section if Confidential Information is disclosed pursuant to subpoena or other compulsory judicial or administrative process, provided the party served with such process promptly notifies the other party and provides reasonable assistance so that the other party may seek a protective order against public disclosure. Each party will limit the disclosure of Confidential Information to those of its employees and subcontractors who have a need to know such Confidential Information, and each party will take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or subcontractors in violation of the terms of this Agreement. Neither party will use the other party's Confidential Information for any purpose other than the performance of this Agreement. Neither party will remove, overprint, or deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the other. All Confidential Information is provided "AS IS", and all representations and warranties, express or implied, including fitness for a particular purpose, merchantability and non-infringement are hereby disclaimed. The parties acknowledge that money damages may not be a sufficient remedy for any breach of this Agreement and that a party is entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Section 13. Such relief will not be the exclusive remedy, but will be in addition to any other rights and remedies available at law or in equity.

14. High Risk Activities; Indemnification

The Software is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-

support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, "**High Risk Activities**"). cPacket expressly disclaims any express or implied warranties for High Risk Activities. Customer will defend or settle at its own expense any suit or proceeding which may be brought by a third party against any third-party claim relating to Customer's use of the Software in connection with High Risk Activities ("**High- Risk Activities Claim**"). Customer will pay all damages and costs finally awarded against cPacket on account of such High-Risk Activities Claim or agreed to in a monetary settlement of such High-Risk Activities Claim; provided, however, that cPacket: (a) promptly notifies Customer in writing of the High-Risk Activities Claim; (b) grants Customer sole control of the defense and settlement of the High-Risk Activities Claim; and (c) provides Customer with all timely assistance, information, and authority required for the defense and settlement of the High-Risk Activities Claim.

15. Miscellaneous

15.1 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Any additional, different, conflicting or inconsistent terms on any purchase order or any other document submitted by Customer are hereby expressly rejected.

15.2 **Government Use**. The Product and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Product and accompanying Documentation by the United States Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

15.3 **Assignment and Delegation**. Except as may be expressly authorized elsewhere herein, neither party may assign or transfer this Agreement, nor any rights granted under it, nor delegate to a third person any duties or obligations under this Agreement ("Assign"), without the prior written consent of the other party. Notwithstanding the foregoing, cPacket may, without consent of Customer, have the right to Assign all of its rights and obligations under this Agreement to a wholly-owned subsidiary or incident to a merger, sale of all or substantially all of its assets or stock. Any attempted assignment or transfer in violation of the foregoing will be void. cPacket will have the right to use subcontractors in the performance of its obligations in the normal course of business without Customer's consent, but such subcontracting will not relieve cPacket of any obligation or responsibilities under this Agreement.

15.4 **Governing Law**. This Agreement will be governed by and construed under the laws of the State of California without regard to the conflicts of law provisions thereof. All litigation arising

under this Agreement will be tried in the courts of Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

15.5 **Waiver**. No failure of either Party to exercise any power given to it hereunder or to insist upon strict compliance by the other with any obligation or provisions hereunder, and no custom or practice of the Parties at variance with the terms will constitute a waiver of the right to demand exact compliance with the terms hereof. Waiver by a non defaulting Party of any right arising from a default of the other Party will not affect or impair the rights of the non defaulting Party with respect to any subsequent default by the other Party of the same or of a different nature.

15.6 **Force Majeure**. Neither Party will be liable for delays in or failures of performance (excluding failure to pay) under this Agreement due to unforeseen circumstances or causes beyond its reasonable control (an "excusable delay"), including war (including civil war), riots, embargoes, acts (whether sovereign or contractual) of civil or military authorities, acts or failures to act of any government, acts of terrorism, fires, floods, explosions, the elements, epidemics, quarantine restrictions or strikes. In the event of an excusable delay as defined above, the affected Party will promptly notify the other Party in writing of such delay and an equitable adjustment will be made in the completion schedules and any other affected terms of this Agreement.

15.7 **Export**. Customer is advised that the Products are subject to the U.S. Export Administration Regulations, and diversion contrary to U.S. laws and regulations is prohibited. Customer agrees not to directly or indirectly export, import or transmit the Products to any country or end user, or for any end use, that is prohibited by any applicable U.S. law or regulation (including those countries from time to time subject to embargo by the U.S. Government). Additionally, Customer agrees not to directly or indirectly export, import, transmit or use the Products contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Customer represents that neither the United States Bureau of Export Administration nor any other governmental agency has suspended, revoked or denied Customer's export privileges. Customer agrees not to use or transfer the Products for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the U.S. Government by regulation or specific written license.

15.8 **Compliance with Laws**. The Parties will comply at their own expense with all applicable federal, state, local and foreign laws, ordinances, regulations, and codes.

15.9 **Notices**. Any notice required or permitted under this Agreement will be given in writing to the address or facsimile number provided for a Party on the initial Order (or such other address or number as any Party may provide to the other in writing in the manner contemplated hereby).

15.10 **Independent Contractors; No Agency**. The parties are acting under this Agreement as

independent contractor. Under no circumstances will Customer, or any of its employees, have any status as an employee of cPacket. In addition, nothing in this Agreement will be contemplated by the Parties to create an agent, joint venture, or partner relationship. Neither party will have authority to contract for or bind the other party in any manner nor represent itself as an agent of the other party.

15.11 **Construction; Severability**. The headings of the Sections of this Agreement are inserted for convenience only and do not form a part or affect the meaning hereof. If any provision of this Agreement is held invalid, the remainder of this Agreement will not be affected. The term "including" means "including without limitation."

15.12 **Trademarks; Public Announcements**. Customer grants to cPacket a non-exclusive worldwide right and license to use and reproduce Customer's trademarks and logos (collectively, "Customer Marks") in order to promote and market the Products, including listing Customer in cPacket's customer lists. All use of the Customer Marks by cPacket shall be in accordance with Customer's trademark usage guidelines and shall inure to the benefit of Customer. cPacket may issue a mutually agreed upon press release announcing execution of this Agreement. Except as provided herein, neither Party will make any other press release or public announcement concerning this Agreement or the transactions which are the subject hereof without consent of the other Party.

15.13 **Segmentation**. Customer understands that it has the right to acquire Hardware without acquiring any Support Services.

15.14 **Joint Drafting**. The Parties, who have both been represented by legal counsel, have jointly participated in negotiating and drafting this Agreement, including any attachments. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if jointly drafted by the Parties and no presumption, inference or burden of proof will arise favoring or disfavoring a Party by virtue of authorship of any or all of the Agreement provisions.

Change History Record

Version	Description of Change	Date of Issue
V2	Added Change Record and used new Template	05/08/2024
V1	Base Version	08/01/2022