

**PACKETEER, INC.**  
**ADVANCE REPLACEMENT SERVICE AGREEMENT**

This Advance Replacement Service Agreement ("Agreement") is between you (either an individual or entity) and PACKETEER, INC. ("Packeteer"). This Agreement sets forth the terms and conditions under which Packeteer will provide Services (as defined below) for the Packeteer product possessing the serial number, referenced in the Invoice, which is originally licensed to and purchased by you (the "Product") pursuant to Packeteer's End User Agreement ("End User Agreement"). You agree to be bound by the terms of the End User Agreement with respect to the Product and all replacement product provided to you under this Agreement which terms and conditions are incorporated herein by reference and all capitalized terms not defined in this Agreement shall have the meanings set forth in the End User Agreement.

**TERM AND TERMINATION.** The initial term of this Agreement will be either a twelve (12) month or multiple year term as specified in your original purchase order as accepted by Packeteer (the "Term"), the Term shall begin as of the date of purchase. Either party can elect to discontinue Services under this Agreement by providing to the other party at least thirty (30) days written notice at any time. If you discontinue Services, the Services fee is not refundable. If Packeteer discontinues Services for its convenience, Packeteer will refund the unused pro-rata portion of the Services fee for the Term. This Agreement shall terminate immediately upon (i) nonpayment of the required Services fee; (ii) termination of the End User Agreement; or (iii) any material breach of the terms of this Agreement.

**PAYMENT.** Payment for Services is due upon receipt of Packeteer's invoice.

**REINSTATEMENT OR RENEWAL OF SERVICES.** If this Agreement expires or is terminated for any reason, you will not be entitled to any Services as of the termination date. If Services are terminated, you may reinstate or renew Services in the future (at Packeteer's sole option) by paying any applicable fees.

**SERVICES.** During the Term of this Agreement and subject to your compliance with the terms of this Agreement, Packeteer will ship you a replacement product with freight prepaid with next day delivery in the United States and priority delivery internationally once you have (i) notified Packeteer that you believe the Product contains defects in materials or workmanship, and (ii) obtained a Return Material Authorization ("RMA") number from Packeteer. Packeteer has the option to ship a replacement product that is a refurbished unit with a software level equal to that of the Product received from you by Packeteer.

**YOUR OBLIGATIONS.** You must notify Packeteer of any product defects promptly, and request a RMA number from Packeteer before returning the Product. All returned Products must be sent to Packeteer, freight prepaid and insured. When requesting Services, you must provide the Product serial number. You may not share the benefits of this Agreement with any other persons nor use the Services furnished to you under this Agreement for any product for which you have not purchased Services. As a condition of Packeteer shipping you the replacement product prior to your returning the Product which you claim to be defective, you agree to return the defective product to Packeteer within 10 business days or you will be invoiced for the replacement product at Packeteer's then current list price and shall pay such invoice within 30 days of the invoice date.

**EXCLUSIONS.** Packeteer shall have no obligation to provide Services for the Product if it (i) has been altered, damaged or modified; (ii) has been used in a manner not specified in the applicable documentation; (iii) has been damaged by accessories, attachments or other similar devices; (iv) has been damaged as a result of accident, natural disaster or other force majeure; (v) has been damaged by negligence, misuse, misapplication, or other causes beyond the reasonable control of Packeteer; or (vi) has been serviced, or attempted to be serviced, by anyone other than Packeteer or its authorized agents.

**NO WARRANTY.** The Services provided hereunder are provided "AS IS" and are without warranty of any kind. WITHOUT LIMITING THE FOREGOING, PACKETEER DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. The foregoing disclaimer does not modify any warranties provided in the End User Agreement.

**LIMITATION OF LIABILITY.** EXCEPT FOR DAMAGES FOR BODILY INJURY, NEITHER PACKETEER NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF DATA, EQUIPMENT DOWNTIME OR LOST PROFITS), EVEN IF PACKETEER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT PACKETEER OR ITS SUPPLIERS MAY BE HELD LEGALLY LIABLE TO YOU BY A COURT OF COMPETENT JURISDICTION, THE AGGREGATE LIABILITY OF PACKETEER AND ITS SUPPLIERS IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION GIVING RISE TO SUCH LIABILITY (WHETHER IN CONTRACT, TORT OR OTHERWISE), SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO PACKETEER IN THE PRECEDING TWELVE (12) MONTHS UNDER THIS AGREEMENT.