

PACKETEER, INC. PARTNER SUPPORT PROGRAM PLUS GOLD AGREEMENT

This Partner Support Program Plus Agreement (“Agreement”) is between you (either an individual or entity) and PACKETEER, INC. and/or its affiliates (“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 software upgrades, software updates 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 Start Date specified in Packeteer’s purchase acknowledgement. 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 Agreement 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 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 the invoice. The Services fee is net of all taxes and duties. You agree to pay all taxes and duties due for the Services and any Product provided subject to this Agreement, including but not limited to sales, VAT, revenue, excise or other taxes applicable to the Services and/or Products covered by this Agreement.

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, and by purchasing and upgrading all Product software to the currently supported release.

SERVICES. During the Term of this Agreement and subject to your compliance with the terms of this Agreement and in consideration of the maintenance and support fees, which are paid to Packeteer, Packeteer will use commercially reasonable efforts to provide you the following services in accordance with the provisions of this Agreement:

(a) **Software Subscription Service.** Access to all software updates and software upgrades for the Product, to the extent created and generally released. Packeteer retains the right to create for-charge add-ons, which shall not be included with the Services except for an additional fee as determined by Packeteer, in its sole discretion. Software updates may be provided by ways of either a modification or an addition that, when made or added to the Software, establishes substantial conformity to the user guide documentation, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of such nonconformity.

(b) **Advance Hardware Replacement.** Provide you a replacement product with freight prepaid with three (3) hours delivery to a mutually agreed upon delivery locations in Japan, for all other Japanese locations replacement product shall be shipped next business day and for all other countries replacement product shall be shipped next business day or priority delivery (please visit Packeteer’s Internet site under Customer Support at <http://www.packeteer.com/support/> for additional details), once you have (i) notified Packeteer by phone that you believe the Product contains defects in materials or workmanship and (ii) obtained a Return Material Authorization (“RMA”) number from Packeteer. In order for Packeteer to be able to provide 3-hour service, Packeteer must receive such notification from you by phone no later than 1:00 P.M. during Packeteer’s normal local office business hours. For next business day service replacement service, Packeteer must receive such notification from you no later than 1:00 P.M. during Packeteer’s normal local office business hours. Packeteer has the option to ship a replacement product with a unit of equal or greater performance or that is a refurbished unit with a software level equal to that of the Product received from you by Packeteer. In order to assure prompt delivery of your replacement product, you are required to provide Packeteer at the time of original purchase of the unit the physical address where the unit will be installed and notify Packeteer in advance of any change in the address. Three (3) hour delivery is limited to certain Packeteer models.

LIMITATIONS. Support does not include services for any failure or defect in the Product caused by any of the following: (a) alteration, modification or damage of the Product by you or persons other than Packeteer employees or consultants; (b) used in a manner not specified in the applicable documentation; (c) interaction between the Product and operating systems, database software and other software not provided by Packeteer or damage by accessories, attachments or other similar devices; (d) damage as a result of accident, natural disaster or other force majeure; (e) damage by negligence, misuse, misapplication, or other causes beyond the reasonable control of Packeteer; or (f) service, or attempted to be service, by anyone other than Packeteer or its authorized agents. Packeteer’s support obligations with respect to the Product shall apply only to the most current release of the licensed software. If Packeteer agrees to remedy any errors or problems not covered by the terms of this Agreement, Packeteer may perform such work at its then-current standard time and material rates.

YOUR OBLIGATIONS. When requesting Service, you must provide the Product serial number. You may not share passwords, product serial numbers or other benefits of this Agreement with any other persons nor use any software updates or software upgrades or other Services furnished to you under this Agreement for any product for which you have not purchased Services. 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. 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 you agree to pay such invoice within 30 days of the invoice date. In order for Packeteer or its agent to perform diagnostic testing and fault isolation with minimal system interruption, you agree to provide Packeteer or its agent with remote access to the Product via dial-in (PSTN) capability or a dedicated network connection.

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, THE SERVICES, THE SOFTWARE OR THE PRODUCT, 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. In no event will Packeteer be liable for delay or non-delivery due to causes beyond its reasonable control.

EXPORT CONTROL. The Product and software is subject to the export control laws of the United States and you may not export or re-export the Product or software without the appropriate United States and foreign government licenses. You agree to comply with all applicable export control laws and shall defend, indemnify and hold Packeteer and all Packeteer suppliers harmless from any claims arising out of your violation of such export control laws.

GENERAL. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of California, USA, as those laws are applied to contracts entered into and to be performed entirely in California by California residents. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect. This Agreement is the final, complete and exclusive agreement between the parties relating to

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the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written. Should you have any questions regarding this Agreement, or if you desire to contact Packeteer for any reason, please write to: Packeteer, Inc., 10201 N. De Anza Blvd., Cupertino, California 95014, U.S.A.