

**PACKET FUSION, INC.**  
**MASTER SERVICES AGREEMENT**

This Master Services Agreement (the “Agreement” or “MSA”) sets forth terms under which Packet Fusion, Inc., a California corporation (“Company”, “Contractor”, “Licensor” “Managed Service Provider” or “PFI”) shall provide services to CITY OF SANTA ROSA, (“Customer”). This Agreement is effective as of the date of signing by both parties (the “Effective Date”) and will remain in effect for all future orders or purchases of equipment, licenses, services, software, subscriptions, and support. Capitalized terms shall have the meanings defined in the Agreement. In consideration of the mutual promises and obligations in the Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows.

## **1. SUPPORT AND PROFESSIONAL SERVICES**

- 1.1. **Support Services.** The Customer may elect to have Company provide on-going Support Services for either their premise-based systems or their cloud-based solutions.
  - 1.1.1. **Premise Solutions.** If Customer elects to engage Company for premise-based Support Services, the Company shall provide such Support Services as described more fully on one or more Support Services Addendums signed by Company and Customer which are incorporated herein by reference to this Agreement (“SSA” or “Support Services Addendum”). Such Addendums shall be included in Exhibit 1 of this Agreement.
  - 1.1.2. **Cloud Solutions.** If Customer elects to engage Company for cloud-based Support Services, the Company, in conjunction with the cloud service provider, shall provide Support Services more fully described on one or more Support Services Addendums signed by Company and Customer which are incorporated herein by reference to this Agreement. Such Addendums shall be included in Exhibit 1 of this Agreement.
- 1.2. **Professional Services.** Company may provide implementation, installation and various other professional services to the Customer as described on one or more Statements of Work signed by Company and Customer which are incorporated herein by reference to this Agreement (“SOW” or “Statement of Work”). Company shall perform Services set forth in any SOW in a prompt and professional manner. Customer shall assist Company by promptly providing all information requests known or available and relevant to the Services set forth in each SOW. Exhibit 2.
- 1.3. **Equipment, License and Software Purchases.** Title to any equipment, license or software purchases shall pass to customer upon the date that the equipment, license or software is delivered to the Customer designated site, subject to the rights of PFI in the following paragraph.
- 1.4. **Delivery and Installation.** All risk of loss passes to Customer upon delivery of equipment to the installation site. The equipment delivery date shall be at a time to be mutually agreed upon by the parties. PFI will install the equipment. Customer will be responsible for a suitable place for installing the equipment, all electrical outlets, power hook-ups, related carpenter work as specified by PFI, and an equipment area acclimatized to computer requirements in terms of temperature.

## **2. INVOICING AND PAYMENT**

- 2.1. Unless otherwise stated in any SOW, product sale or services order, Customer will pay all invoices within thirty (30) days of the date of the applicable invoice by check, ACH or wire transfer. All payments are non-refundable and PFI will charge an administrative fee for returned checks.
- 2.2. Fees and other amounts due shall be set forth in each product or services order or SOW (“Fees”). Unless otherwise stated in a product or services order, SOW or this Agreement: (a) all Fees quoted are payable in the currency set forth in the applicable order or SOW, and (b) Customer will be invoiced for the Fees as set forth in order or SOW.
- 2.3. All Fees and quoted prices are exclusive of applicable regulatory charges and state and local taxes. All taxes that are the responsibility of Customer shall be paid by Customer. Company will invoice Customer for sales taxes and Customer agrees either to pay Company amounts covering such taxes (as determined by tax authorities) or to provide evidence necessary to sustain an exemption therefrom.

- 2.4. Customer will reimburse all pre-approved travel and other expenses incurred by Company in connection with the delivered services pursuant to this Agreement, any related Support Services Addendum or any applicable SOW.
- 2.5. If Customer in good faith disputes the amount of any invoice, Customer will timely pay the undisputed amount and will notify PFI in writing of the disputed amount no later than the date payment would otherwise be due, providing the reasons for the dispute. The parties will attempt in good faith to resolve the dispute within thirty (30) days after PFI's receipt of Customer's notice of dispute (the "Resolution Period"), during which time Customer's withholding of the disputed amount will not be considered a material breach of this Agreement. Upon resolution of the dispute, Customer will pay the resolved amount promptly but, in any case, within ten (10) days of mutual written agreement resolving the dispute. If the dispute is not resolved within the thirty-day (30) Resolution Period, then each party will be entitled to pursue all available remedies.

### 3. FEES

- 3.1. **Support Services Fees.** PFI shall invoice Customer for the Support Services Fees set forth in each support services order issued pursuant to the applicable Support Services Addendum.
  - 3.1.1. **Additional Work.** When Customer requests services outside the scope of the applicable Support Services Addendum, Company will utilize its commercially reasonable best efforts to provide such services such as moves, adds or changes in a timely manner at the Company's time and materials rates ("T&M Rates"). Such work performed hereunder shall be invoiced upon completion.
  - 3.1.2. **Changes to Premise Configuration.** Changes in station quantities, port counts, equipment specifications, attachments or features may result in an adjustment of the Support Services original fee amount. Such adjustments will occur at the time of each renewal and will require notification sent from Company to Customer, at which time Customer may elect, in its sole discretion, to cancel the applicable SSA per Section 7.4 of this MSA.
- 3.2. **Time & Materials Work.** At Customer's request and pursuant to a written quote or work order, Company shall perform services and provide materials, subject to their availability, to complete such work request on a time and materials basis with payment due upon satisfactory completion.
- 3.3. **Tangible and Intangible Product Fees.** At Customer's request and pursuant to a written quote or sales order, Company shall provide equipment, licenses, software or software subscriptions, subject to their availability. Upon delivery to the Customer designated site, the Company will invoice and payment will be due for such invoice.
- 3.4. **Professional Services Fees.** Customer shall pay Company the amount set forth in each SOW or corresponding services order for any agreed upon Professional Services to include implementation services, installation services, system enhancement services or other requested services. Each Professional Service Fee may also cover hardware, software, licenses which are described in such SOW, sales quote or services order.

### 4. WARRANTIES; DISCLAIMERS

- 4.1. Company warrants that the (i) Professional Services and (ii) Maintenance and Support will be performed in a professional and workmanlike manner and in accordance with applicable requirements of the Master Services Agreement.
- 4.2. Customer's sole and exclusive remedy for breach of the warranties set forth in this section shall be for Company to re-perform non-conforming services or to correct errors.
- 4.3. Customer indemnifies and holds harmless Company for any claims, actions, expenses, losses, damages, or liabilities arising from allegations that the Equipment was used for illegal monitoring of calls or other illegal activities.
- 4.4. Company shall not be liable for any loss, cost, expense, or damages resulting from unauthorized calls made using the Equipment, or other fraudulent activities from Equipment, except where the unauthorized

calls or other fraudulent activities are from or attributable to Company, its officers, employees, agents or representatives, including its subcontractors.

- 4.5. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS MSA or SSA, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, OR ITS CONDITION, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER.
- 4.6. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED TO CUSTOMER ON AN “AS IS” “WHERE IS” AND “AS AVAILABLE” BASIS WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PACKET FUSION MAKES NO REPRESENTATIONS OR WARRANTIES THAT USE OF THE ANY CLOUD SERVICE WILL BE UNINTERRUPTED, TIMELY, COMPLETE, OR ERROR-FREE. The Company technology and third-party technology may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Company is not responsible for any delays, delivery failures, or other damage resulting from such problems.
- 4.7. Where Company acts as a reseller of third-party technology, Company represents and warrants that any third-party technology provider has authorized Company to grant licenses or sublicenses to use their products, including but not limited to the third-party technology, for use in Company’s performance of the solution and Customer’s use in connection therewith.

## **5. LIMITATION OF LIABILITY**

- 5.1. Neither party shall be liable for any special, indirect, incidental or consequential damages or for loss, damage, or expense directly or indirectly arising from customer’s use of or inability to use the equipment either separately or in combination with other equipment, or for personal injury or loss or destruction of other property.
- 5.2. Customer and Company indemnifies and holds each party harmless for any claims, actions, expenses, losses, damages, or liabilities for any property damage or bodily injury (including death) arising in connection with this Agreement or the Support Services provided under this Agreement, except to the extent that any such property damage or bodily injury results from the negligence or willful misconduct of each party, its officers, employees, agents including subcontractor or for claims, damages or injuries by Company’s employees covered under California’s workers’ compensation statutes.
- 5.3. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RELATED PARTIES BE LIABLE TO THE OTHER PARTY OR ANY OF ITS RELATED PARTIES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE DAMAGES OF ANY CHARACTER, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LOSS OF BUSINESS OR GOOD WILL, WORK STOPPAGE, LOST PROFITS, REVENUE, DATA OR USE, COMPUTER FAILURE OR MALFUNCTION AND TELECOMMUNICATIONS CHARGES FROM UNAUTHORIZED ACCESS), COVER DAMAGES , OR OTHER SIMILAR DAMAGES REGARDLESS OF THE LEGAL THEORY ASSERTED, WHETHER IN CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY OR ANY OF ITS RELATED PARTIES (AND IN THE CASE OF MITEL, ITS LICENSORS OR SERVICE PROVIDERS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON.
- 5.4. THIS LIMITATION OF LIABILITY SHALL NOT OPERATE SO AS TO: (I) REDUCE ANY AMOUNTS DUE AS FEES; (II) LIMIT LIABILITY ARISING IN CONNECTION WITH INDEMNIFICATION OBLIGATIONS; OR (III) LIMIT LIABILITY FINALLY DETERMINED TO HAVE RESULTED FROM A PARTY’S GROSS NEGLIGENCE OR WILFULL MISCONDUCT. THIS SECTION WILL NOT APPLY TO DAMAGES THAT CANNOT BE LIMITED OR EXCLUDED BY LAW (IN WHICH EVENT THE LIMITATION WILL BE THE MINIMUM AMOUNT REQUIRED BY LAW).

## 6. GENERAL

- 6.1. **Confidentiality.** During the course of providing Support Services, Professional Services and other products or services hereunder, Company may have access to confidential and proprietary information and materials of Customer (“Confidential Information”). Confidential Information includes and is not limited to, information related to past, present or future research, development or business affairs, any proprietary products, software, materials or methodologies, trade secrets or any other information which provides Company with a competitive advantage. Confidential Information shall be used by Company only in conjunction with the provision or performance of Support Services and other services and products hereunder and shall not be disclosed to any third party. No rights or licenses under patents, trademarks or copyrights are granted or implied by any disclosure of Confidential Information. Upon Customer’s request or completion or termination of this Agreement, Company shall return all Confidential Information to Customer. Company shall only disclose Customer Confidential Information to subcontractors, employees, officers, directors or affiliates (collectively, “Affiliated Persons”) who have a need to know such Customer Confidential Information in order to perform or provide the Support Services or other products or services for Customer related to Customer's systems, provided that such Affiliated Persons are subject to written confidentiality obligations with Company protecting Customer’s Confidential Information.
- 6.2. **Independent Contractors.** Neither party is an employee, agent or representative of the other party. Neither party shall have any right, power, or authority to enter into any agreement for or on behalf of the other party, or to incur any obligation or liability or otherwise bind the other party. This agreement does not create an association, joint venture, or partnership between the parties nor imposes any partnership liability upon either party.
- 6.3. **Termination.** Company shall have the right to modify, reject, or terminate any SOW or SSA and any related work in process with five days written notice to Customer.
- 6.4. **Cancellation.** Customer or Company may cancel this Agreement for any reason at any time upon providing the other Party thirty (30) days advance written notice of intent to terminate this Agreement.
- 6.5. **Default.** Upon and during a Customer Default as defined in this subsection, Company in its sole discretion may suspend Support Services and other services it provides under this Agreement, and/or bill for Support Services at then-applicable T&M Rates for such services performed, and/or suspend all credit and perform on a cash-only basis, and/or pursue any other legal or equitable remedies available.
- 6.5.1. A “Customer Default” includes:
- 6.5.1.1. Customer’s failure to meet any undisputed payment obligation under this Agreement or any other agreement between Company and Customer, which failure continues for ten (10) business days after date of written notice of such failure, or
- 6.5.1.2. Customer’s failure to perform any other material condition or material obligation under this Agreement or any other agreement between Company and Customer, which failure continues for thirty (30) days after date of written notice specifying the nature of such failure and Customer then fails to continue to diligently cure such failure. If Company terminates this Agreement under this subsection, Customer shall be liable for any and all outstanding charges up to the date of termination.
- 6.6. **Force Majeure.** Neither party shall be liable or otherwise responsible for any nonperformance or delay in performance of any of obligations under this Agreement during any period in which performance is prevented or hindered by any Force Majeure event, including by way of example but without limitation, lightning strike and any other acts of God, fire, flood and other severe catastrophic weather conditions, pandemic, war, embargo, union strikes, explosions or riots.
- 6.7. **Cost of Collection.** Customer shall be liable for any reasonable expenses incurred by Company in collecting any amount due under this Agreement and any Orders, or in enforcing any obligation under this Agreement or any Orders, including without limitation collection agency costs, reasonable attorney’s fees, and court costs.

- 6.8. **Insurance.** Company will maintain appropriate and adequate commercial insurance for its operations.
- 6.9. **Assignment and Subcontracting.** This Agreement, including any order entered into hereunder, is assignable by either party with the other party's prior written consent, which consent shall not be unreasonably withheld. Either party may assign this Agreement and orders entered hereunder, in whole or in part, to an affiliate, subsidiary, joint venture, or third party into which said party is merged or which acquires substantially all of a party's assets or control of said party. Company may freely subcontract any or all of the work hereunder, provided that Company shall retain responsibility for the work subcontracted.
- 6.10. **Notices; Party Representatives.** All notices, demands or other writings to be made, given or sent hereunder or which may be so given or made or sent by Customer or Company to the other shall be deemed to have been given in writing and personally delivered or if mailed on the third (3<sup>rd</sup>) day after being deposited in the United States mail, certified or registered, postage prepaid, and addressed to the respective Parties at the following addresses:

If to Company:

Packet Fusion, Inc.  
4301 Hacienda Drive, Suite 400  
Pleasanton, CA. 94588  
ATTN: Legal

If to Customer:

CITY OF SANTA ROSA  
CITY HALL ANNEX, 90 SANTA ROSA AVE, 2<sup>ND</sup> FL  
SANTA ROSA, CA 95405  
ATTN: Legal

- 6.11. **Authority.** Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms.
- 6.12. **Disputes.** Any controversy, dispute or claim arising out of, or relating to, the interpretation of this Agreement shall be first subject to a thirty (30) day negotiation period between the parties in which each party shall disclose to the other all non-confidential documents, facts, statements and any other relevant information which may have any bearing on this dispute. Should such negotiations fail to resolve the dispute, either party may refer the dispute to arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association. The decision of the Arbitrator shall be based, exclusively, upon only this Agreement and the information disclosed by the parties during the negotiation period, and the law of the state in which the equipment is located. The Arbitrator's decision shall be final and binding, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- 6.13. **Governing Law; Entire Agreement.** This Agreement, will be governed by the laws of the state of the State of California, constitutes the entire Agreement between the parties and supersedes all prior oral and written proposals and communications. This Agreement takes precedence over the language of any implementing Customer purchase order or similar document. No modification to this Agreement is effective unless in writing and signed by both parties.
- 6.14. **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, then such provision shall be modified to the minimum extent necessary, in conformance with the intention of the parties, to cure such invalidity or unenforceability, and the remaining provisions shall continue in full force and effect.
- 6.15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures of

parties on copies transmitted by facsimile or electronic signature shall be considered as signed original documents.

- 6.16. **Construction; Section Headings.** The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor or against either party, and that any ambiguity shall not be interpreted against the drafting party. The section headings in this Agreement have been inserted merely for convenience, are not a part of this Agreement, and shall not affect the rights and obligations of the parties or the meaning of the language in this Agreement.
- 6.17. **Survival.** Sections 4-6 shall survive the expiration or termination of this Agreement
- 6.18. **Special Provisions.** The City of Santa Rosa will have an option to auto-extend the Support Services for a one (1) year period at the expiration of the 2022 – 2023 Support Services coverage period. The quoted pricing of such Support Services will be based on the equipment then in use by the City of Santa Rosa at the time of extension. Further stated, the cost will reduce or increase based on decommissioned or purchased equipment and licenses.

Packet Fusion, Inc.

CITY OF SANTA ROSA

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT 1**

### **SUPPORT SERVICES ADDENDUM**

Exhibit 1 is comprised of all Support Services Addendums agreed to by the parties pursuant to this MSA.

## **EXHIBIT 2**

### **STATEMENT OF WORK**

Exhibit 2 is comprised of all SOWs agreed to by the parties pursuant to this MSA.



### **EXHIBIT 3**

#### **SALES & SERVICES QUOTES**

Exhibit 3 is comprised of all Quotes agreed to by the parties pursuant to this MSA.