

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	12/21/2004

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Mentat Inc.		12/21/2004	CORPORATION: CALIFORNIA

**RECEIVING PARTY DATA**

Name:	Packeteer, Inc.
Street Address:	10201 N. De Anza Boulevard
City:	Cupertino
State/Country:	CALIFORNIA
Postal Code:	95014
Entity Type:	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 4**

Property Type	Number	Word Mark
Registration Number:	1959662	MENTAT
Registration Number:	2547379	MENTAT
Registration Number:	1930927	MPS
Registration Number:	2487983	SKYX

**CORRESPONDENCE DATA**

Fax Number: (650)833-2001  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 650 833-2170  
 Email: tmfilings@dlapiper.com  
 Correspondent Name: Allyn Taylor, Esq.  
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 Address Line 4: East Palo Alto, CALIFORNIA 94303-2248

NAME OF SUBMITTER: Allyn Taylor, Esq.

CH \$115.00 1959662

Signature:

/Allyn Taylor, Esq./

Date:

06/09/2005

**Total Attachments: 8**

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AGREEMENT AND PLAN OF REORGANIZATION  
BY AND AMONG  
PACKETEER, INC.  
P ACQUISITION CORPORATION,  
MENTAT INC.  
AND  
CERTAIN SHAREHOLDERS OF MENTAT INC.

December 21, 2004

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**TRADEMARK**  
**REEL: 003100 FRAME: 0948**

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## AGREEMENT AND PLAN OF REORGANIZATION

This AGREEMENT AND PLAN OF REORGANIZATION (the "Agreement") is made and entered into as of December 21, 2004 by and among Packeteer, Inc., a Delaware corporation ("Acquiror"), P Acquisition Corporation, a California corporation ("Merger Sub") and wholly owned subsidiary of Acquiror, Mentat Inc., a California corporation ("Target"), and, with respect to Sections 2.7(f), 9, 10 and 11 only, the shareholders of Target identified on the signature page hereto (the "Principal Shareholders").

### RECITALS

A. The Boards of Directors of Target, Acquiror and Merger Sub believe it is in the best interests of their respective companies and the shareholders of their respective companies that Target and Merger Sub combine into a single company through the statutory merger of Merger Sub with and into Target (the "Merger") and, in furtherance thereof, have approved the Merger.

B. Pursuant to the Merger, among other things, the outstanding shares of Target Common Stock, shall be converted into the right to receive the Merger Consideration, upon the terms and subject to the conditions set forth herein.

C. Target, Acquiror and Merger Sub desire to make certain representations and warranties and other agreements in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

#### 1. Definitions.

(a) Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Acquiror" has the meaning assigned in the first paragraph of this Agreement.

"Acquiror Common Stock" means shares of Acquiror's Common Stock, par value \$0.001 per share.

"Acquiror Indemnified Parties" has the meaning assigned in Section 9.2.

"Acquiror Losses" has the meaning assigned in Section 9.2

"Acquiror SEC Filings" has the meaning assigned in Section 4.7

"Acquiror's Knowledge" means that Acquiror shall be deemed to have knowledge of a particular fact or other matter if an executive officer of Acquiror or an employee of Acquiror actively involved in the transactions contemplated by this Agreement has or at any time had knowledge of such fact or matter.

(c) To the Knowledge of Target, (i) there are no structural, electrical, mechanical, plumbing, roof, paving or other defects in any improvements located on any such real property as could, either individually or in the aggregate, have a material effect on the use, development, occupancy or operation thereof as presently contemplated, (ii) there are no natural or artificial conditions upon any such real property or any other facts or conditions which could, in the aggregate, have a material effect on the transferability, financeability, ownership, leasing, use, development, occupancy or operation of any such real property, (iii) there are no parties in possession of any portion of any such real property, whether as tenants, trespassers or otherwise, except Target, (iv) there are no pending or, to the Knowledge of Target, threatened assessments, improvements or activities of any public or quasi-public body either planned, in the process of construction or completed which may give rise to any material assessment against any such real property, and (v) all utilities required for the conduct of the business as presently conducted are installed and legally available for use at such real property upon payment at market rate consumption charges.

3.14 Adequacy of Assets. Target has possession of, and right to use, all of the tangible and intangible, real and personal property assets required for the conduct of its business as presently conducted, including, but not limited to, all Intellectual Property rights (except as modified pursuant to Section 3.16).

3.15 Tangible Personal Property. Target is in possession of and have good title to, or valid leasehold interests in or valid rights to use, all tangible personal property which is used in the business of Target free of Encumbrances other than Encumbrances that will be removed at or prior to the Closing, or Encumbrances disclosed, or given as security for a monetary Liability shown, on the Balance Sheet.

3.16 Intellectual Property Rights.

(a) The Target Intellectual Property includes all tangible and intangible information that is used or currently proposed to be used in the business of Target as currently conducted or as proposed to be conducted. Section 3.16 of the Disclosure Schedule contains an accurate and complete description of all registered Target-Owned Intellectual Property and common law trademarks that are Target-Owned Intellectual Property.

(b)

(i) Each item of Target-Owned Intellectual Property is free and clear of any Encumbrances;

(ii) Target is the owner of all right, title and interest in or is the exclusive licensee of all Target-Owned Intellectual Property;

(iii) Target is the owner of all right, title and interest in, and has good title to, (a) to the Knowledge of Target, all trademarks, service marks and trade names used in connection with the operation or conduct of the business of Target, including the sale of any products or technology or the provision of any services by Target, (b) all copyrighted works that are or are part of Target products, (c) all patents and patent applications of Target Intellectual

Property, and (d) other works of authorship and, to the Knowledge of Target, inventions that Target otherwise purports to own;

(iv) Target has not transferred ownership of any right, title or interest in, or granted any license under or right to use or authorized the retention of any rights to use, any Intellectual Property that is or was Target Intellectual Property, to any other person or entity other than (i) nonexclusive customer licenses granted in the ordinary course of business and (ii) nonexclusive licenses granted to distributors, OEMs and other resellers (collectively, "Resellers") in the ordinary course of business;

(v) there are no persons or entities to whom Target has delivered copies of the source code to any Target Intellectual Property, whether under an escrow arrangement or otherwise, or persons or entities who have the right to receive such source code;

(vi) all Target Intellectual Property, including any item thereof, is and will be fully transferable, assignable and licensable by or between Target or Acquiror without restriction and without payment of any kind to any third party;

(vii) the consummation of the transactions contemplated by this Agreement will not result in the loss of, or otherwise adversely affect, any ownership rights of Target in any Target Intellectual Property;

(viii) the consummation of the transactions contemplated by this Agreement will not result in the breach or termination of any license, contract or agreement to which Target is a party respecting any Intellectual Property;

(ix) the operation of the business of Target and to the Knowledge of Target does not and will not, when conducted in substantially the same manner following the Closing, infringe or misappropriate any Intellectual Property of any person or entity, violate the rights of any person or entity, or constitute unfair competition or trade practices under the laws of any jurisdiction, and Target has not received notice within ten (10) years prior to the Closing Date from any person or entity claiming that such operation or any act, product, process, technology or service (including products, processes, technology or services currently under development) of Target infringes or misappropriates any Intellectual Property of any person or entity or constitutes unfair competition or trade practices under the laws of any jurisdiction or any claim challenging the ownership, validity or effectiveness of any of Target Intellectual Property (nor is Target aware of any basis therefor);

(x) to the Knowledge of Target, there are no contracts, licenses or agreements between Target and any other person or entity with respect to Target Intellectual Property under which there is currently pending any dispute regarding the scope of such agreement or performance under such agreement, including with respect to any payments to be made or received by Target thereunder;

(xi) to the Knowledge of Target, no person or entity (including any employee or former employee of Target) is infringing, misusing or misappropriating any Target Intellectual Property;

Pre-Fetch Communication Systems and Methods	Toporek, Jerome D. Dye, Marc S. M:Cooley, Jeremy A.	PCT/US04/19370 06/16/2004	Pending Int'l Filing Deadline (Final): 06/16/2004 **Completed** Chapter 2 Demand (Due): 01/16/2005 Chapter 2 National Phase Deadline: 12/16/2005
Pre-Fetch Communication Systems and Methods	Toporek, Jerome D. Dye, Marc S. McCooley, Jeremy A.	10/870705 06/16/2004	Pending

2. Target's trademark property includes:

COUNTRY	MARK	CLASS	REG. NO.	REG. DATE	STATUS
European Union	MENTAT	9, 38, 42	002565166	02/06/2002	Registered Next Due Date: Next Renewal Due 02/06/2012
France	MENTAT	9 16 35	94544147	11/10/1994	Registered Next Due Date: Next Renewal Due 11/10/2004*
Germany	MENTAT	9 16 42	39401083.3	11/09/1994	Registered Next Due Date: Next Renewal Due 11/09/2004*
Japan	MENTAT	42	4-209794	08/30/1996	Registered Next Due Date: Next Renewal Due 08/30/2006
Japan	MENTAT	9	2002-4630	02/08/2002	Registered Next Due Date: Next Renewal Due 02/21/2013
Japan	MENTAT	38		3020814 09/07/2004	Registered Next Due Date: Next Renewal Due 01/31/2015
Japan	SKYX	9	2000-23644	03/10/2000	Registered Next Due Date: Next Renewal Due 10/19/2011
Japan	MENTAT	9	H04-209798	09/25/1992	Registered Next Due Date: Next Renewal Due 07/31/2005
United Kingdom	MENTAT	9 16 38 42	2003031	11/17/1994	Registered Next Due Date: Next Renewal Due 11/17/2004*
US	MENTAT	009; 042;	74/526316	05/18/1994	Registered Next Due Date: Next Renewal Due 03/05/2006
US	MENTAT	009;	76/296273	08/06/2001	Registered Next Due Date: Section 8 & 15 Open 03/12/2007
US	MING	009;	75/009130	10/23/1995	Inactive (Abandoned)
US	MPS	009;	74/526315	05/18/1994	Registered Next Due Date: Next Renewal Due 10/31/2005
US	SKYX	009;	75/460829	04/02/1998	Registered Next Due Date: Section 8 & 15 Open 09/11/2006

\*Target did not renew these applications because it decided on a strategy of using a European Community registration and claimed priority for that registration based on the previous registrations in France and Germany.

3. Assignment Agreement with Priscomm dated September 23, 1998 provides for the assignment of certain logos used by Target, which are common law trademarks.

(b)(ii) 1. Certain Mentat source code was developed with Sun Microsystems pursuant to that certain Software Development Agreement with Sun Microsystems, Inc. dated May 15, 1990, as amended on January 26, 2004, and that certain Software Development Agreement with Sun Microsystems, Inc. dated September 28, 1992, as amended on January 26, 2004, that provided for joint ownership of the software to both companies.



IN WITNESS WHEREOF, Target, Acquiror, Merger Sub and Principal Shareholders have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

MENTAT INC.

By: \_\_\_\_\_  
Kay A. Guyer  
President

PACKETEER, INC.

By: David C. Yntema  
David Yntema  
Chief Financial Officer

P ACQUISITION CORPORATION

By: David C. Yntema  
David Yntema  
President

PRINCIPAL SHAREHOLDERS

\_\_\_\_\_  
Kay A. Guyer

\_\_\_\_\_  
Jerome D. Toporek

SIGNATURE PAGE FOR AGREEMENT AND PLAN OF REORGANIZATION

IN WITNESS WHEREOF, Target, Acquiror, Merger Sub and Principal Shareholders have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

MENTAT INC.

By: Kay A. Glycer  
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President

PACKETEER, INC.

By: \_\_\_\_\_  
David Yntema  
Chief Financial Officer

P ACQUISITION CORPORATION

By: \_\_\_\_\_  
David Yntema  
President

PRINCIPAL SHAREHOLDERS

Kay A. Glycer  
Kay A. Glycer

\_\_\_\_\_  
Jerome D. Toporek

SIGNATURE PAGE FOR AGREEMENT AND PLAN OF REORGANIZATION