

**PEAK TECHNOLOGIES, INC.**  
**TERMS AND CONDITIONS FOR DEPOT SERVICE**  
**FOR ZEBRA HARDWARE (REV.060121)**  
**(US)**

The Depot Service for Zebra Hardware shall be governed by the following terms and conditions (this "Agreement"). Any prior or contemporaneous representations, agreements, comments, covenants or assertions that relate to the subject matter of this Agreement, whether written or oral, are not enforceable.

- 1.0 NATURE OF AGREEMENT.** By Customer's submittal to Peak of a purchase order for Services, Customer orders and agrees to pay for those Services listed therein and Peak agrees to deliver the ordered Service(s) in the country (or region) in which they were ordered. Only the written terms and conditions of this Agreement, the associated Services Description Document ("SDD"), and any attachments agreed upon and signed by the parties will apply. Peak's acceptance of any purchase order is expressly conditional on Customer's assent to the additional or different terms and conditions herein. Any of Customer's terms and conditions that are different or in addition to those contained herein are hereby objected to and of no effect. Oral or other representations unless contained herein, are not enforceable under the Agreement.
- 2.0 TERM.** Subject to Customer's compliance with all of the terms and conditions of the Agreement and acceptance by Peak of Customer's order for the particular package of Services, such Services shall be supplied to Customer in the country (or region) in which they were ordered for the term agreed to by the parties in the order. The term of the Agreement may be extended upon mutual agreement of the parties.
- 3.0 SUPPORTED HARDWARE.**
- 3.1** Peak will provide the Services with such levels of skills and experience as it deems appropriate to perform the Services. Peak's obligation to deliver the Services is subject to Peak's receipt of all required information regarding Customer and the supported products as Peak shall request. This information may include but is not limited to: Customer billing address; product's installation and/or use address; authorized contact names; valid serial numbers; and service start date. For e-Contract orders, End-User must provide to Peak a valid authorized buyer's e-mail address and company address.
- 3.2** Peak may require from Customer a proof of purchase of the particular unit of product and the Services for such product. The Services shall cover the particular units of Motorola products described in Peak's quote which will, among other things, identify the product number and associated serial number for each unit of product covered. During provision of the Services, if replacement parts or units of products are needed, such parts will be new or refurbished, and such units of products will be products equivalent to new in performance.
- 3.3** The Agreement covers the individual units of the Motorola products identified in Peak's quote or Add Form signed and submitted by Customer to Peak, including any added units that are acquired by Customer.
- 4.0 SERVICE CHARGES.** Service price(s) are set forth in Peak's quote. These charges do not include applicable taxes.
- 5.0 INVOICING AND PAYMENT TERMS.** Unless otherwise set forth in a Purchase Order, Peak shall invoice Customer for the Initial Term upon execution of this Agreement, and Customer shall pay Peak upon receipt of invoice. Peak may charge late payment interest of the lesser of the highest legally permissible rate or 1.5% per month for the late payment of any and all balances of invoices from when they are due and payable.
- 6.0 LIMITATIONS.** Service coverage does not include physical damage, misuse, unauthorized alterations or attempts to repair, abnormal operating environments, manmade or natural disasters, direct lightning damage, nor damage to consumable items such as tapes, diskettes, ribbons, paper, cables, print heads, batteries or chargers, and any associated equipment or system except as affected by the particular covered product, unless also specifically covered in writing by Motorola. Products submitted for repair under these conditions will be subject to an additional fee to bring product up to Motorola's specifications.
- 7.0 SERVICES OUTSIDE SCOPE OF STANDARD OFFERS.** Where **Services** are requested that are outside the scope of the Service(s) covered under Peak's standard Service offering as described in the SDDs, such Services will require additional payment by Customer in accordance with Peak's prevailing rates. Prior to carrying out such Services, Peak shall issue a quote to Customer. Peak requires a Purchase Order and payment in advance.
- 8.0 RIGHT TO INSPECT.** Peak reserves the right to inspect any unit of product that has not been covered by a Peak Service Agreement or Peak Service Warranty and, if necessary, make it operational. Customer will be responsible for an inspection fee as well as the cost of any repair work that may be necessary to make the product acceptable for coverage under the Agreement. Hardware which had been covered by an Agreement that has expired may also be subject to product inspection fees prior to renewal.
- 9.0 CUSTOMER RESPONSIBILITIES.** Customer's responsibilities include: (a) immediate notification to Peak if there is any change

regarding the information provided as part of the Agreement and the products (this may impact Peak's ability to perform and require additional fees); (b) making all reasonable efforts to cooperate with Peak in resolving problems remotely; executing self-tests, diagnostic programs and so on; (c) paying all telecommunications charges associated with provision of telephone and remote Services; (d) ensuring compatibility of non-supported products, accessories and devices with the Product(s); (e) maintaining security of its proprietary and confidential information and for maintaining a procedure for reconstruction of lost, or altered files or data programs; and (f) fulfilling those activities and responsibilities identified in any associated SDDs.

## **10.0 CHANGES AND NOTICES.**

**10.1** Peak may change the serial number of product(s) covered by the Services when the original product is damaged beyond economic repair and a replacement product is provided or when the Services offered provide an advance replacement product. Notification of the replacement unit serial number will be provided to Customer.

**10.2** In addition to requesting the Auto-Add feature, where applicable, Customer may request a change of the unit(s) of Hardware being covered under the Agreement by forwarding those changes in writing to Peak. Additions to the Agreement may be accepted by Peak to be effective thirty (30) days after receipt for pro-rata fees for the remaining term under the then current Agreement for such additional units of Hardware; the Agreement is non-cancellable although a deletion of some limited number of units of Hardware from the Agreement may be accepted by Peak, at its sole discretion, thirty (30) days after receipt of such proposed request for a deletion of a unit for a pro-rata credit of the pre-paid fee for the service of such units. Hardware submitted for repair while not under Service coverage or warranty will be charged Peak's then prevailing repair rates at the time such Service is provided prior to placing the unit under Service Agreement.

**11.0 TERMINATION.** Termination does not relieve the parties of their respective accrued obligations hereunder. Customer must pay for all Services delivered. Peak may terminate the Agreement in the event of any of the following: (a) failure of Customer to comply with any Agreement provision (including where Peak is not paid for the Services) within ten (10) days of written notice of such failure from Peak; or (b) Customer's insolvency, bankruptcy or filing to seek relief from creditors.

**12.0 FORCE MAJEURE.** Peak shall not be responsible or liable for any failure to perform hereunder if such failure is caused by acts of God, acts of government, strikes or labor disputes, failures of transportation, fire or flood or other casualty, failures of subcontractors or suppliers, or any other cause or causes (whether or not similar in nature to any of those herein specified) which are beyond Peak's reasonable control.

**13.0 LIMITATION OF LIABILITIES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, PEAK WILL NOT BE LIABLE TO CUSTOMER, THEIR RESPECTIVE AFFILIATES OR ANY OTHER PERSON FOR ANY LOST REVENUES, PROFITS, GOODWILL OR USE, THE COST OF SUBSTITUTED PRODUCTS OR SERVICES, BUSINESS INTERRUPTION OR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE PROGRAMS, DATA OR REMOVABLE DATA STORAGE MEDIA, FOR THE RESTORATION OR REINSTALLATION OF ANY SOFTWARE PROGRAMS OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED RELATED TO THE SERVICES OR THE AGREEMENT, OR THE INABILITY TO USE THE PRODUCTS, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF PEAK HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR EVEN IF THOSE DAMAGES ARE FORESEEABLE. CUSTOMER'S EXCLUSIVE REMEDY IS EXPRESSLY LIMITED TO PERFORMANCE OF THE SERVICES PROVIDED FOR BY THE AGREEMENT OR THE FAIR MARKET VALUE THEREOF. PEAK'S ENTIRE LIABILITY FOR DAMAGES TO CUSTOMER OR OTHERS RESULTING FROM SERVICES PERFORMED UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE ANNUAL SERVICES CHARGE PAID BY CUSTOMER, EXCEPT FOR INSTANCES OF PHYSICAL INJURY TO PERSON OR TANGIBLE PERSONAL PROPERTY DAMAGE. PEAK DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NONINFRINGEMENT. NEITHER PARTY MAY BRING A LEGAL ACTION UNDER THE AGREEMENT OR RELATED TO THE SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION AROSE UNLESS PROVIDED OTHERWISE BY APPLICABLE NONWAIVABLE LAW.

**14.0 HOLIDAYS.** Peak will observe all local public holidays at the site where the Services are being performed and no Service shall be provided on these days.

**15.0 DISPUTES.** If any legal proceedings are commenced to resolve any dispute or difference which may arise in connection with the Agreement or the performance of the Services, the prevailing party shall be entitled, in addition to any other award that may be made, to recover costs, attorney's fees and expert witness fees, including any costs or attorney fees incurred in connection with any appeals.

**16.0 ENTIRE AGREEMENT.** No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorized representatives of each party. The Agreement constitutes the entire understanding between Motorola and Peak or between Motorola and Customer (as applicable) with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter. If a conflict exists between these Terms and Conditions and an SDD, the SDD shall prevail.

- 17.0 ASSIGNMENT.** The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Customer may not transfer or assign its interests in the Agreement, in whole or in part, without the prior written consent of Peak, which consent shall be in Peak's sole discretion to grant. Peak has the right to assign and subcontract its interests in and obligations under the Agreement, and Customer specifically acknowledges and agrees that Peak may transfer or assign its interests in the Services and the Agreement to the purchaser of all or substantially all of the capital stock, assets or business of Peak (the "Assignee") without the consent of Customer.
- 18.0 GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Illinois without giving effect to the conflict of law principles thereof and excluding the Convention on Contracts for the International Sale of Goods. Customer hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to the Agreement or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the applicable courts of the County of Cook, Illinois and to the respective appellate courts thereof in connection with any appeal therefrom.
- 19.0 EXPORT CONTROL.** Provision of the Services to Customer may be subject to export control law and regulations. Peak does not represent that any necessary approvals and licenses will be granted. Customer will provide reasonable assistance to Peak to obtain any necessary consent. If, through no fault of Peak, any necessary consent is not granted, the respective parties can terminate the Agreement without any liability to the other.
- 20.0 THIRD-PARTY RIGHTS.** If applicable, a person who is not party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.