

The following Peak Technologies, Inc. Terms of Service govern the maintenance and support services performed by Technical Service Team, a division of Peak Technologies, Inc. ("TST"): Reseller seeks to engage the service of TST from time to time, and TST desires to provide such services to Reseller Customers, pursuant to Orders that may be entered into by Reseller Customers and TST from time to time pursuant to this Agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Definitions.** "**Customer**" shall mean a customer of Reseller for whom TST shall be providing Services under an Order. "**Hardware**" shall mean the Hardware listed on each Order for which TST has agreed to provide Services under this Agreement and the applicable Order. "**Orders**" shall mean mutually acceptable quotes, statements of work, orders, or proposals (an Order) that specify the Services to be provided to Customers of Reseller by TST, and the terms and conditions relating thereto. "**Services**" or "**Maintenance Services**" shall mean the services provided by TST for Reseller Customer as described in each Order. "Reseller" shall mean the entity that is contracting with TST under this Agreement, or who has issued a PO TST or signed a TST quote governed by this Agreement.

**2. SCOPE OF SERVICES.** Services will be provided by TST, acting as subcontractor of Reseller Customer. The parties shall prepare an Order for each Customer. All Orders shall include, at a minimum, the following information: (a) service start date and term, (b) the service levels, (c) Reseller's Customer(s) and their applicable site locations, (d) the Hardware to be serviced, (e) Maintenance Service fees, (f) invoicing instructions and payment schedules, and (g) a Scope of Work which will set forth the service obligations of TST with respect to the Hardware.

As indicated in Order, TST will provide to Customer for each term (as indicated on the Order) the Maintenance Services at each designated site for which Reseller pays to TST the applicable maintenance fees. TST will be available to Reseller Customer Monday through Friday 8AM-5PM as defined as normal business hours, local time at Customer's location, excluding TST holidays by telephone at (888) 849-0341. For an additional fee (or as indicated on an Order), Customer may select after normal business hours support for Onsite and Telephone Support. After hours support will be available based on best effort and resource availability for the location. Reseller has selected one or more of the following Maintenance Service(s), as indicated on an Order:

"**Depot Service.**" TST shall provide Maintenance Services at TST's maintenance facilities or manufacturer location. Reseller shall contact TST and place a request for Maintenance Services, at which time TST will provide Reseller with a Notification Number. Reseller shall be responsible for shipping the Hardware (at Reseller's expense) requiring service to TST's maintenance facility, the address of which TST will supply to Reseller. Reseller shall include with the Hardware a detailed description of the problems with the Hardware and shall display the Notification Number on the exterior of the shipping package for the Hardware. TST shall repair the Hardware and return the

Hardware via ground delivery at TST's expense unless otherwise agreed in the order to the address supplied to TST by Reseller within the timeframe set forth in an Order. As indicated on the Order, Reseller may purchase (at Reseller's expense) a replacement unit(s) of the Hardware for storage at TST's depot location ("Hot Spares"). Upon Reseller's notification that it requires the Hot Spare, TST will return the Hardware to Customer (at TST's expense) via next day delivery. For depot Service on Motorola Hardware only, their terms and conditions of this Agreement and Attachment are replaced with the Peak Technologies Inc Terms and Conditions for depot Service for Motorola Hardware located at [TST-Terms-and-Conditions-Final.pdf \(peaktech.com\)](#)

**"Onsite Service."** TST shall provide Maintenance Services at Customer's locations where the Hardware is located, as indicated on an Order. Reseller Customer shall contact TST and place a request for Maintenance Services, such request to include a detailed description of the problems with the Hardware, its location, and other such information as requested by the TST support representative. TST will dispatch a service technician to the Customer's site to perform the Maintenance Services within the timeframe set forth in the Order. Fees for Onsite Service in accordance with this section are inclusive of any travel. Lodging and other related expenses may be subject to additional fees. Customer shall provide such access to Customer's facilities as TST may reasonably request, during Customer's normal business hours or as otherwise agreed upon by the parties. TST shall observe all reasonable access, health, safety, and security requirements of Customer of which TST is informed in writing in advance and that are not inconsistent with TST's own business practices. Customer shall make available to TST appropriate Customer personnel familiar with Customer's equipment, software and/or applications. Customer shall provide the following for Onsite Service: electric power for portable electric tools, sufficient light where possible, safe access to the Hardware, appropriate Media, and reasonable cooperation from Customer's employees. Reseller acknowledges that TST is not liable for any hardware, software, or any other items or services provided to Customer by any persons other than TST, except as set forth in the Agreement. Customer shall promptly notify TST of any anticipated delays or deficiencies in Customer's responsibilities and shall provide prompt assistance in resolving any such delays or deficiencies to TST's reasonable satisfaction. TST reserves the right to stop work until Customer remedies such delays or deficiencies to TST's reasonable satisfaction.

TST shall not perform On-Site services at the residence of an end customers employee or location.

**"Telephone Support."** TST shall provide Maintenance Services to Reseller Customer via telephone. Reseller Customer shall call TST at (888) 849-0341 and place a request for Maintenance Services, such request to include a detailed description of the problems with the Hardware, its location, and such other information as requested by the TST support representative. TST shall provide Reseller Customer with a telephone response within four (4) hours following first notification of a problem. Reseller Customer shall receive all Customer service calls and screen out all non-hardware problems. Only

Reseller may call TST to request service hereunder. TST will be available to Reseller Customer Monday through Friday 8AM-5PM as defined as normal business hours, local time at Customer's location, excluding TST holidays by telephone at (888) 849-0341. For an additional fee (or as indicated on an Order), Customer may select after normal business hours support for Telephone Support. After hours support will be available based on best effort and resource availability for the location.

**"Preventative Maintenance."** TST shall provide proactive Preventive Maintenance in accordance with the equipment manufacturer's recommendations for an additional fee and as defined per the scope of work or related terms.

TST shall have the right to perform pre-contract inspections of Hardware within sixty (60) days of the effective date of the Agreement or the addition of Hardware to the Agreement. TST shall invoice Reseller for any parts used by TST during the pre-contract inspections. If TST does not perform pre-contract inspections, TST reserves the right to invoice Reseller for any parts used by TST where the first service call is within sixty (60) days from either the effective date of this Agreement or from the addition of Hardware to this Agreement. TST reserves the right to discontinue providing Maintenance Services for any Hardware for which it cannot obtain an adequate supply of spare parts and supplies through commercially reasonable means. Where possible, TST will provide Reseller with thirty (30) days prior written notice of its intent to discontinue providing Maintenance Services for such Hardware and upon the discontinuation TST shall adjust the maintenance fees accordingly. If the Hardware specifications shown on an Order are inaccurate or incomplete, TST will adjust the maintenance fees to reflect the accurate specifications of the Hardware and TST will invoice Reseller for the corrected Hardware specifications retroactive to the Effective Date (or the date at which the Hardware became covered by the Maintenance Services).

TST shall maintain current records of all Customers for which TST provides Services and all Services ordered/provided under each Order.

**3. ADDITIONAL SERVICES.** TST will provide no Additional Services for Customers without the prior written approval of Reseller Customer. Maintenance Services do not include the following Additional Services: (A) site preparation and maintenance of a proper environment, (B) set up and installation of Hardware, (C) moving Hardware, (D) painting or refurbishing Hardware, (E) adding, changing or removing features or options or making other functional changes to Hardware, (F) providing consumable supplies such as paper, ribbons and print heads ("Media"), even if consumed while providing maintenance services, (G) systems engineering services, programming services, consulting services, software maintenance and support services and operational procedures of any sort, and (H) maintenance, repair or replacement of parts or Hardware, when such services are required because of abuse, misuse, accident, neglect, usage in an improper environment, not in accordance with manufacturer's specifications for the Hardware, or in excess of an item's duty cycle or other loss or

damage to Hardware due to any insurable loss or any cause or causes external to the Hardware. Any Additional Services which Customer requests and TST agrees to perform pursuant to this Agreement will be billed on a time and materials basis subject to TST's then-current applicable rates. Associated actual and reasonable expenses include travel, lodging and project expenses incurred by TST in the performance of the Additional Services.

**4. PARTS.** TST will replace parts on an exchange basis only. TST reserves the right to use remanufactured or refurbished parts. Such parts shall be deemed to be the equivalent to new parts when installed in the Hardware. All parts sent to TST by Customer on an exchange basis shall become the property of TST.

**5. Term and Termination.** This Agreement commences on the Effective Date and shall continue for three (3) years thereafter at which point it shall renew automatically in consecutive one-year increments unless either party notifies the other in writing thirty (30) days before the renewal term that it intends not to renew. Any Order entered into during the term of this Agreement shall continue for periods specified therein and shall continue to incorporate the terms of this Agreement, notwithstanding the termination of this Agreement. Either party may terminate this Agreement as follows (a) at any time for any reason by giving to the other at least ninety (90) days prior written notice; (b) for a material breach by the other party of its obligations under this Agreement and such breach is not cured within thirty (30) days after receiving written notice thereof; and (c) immediately upon written notice if the other party files a petition in bankruptcy or for liquidation or reorganization, makes an assignment for the benefit of creditors, is adjudicated bankrupt, or becomes insolvent.

Orders will have terms of one (1) year and shall renew automatically in consecutive one-year increments unless either party notifies the other in writing thirty (30) days before the renewal term that it intends not to renew. TST will contact Reseller prior to the renewal Term to obtain Reseller's purchase order, as applicable. Reseller reserves the right to renew any Order within thirty (30) days of the termination date with no penalty. Renewals beyond thirty (30) days of the termination date will be subject to the same acceptance criteria as a new Order.

**6. Price and Payment Terms.** The Service fees and charges will be determined in each Order. Unless otherwise specified in the applicable Order, amounts are due upon receipt of invoice. Reseller agrees to pay accordingly. If Reseller fails to make payments when due and such failure continues after TST notifies Reseller of such failure, TST may refuse to perform any further Services or deliver any further Hardware. If Reseller fails to make payments when due, TST may charge Reseller interest on the overdue amounts, from the date such amount became due at the lesser of the rate of one and one-half percent (1.5%) per month or the maximum interest rate permitted by applicable law. TST reserves the right to revoke any credit extended to Reseller at any time for good and sufficient cause. If a Customer inadvertently remits payment to TST, TST

shall promptly transfer such payment to Reseller. If any governmental authority imposes a duty, tax, levy, or fee on TST (excluding those based on TST's net income) on this Agreement or on the Service supplied, then Reseller agrees to pay such amounts to TST as agreed upon in the applicable Order.

**7. HIRING OF EMPLOYEES.** Neither party shall solicit or recruit for employment (other than by general advertising), any person who was an employee of the other party during the provision of the Maintenance Services and for a period of one (1) year thereafter, without the other party's written consent. Any violation of this section shall be deemed a material breach hereof and the non-breaching party may immediately terminate this Agreement.

**8. NON-SOLICITATION.** During the term of this Agreement, TST hereby agrees (i) not to induce, encourage, or solicit any Customer to terminate or modify the service relationship that such Customer has with Reseller, or (ii) directly or indirectly, other than pursuant to this Agreement, sell, license, or otherwise provide any of the Services provided hereunder to any Reseller assigned Hardware at a Customer location serviced by TST. In the event a customer engineer of TST receives a request for product information from the Customer in connection to the Reseller assigned hardware, the customer engineer shall immediately refer the Customer to the Reseller for a response. Any customer request outside the Reseller assigned hardware is subject to support and consideration by the TST partner. The provisions of this Section 8 shall survive the termination of this Agreement for a period of up to 6 months.

**9. Independent Contractor.** TST will manage its personnel and be free to exercise independent judgment as to the manner and method of performance of the Maintenance Services. TST is an independent contractor, and nothing herein will be deemed to make one party the agent of the other.

**10. Confidential Information.** Each party agrees not to permit unauthorized access to and to take reasonable steps to protect the confidentiality of the other party's information, marked "confidential," "proprietary," or with a similar legend indicating its sensitive nature. Reseller agrees to treat as confidential information all TST techniques, processes methods and know-how observed at Customer's facilities. Reseller acknowledges that all processes, materials, and data used or furnished by TST pursuant to this Agreement have been developed at great expense to TST, contain trade secrets of TST, are the sole property of TST and shall be kept confidential by Reseller. The obligations of the party receiving the confidential information ("Recipient") shall not apply to any portion of the confidential information: (i) which was rightfully known or becomes rightfully known to Recipient without confidential restrictions from a source other than the disclosing party; (ii) which was or becomes publicly available or a matter of public knowledge generally, through no fault of Recipient; (iii) which is approved by the disclosing party, in writing, for disclosure without restrictions; (iv) which is independently developed by Recipient; (v) which is generalized know-how or skills; or

(vi) which Recipient is legally compelled to disclose; provided that Recipient has given the disclosing party reasonable notice and opportunity to contest such compulsive disclosure, and Recipient requests that the Confidential Information disclosed be treated as confidential.

**11. WARRANTY.** TST warrants that it will render the Maintenance Services in a good and workmanlike manner. In the event of any material failure to meet such standard, Reseller's exclusive remedy and TST's sole responsibility shall be for TST to re-perform the Maintenance Services or, if in TST's discretion it is not commercially reasonable to re-perform the Maintenance Services, provide Reseller with a refund of the Maintenance Fees paid by Reseller for the current term. TST's obligations and liability under this warranty are conditioned upon the receipt of prompt notice of defects as to parts and/or workmanship from Reseller or Reseller Customer. Timely completion of Maintenance Services by TST is subject to the timely satisfaction by Reseller of any Reseller obligation or requirement. This warranty shall be void if the Hardware is damaged or rendered unusable by the willful act, negligence and/or tampering of persons other than TST. TO THE FULLEST EXTENT ALLOWED BY LAW, THE WARRANTIES PROVIDED IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TST DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

**12. Limitation of Liability.** TST's liability for all claims, including claims of contract, negligence, and strict liability, shall not exceed the amounts paid and payable by Customer to TST for the Services giving rise to the claim. TST shall have no responsibility for defects in hardware, software or services supplied by persons other than TST or for modifications to any hardware or software manufactured by persons other than TST. IN NO EVENT SHALL TST BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS, AND LOSS OF PROFITS. THESE LIMITATION OF DAMAGES AND REMEDIES CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AND MEASURE OF DAMAGES. THESE LIMITATIONS OF DAMAGES AND REMEDIES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

**13. INDEMNIFICATION.** Notwithstanding any other provision of this Agreement, Reseller agrees to indemnify, defend and hold harmless TST for any liabilities, costs, losses, damages and expenses (including reasonable attorney's fees actually incurred) arising from any claim or action against or incurred by TST for any claim for personal injury or real or tangible property damage, to the extent such damages are caused by

the action, inaction, omission, or negligence of Reseller's personnel or caused by breach of Reseller's obligations under this Agreement.

**14. INSURANCE.** Each Party shall take out and maintain at its own expense all insurance necessary to cover its obligations under the agreement.

**15. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, TST shall not be liable for any delay or failure to provide the Services hereunder, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake, cyber-attack, ransomware attack, or any act of God, delay by subcontractor or the failure of any third party subcontractor, or third party hardware, software, network system equipment, wiring, electrical systems or utilities, or other causes beyond TST's reasonable control. If any third-party subcontractor providing service or hardware with respect to this Agreement, ceases to provide such services or hardware, and TST cannot find a suitable replacement vendor, then TST shall have the right to terminate the Agreement by providing thirty (30) days prior written notice to Customer.

**16. MISCELLANEOUS.** (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither party shall assign or otherwise transfer this Agreement without the prior express written consent of the other party, such consent not to be unreasonably withheld; provided however, either party may assign this Agreement without the other party's consent incidental to a merger, reorganization, change of control, or sale of all or substantially all its assets or the assets of a division. (b) This Agreement supersedes and merges all prior proposals, understandings, and agreements, oral and written, between the parties relating to the subject matter of this Agreement and may not be modified or altered except by written instrument duly executed by both parties. Reseller agrees that this Agreement and any Maintenance Services Agreement that incorporates this Agreement exclusively governs and controls the rights of the parties so that any purchase order or other writing Reseller may submit to TST shall only be for Reseller's convenience. Any additional or differing terms, whether materially different, set forth in any communication from Reseller are hereby expressly rejected. (c) No term or provision of this Agreement shall be deemed waived, and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. (d) Section headings are for convenience only and do not form a part of this Agreement. (e) The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the enforceability of any other provision, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. (f) This Agreement shall be governed by the internal laws of the State of Maryland, without regard to its conflict of law provisions. The United Nations Convention for the International Sale of Goods shall not apply. (g) All notices hereunder shall be in writing, sent by certified mail, or overnight delivery service addressed to the parties at their respective addresses set forth on the Order.

