



## TST SUBCONTRACT SERVICE AGREEMENT

This TST Subcontract Service Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between TST test with its principal office located at \_\_\_\_\_ ("Reseller"), and Peak Technologies, Inc. on behalf of its Technical Services Team division on behalf of its Technical Services Team division, with an address of 901 Elkridge Landing Road, Suite 300, Linthicum, Maryland 21090 ("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 Customers as described in each Order.

**2. SCOPE OF SERVICES.** Services will be provided by TST for a Reseller Customer, acting as a subcontractor of Reseller. 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. In the event of a conflict in terms between this Agreement and an Order, the terms of the Order shall control.

As indicated in an 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 as individually referenced in each bulleted service option below. TST will be available to Reseller Customer Monday through Friday 8AM-5PM, local time at Customer's location, excluding TST holidays by telephone at (888) 849-0341. 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, the terms and conditions of this Agreement and Attachment are hereby replaced with the Peak Technologies, Inc. Terms and Conditions for Depot Service for Motorola Hardware located at:

[www.peaktech.com/Terms\\_and\\_Conditions/Depot-service-for-Motorola-hardware---US.aspx](http://www.peaktech.com/Terms_and_Conditions/Depot-service-for-Motorola-hardware---US.aspx).

♦ **"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 such other 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 agreed to by the Parties. Fees for Onsite Service in accordance with this section are inclusive of any travel, lodging and related expenses. 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. Additionally, if Services are being provided at a location other than a traditional business setting (for example, a residence or home office), such location, in addition to the above responsibilities, shall be provided in a safe and accessible fashion. TST reserves the right to decline to perform an Onsite Service in the event TST personnel reasonably believes the above requirements are not met.

♦ **"Telephone Support."** TST may 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. Reseller Customer shall receive all Customer service calls and screen out all non-hardware problems. Only Reseller Customer may call TST to request service hereunder.

♦ **"Preventative Maintenance."** TST shall provide proactive Preventative Maintenance in accordance with the equipment manufacturer's recommendations for an additional fee and/or as defined per the Scope of Work, or related Terms. Preventive maintenance will be included in the annual pricing. If the Customer is not able to accommodate a Peak representative when the PM event is scheduled or planned, or if a device is not readily available when the PM event is scheduled or planned, Customer will be deemed to have cancelled the PM event and Peak's obligations to perform PM shall be satisfied. If the Customer requests a PM revisit, the resulting revisit may be billed at the prevailing labor and travel rates.

As a condition precedent to any of the above-bulleted support offerings, TST reserves 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. In the event that 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. Billing may happen up to ninety (90) days from the time of initial service event. 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 may adjust the maintenance fees accordingly. In the event that 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). If the customer requires compliance certifications, use of a compliance platform or compliance service, or similar requirements that come at an added financial impact to TST to deliver services, the cost associated with the required certification shall be added to the service contract.

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 are only applicable to base units. Maintenance Services do not include the following non-exhaustive list of 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, including, but not limited to, any board level configuration (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, software setup and configuration (including driver installation and setup), and support services and operational procedures of any sort, (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, (I) printer shuttles, printheads, cutter assembly, (J) forms handling low-speed high-speed rubber rollers, seal heads, and (K) any Accessories or Options. 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. Any part not readily available by the OEM and requires design, manufacturing, programming, modification, or sourcing for procurement may be subject to additional costs. The related costs will be discounted as an entitlement of the service contract. Any part in support of a discontinued device may be subject to additional costs and at a reduced rate.

**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 for consecutive one-year terms (each a "Term") 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 for consecutive one-year terms (each an "Order Term") unless either party notifies the other in writing thirty (30) days before the renewal Order Term that it intends not to renew. TST will contact Reseller prior to the renewal Order 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.

In the event that 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.

Notwithstanding the foregoing, and in addition to any right of set-off or recoupment provided by applicable law, any amounts due to Reseller by TST under this Agreement may be set-off against or recouped from any amounts due or to become due from Reseller to TST however and whenever arising.

**7. HIRING OF EMPLOYEES.** Neither party shall solicit or recruit for employment, any person who was an employee or independent contractor of the other party during the Term of this Agreement 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 an Order, TST hereby agrees not to provide Maintenance Services directly to a Customer for Hardware serviced by TST under this Agreement. In the event a Customer Service Engineer of TST receives a request for product information from the Customer, the Customer Service Engineer shall immediately refer the Customer to the Reseller for a response.

**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. TST warrants to Customer for a period of thirty (30) days following the performance of any repair work by TST, that such work will be performed in a good and workmanlike manner. Parts, and labor required to install those parts, are similarly warranted for a period of thirty (30) days. 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 the unused portion of any prepaid Maintenance Service fees, less fifteen percent, and less the cost of any parts/services provided to Customer prior to the warranted event. TST's obligations and liability under this warranty are conditioned upon the receipt of prompt notice of alleged defects as to parts and/or workmanship, and a detailed description of the alleged defect, 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 action or inaction of any 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 any and 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.** Reseller agrees to indemnify, defend and hold harmless TST for any liabilities, costs, losses, damages and expenses (including reasonable attorneys fees actually incurred) arising from any claim or action against or incurred by TST as a result of Reseller's act or omission or breach of its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**TST test**

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

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

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

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

**14. 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 or any act of God, pandemic, epidemic, ransomware or other cyber-attack, 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 impacted Services under this Agreement by providing thirty (30) days prior written notice to Reseller.

**15. 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 of 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 Order 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 or not 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 as specified below:

If to Peak:  
Peak Technologies, Inc. on behalf of its Technical Services Team division  
ATTN: Legal Department  
901 Elkridge Landing Road  
Suite 300  
Linthicum Heights, MD 21090  
with a copy to Peak via email at: [Legal@peaktech.com](mailto:Legal@peaktech.com)

If to Customer:

**Peak Technologies, Inc. on behalf of its Technical Services Team division**

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

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

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

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