

CONTRACT
MAINTENANCE and SUPPORT AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

PEAK TECHNOLOGIES, INC.

THIS AGREEMENT (the "Contract") is made and entered into this 18th day of May, 2011, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Information Services Center and **Peak Technologies, Inc.** ("Peak"), an Illinois corporation, having principal place of business at 10330 Old Columbia Road, Columbia, Maryland 21046. (the "Provider")

WHEREAS, the County has a present need for maintenance and technical support of its Pressure Seal, Heavy Duty Detachers, Stacker and Station Collator System; and

WHEREAS, Peak, is the only authorized sole source of authorized maintenance and support services for the Pressure Seal, Heavy Duty Detacher and Station Collator System; and

WHEREAS, the County desires to avail itself of the maintenance and support services for the County's Pressure Seal, Heavy Duty Detacher and Station Collator System and Peak is willing to provide such maintenance and support to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Peak and the County agree as follows:

ARTICLE I - AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Peak shall provide to the County under this maintenance and support agreement the following services as detailed in Peak's Scope of Services and Quote 950034529, attached hereto and incorporated by reference herein as Schedule A insofar as the terms of Schedule A concur with this agreement. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.
- 1.2 Term. The term of this Contract shall commence as of May 25, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for one year from the date of commencement. (5/25/11 - 5/24/12) this contract shall be in an

amount not to exceed Twenty-Eight Thousand Eight Hundred Seven Dollars and Fifty Eight Cents (\$28,807.58).

ARTICLE II – SCOPE OF WORK

- 2.1 At the request of the County, and with the consent of Peak, Peak may also provide technical, operational or other assistance on a consulting basis to the County in excess of the scope of service included but such services would require an amendment to the annual Maintenance and Support Services Agreement between the County and Peak under a separate and existing contract.
- 2.2 Record Audit Retention. Peak agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should Peak be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit. County shall provide ten (10) days prior written notice of audit and shall not conduct audit more than once per calendar year. County shall bear all expenses related to audit.

ARTICLE III – PAYMENT AND INVOICING

- 3.1 Payment. During the term of this contract, the County shall pay the costs associated with the maintenance and support agreement upon receipt of said invoice from Peak and approval of the County Executive, not to be unreasonably withheld.
- 3.2 Invoicing. Peak shall invoice the County for the maintenance and support agreement upon execution of this agreement. Peak shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Indemnification. Peak shall agree to indemnify and save the County of Cuyahoga, Ohio harmless from suits or actions relative to the provision of services brought against the County, for or on account of any injuries (including death) to persons or damages to real or tangible property to the extent caused by an act of Peak, its' servants or agents that arises out of the performance of the service rendered by Peak while Peak is performing services at the County's facility.

- 4.2 Condition Precedent to Indemnification. The indemnities in Article IV are conditioned upon (a) County providing Peak with prompt, written notice of a claim or threat of claim hereunder; (b) Peak having full control of the settlement and/or defense of the claim; (c) County providing Peak the assistance necessary to settle and defend the claim, and (d) Peak not entering into any settlement or compromise which admits the fault of, or necessitates payment by, County without the consent of the County.
- 4.3 Limitation of Liability. Peak's liability for any and all claims, including claims of contract, negligence and strict liability, shall not exceed the amounts paid and payable by Cuyahoga County to Peak for the Services giving rise to the claim. Peak shall have no responsibility for defects in hardware, software or services supplied by persons other than Peak or for modifications to any hardware or software manufactured by persons other than Peak. IN NO EVENT SHALL PEAK 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.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Peak and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Peak or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Peak, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that Peak becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Peak of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI - MISCELLANEOUS

6.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Information Services Center
ATTN: Tom Basco
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of Peak :

Peak Technologies, Inc.
ATTN: Legal Department
10330 Old Columbia Road
Columbia, Md. 21046

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

- 6.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 6.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.
- 6.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 6.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 6.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 6.7 Social Security Act. Peak shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Peak for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Peak also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

- 6.8 Assignment. Peak shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive. Notwithstanding the foregoing, either party may assign this Contract 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.
- 6.9 Contract Processing. Peak shall submit one (1) original contractual agreement with original signatures to the following:
Cuyahoga County Information Services Center
ATTN: Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115
- 6.10 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the County Executive before compensation for the services or products set forth in this contract can be provided.

ARTICLE VII - ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 7.1. By entering into this Contract, Peak, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
- 7.2 Peak further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VIII - 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. Cuyahoga County agrees to treat as confidential information all Peak techniques, processes methods and know-how observed at Cuyahoga County's facilities. Cuyahoga County acknowledges that all processes, materials and data used or furnished by Peak pursuant to this Contract have been developed at great expense to Peak, contain trade secrets of Peak, are the sole property of Peak and shall be kept confidential by Cuyahoga County. 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.

ARTICLE IX - WARRANTY

Peak 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, Cuyahoga County's exclusive remedy and Peak's sole responsibility shall be for Peak to re-perform the maintenance services or, if in Peak's discretion it is not commercially reasonable to re-perform the Maintenance Services, provide Cuyahoga County with a refund of the Maintenance Fees paid by Cuyahoga County for the current Term. Peak's obligations and liability under this warranty are conditioned upon the receipt of prompt notice of defects as to parts and/or workmanship from Cuyahoga County. Timely completion of maintenance services by Peak is subject to the timely satisfaction by Cuyahoga County of any Cuyahoga County 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 Peak. 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 CONTRACT, PEAK DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE SERVICES PROVIDED UNDER THIS CONTRACT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS OF WARRANTY CONSTITUTE AN ESSENTIAL PART OF THIS CONTRACT.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, THE County and Peak have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Peak Technologies, Inc.

CUYAHOGA COUNTY, OHIO

BY: 

Ross M. Young, President & CEO

BY: 

Edward FitzGerald, County Executive



**SCHEDULE A
SCOPE OF SERVICES**

1. Peak hereby agrees to provide to Cuyahoga County for each Term (as hereinafter defined) the Maintenance Services at each designated site for which Cuyahoga County pays to Peak the applicable maintenance fees. Peak will be available to Cuyahoga County Monday through Friday 8AM-5PM, local time at Cuyahoga County's location, excluding Peak holidays by telephone at 800-PEAKFIX or through the Internet at www.peaktech.com. For an additional fee (or as indicated on an Order), Cuyahoga County may select 24x5 or 24x7 support for Onsite and Telephone Support. Cuyahoga County has selected one or more of the following Maintenance Service(s), as indicated on an Order:

• "Depot Service." Peak shall provide Maintenance Services at Peak's maintenance facilities or manufacturer location. Cuyahoga County shall contact Peak and place a request for Maintenance Services, at which time Peak will provide Cuyahoga County with a Notification Number. Cuyahoga County shall be responsible for shipping the Hardware (at Cuyahoga County's expense) requiring service to Peak's maintenance facility, the address of which Peak will supply to Cuyahoga County. Cuyahoga County 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. Peak shall repair the Hardware and return the Hardware via ground delivery at Peak's expense unless otherwise agreed in the Order to the address supplied to Peak by Cuyahoga County, within the timeframe set forth in an Order. As indicated on the Order, Cuyahoga County may purchase (at Cuyahoga County's expense) a replacement unit(s) of the Hardware for storage at Peak's depot location ("Hot Spares"). Upon Cuyahoga County's notification that it requires the Hot Spare, Peak will return the Hardware to Cuyahoga County (at Peak's expense) via next day delivery.

• "Onsite Service." Peak shall provide Maintenance Services at Cuyahoga County's locations where the Hardware is located, as indicated on an Order. Cuyahoga County shall contact Peak 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 Peak support representative. Peak will dispatch a service technician to the Cuyahoga County's site to perform the Maintenance Services by the next business day or within the timeframe set forth in the Order. Fees for Onsite Service in accordance with this section are inclusive of any travel, lodging and related expenses. Cuyahoga County shall provide such access to Cuyahoga County's facilities as Peak may reasonably request, during Cuyahoga County's normal business hours or as otherwise agreed upon by the parties. Peak shall observe all reasonable access, health, safety and security requirements of Cuyahoga County of which Peak is informed in writing in advance and that are not inconsistent with Peak's own business practices. Cuyahoga County shall make available to Peak appropriate Cuyahoga County personnel familiar with Cuyahoga County's equipment, software and/or applications. Cuyahoga County 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 Cuyahoga County's employees. Cuyahoga County acknowledges that Peak is not liable for any hardware, software, or any other items or services provided to Cuyahoga County by any persons other than Peak, except as set forth in the Agreement. Cuyahoga County shall promptly notify

Peak of any anticipated delays or deficiencies in Cuyahoga County's responsibilities and shall provide prompt assistance in resolving any such delays or deficiencies to Peak's reasonable satisfaction. Peak reserves the right to stop work until Cuyahoga County remedies such delays or deficiencies to Peak's reasonable satisfaction.

♦ "Telephone Support." Peak shall provide Maintenance Services to Cuyahoga County via telephone. Cuyahoga County shall call Peak at 800-PEAKFIX 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 Peak support representative. Peak shall provide Cuyahoga County with a telephone response within four (4) hours during support time following first notification of a problem.

Peak shall have the right to perform pre-contract inspections of Hardware within thirty (30) days of the effective date of the Agreement or the addition of Hardware to the Agreement. Peak shall invoice Cuyahoga County for any parts used by Peak during the pre-contract inspections. In the event that Peak does not perform pre-contract inspections, Peak reserves the right to invoice Cuyahoga County for any parts used by Peak where the first service call is within thirty (30) days from either the effective date of this Agreement or from the addition of Hardware to this Agreement. Peak 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, Peak will provide Cuyahoga County with thirty (30) days prior written notice of its intent to discontinue providing Maintenance Services for such Hardware and upon the discontinuation Peak shall adjust the Maintenance Fees accordingly. In the event that the Hardware specifications shown on an Order are inaccurate or incomplete, Peak will adjust the Maintenance Fees to reflect the accurate specifications of the Hardware and Peak will invoice Cuyahoga County for the corrected Hardware specifications retroactive to the Effective Date (or the date at which the Hardware became covered by the Maintenance Services).

2. **Additional Services.** 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 Cuyahoga County requests and Peak agrees to perform pursuant to this Agreement will be billed on a time and materials basis subject to Peak's then-current applicable rates. Associated actual and reasonable expenses include travel, lodging and project expenses incurred by Peak in the performance of the Additional Services.

3. **PARTS.** Peak will replace parts on an exchange basis only. Peak 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 Peak by Customer on an exchange basis shall become the property of Peak.

Maintenance Quote



PEAK Technologies
10330 Old Columbia Road
Columbia MD 21046

Schedule A

Sold to Party
CUYAHOGA COUNTY INFORMATION SE
Attn: JAMES EVANS
1255 EUCLID AVE 4TH FL
CLEVELAND OH 44115-1807

Quotation
Number / Date
950034529 / 12/16/2010
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Item	Description	Qty	Total Amount
Site:	CUYAHOGA COUNTY IS CENTER 1255 EUCLID AVE 4TH FL CLEVELAND, OH 44115-1807	SERVICE ZONE 1	
10	Serv. MOORE LM20 D VALIDITY DATES: 05/25/2011 TO 05/24/2012. SERIAL(s) 400	1	\$17,847.67
20	Serv. DAS 3400 DETACHER VALIDITY DATES: 05/25/2011 TO 05/24/2012. SERIAL(s) 59103	1	\$2,468.88
30	Serv. HIGH VOLUME FLOOR DETACHER VALIDITY DATES: 05/25/2011 TO 05/24/2012 SERIAL(s) 59001	1	\$4,037.10
40	Serv. DAS 7434-01 STACKER VALIDITY DATES: 05/25/2011 TO 05/24/2012. SERIAL(s) A70218	1	\$810.06
50	Serv. DUPLO 740 BURSTER VALIDITY DATES: 05/25/2011 TO 05/24/2012 SERIAL(s) 070208	1	\$1,182.00
60	Serv. MOORE M2000 VACUUM TRIMWINDER VALIDITY DATES: 05/25/2011 TO 05/24/2012 SERIAL(s) 11118	1	\$2,401.87
Subtotal:			\$28,807.56
Tax:			\$0.00
Total:			\$28,807.56