

GENERAL TERMS AND CONDITIONS
for PEAK UTILITY SERVICES GROUP, INC. AND ITS AFFILIATES

The terms and conditions set forth below (the "**General Terms**") will govern the relationship between Peak Utility Services Group, Inc. ("**Peak**") or an affiliate of Peak, that is identified as the buyer or customer on the face of the purchase order or contract (such entity, "**Buyer**") and the vendor identified on the face of the contract, or any Buyer purchase order or linked with, or party to, an electronic data interchange ("EDI") transmission with Buyer (such vendor, "**Seller**"). If there is a conflict between these General Terms and the terms and conditions of any other form of either Buyer or Seller, these General Terms shall govern. In the event that there is an executed supply and/or services agreement in place between Buyer and Seller involving the particular products or services at issue, the terms of that executed agreement shall govern. For purposes of the General Terms, an "**Order**" shall mean any contract, purchase order or EDI transmission by Buyer requesting products and/or services from Seller. The General Terms shall be incorporated by reference into and form a part of each Order.

- A. GENERAL TERMS.** These terms are applicable to all Orders, whether for Products or Services.
- 1. Definitions.** "**Affiliates**" means any operating companies, divisions or affiliates of Buyer. "**Confidential Information**" means the terms and existence of any Order and these General Terms, as well as any and all business methods or plans, strategy, technical and commercial information, drawings, blueprints, photographs, sketches, software, specifications, and similar materials trade secrets, customer and vendor lists, data, financial information and any other proprietary or non-public information of Buyer or Affiliates. "**Products**" means any products, goods or equipment described on the face of an Order. "**Services**" means any services described on the face of an Order.
 - 2. Order Acceptance.** Seller's complete or partial shipment or provision of the Products or Services or Seller's acknowledgment of the Order (electronic, written or verbal) shall constitute acceptance of the Order and shall be considered a binding contract pursuant to the General Terms. Buyer does not and will not agree to any terms and conditions stated by Seller that conflict with or are in addition to those contained in these General Terms and the Order. The General Terms and the Order constitute the final, complete and exclusive statement of the agreement between Seller and Buyer concerning the Order.
 - 3. Confidentiality.** Seller shall not disclose any Confidential Information to anyone except its employees or agents that need to know in order to satisfy Seller's obligations hereunder and under an Order. In the event that Seller is compelled to disclose any Confidential Information by law or governmental authority or order, Seller shall promptly notify Buyer so that Buyer may seek an appropriate protective order. Seller shall not use Confidential Information for any purpose other than the fulfillment of its obligations under any Order.
 - 4. Publicity.** All media releases, advertising, public announcements and public disclosures by Seller, its employees or agents, relating to any Order, or the name or logo of any Buyer or Affiliate, shall be approved by Buyer in writing prior to the release thereof.
 - 5. Prices.** Prices for any Products and Services shall be as specified in the Order and constitutes the entire compensation for the Products and Services, except for any U.S. sales or use tax.
 - 6. Invoices.** Seller shall not invoice, and Buyer shall not be responsible for the payment of, any amounts that are invoiced more than ninety (90) days past the date of shipment of the Products or performance of the Services to which such amounts apply. Each invoice shall be accompanied by all required documentation necessary to support all charges. Seller shall include any freight cost as a separate line item on, and shall attach a copy of the freight bill to, the invoice. Seller must itemize all applicable sales or use taxes separately on the invoice for the Products or Services. Seller shall separately state charges for Services from charges for Products on each invoice. Any invoice submitted in an improper format or without the required documentation will be returned unpaid to Seller for correction and resubmission.
 - 7. Payment Terms.** Buyer will pay all undisputed and properly documented invoices within thirty (30) days of the later of: (i) Buyer's receipt of Seller's invoice for the Products or Services or (ii) Buyer's receipt and acceptance of the Products or Seller's performance of the Services. Payments are subject to Buyer's payment processing procedures. Buyer at its option may pay invoices in advance of inspection and acceptance without prejudice to Buyer's rights under law or under any provision in the General Terms. Buyer reserves the right to offset against Seller's invoices any amounts remaining due from Seller to Buyer or Affiliates.
 - 8. Buyer's Property.** "**Buyer Materials**" means Buyer's and its Affiliates' Confidential Information, materials, inventions, data, ideas, Products, specifications intellectual property and other rights, as well as any information and other materials prepared for Buyer for the purpose of, or in the course of fulfilling, an Order or other work product created under an Order and any derivatives of any of the foregoing. The Buyer Materials, and any rights arising from Seller's use of such, are and shall be owned exclusively by Buyer. All Buyer Materials that are developed for Buyer by Seller that are works of authorship will be deemed "works made for hire." Seller shall not make, use or sell any Buyer Materials for any purpose other than to fulfill an Order, without Buyer's express written permission. Seller agrees to execute, and shall cause Seller personnel to execute, any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to evidence, perfect, maintain and enforce Buyer's ownership of any Buyer Materials including those developed by Seller.
 - 9. Representations, Warranties and Covenants.** Seller represents, warrants and covenants that (a) Seller shall comply with Buyer's policies provided to Seller from time to time (as such policies may be revised by Buyer from time to time) (b) Seller shall comply with all applicable laws, rules and regulations ("**Laws**") and secure all permits, licenses, regulatory approvals and registrations required to supply the Products or render the Services, including, without limitation, registration with the appropriate taxing authorities for remittance of taxes, (c) except as set forth in an Order, no payment, gift or thing of value has been made, given or promised by either party to obtain an Order and no Buyer officer, employee or representative has a direct or indirect interest or receives any direct or indirect proceeds from the Order, and (d) neither the Services (including Buyer's or Affiliate's use thereof) nor the Product (including all packaging and labels) or the manufacture (including any manufacturing method), use, importation, sale or offer for sale of the Product, will infringe or misappropriate any proprietary, intellectual property or other rights of any third party. If any Product or Service, or Buyer's or Affiliate's use of any Product or Service, is held to constitute any such infringement or misappropriation or its use by Buyer is enjoined, Seller, at no cost to Buyer, shall procure for Buyer the right to continue using the Product or Service, as applicable, or provide Buyer with a substitute Product or Service conforming to the Order. If Buyer discovers that any Products or Services fail to conform to the above warranties (a) through (c), then, after receipt of Buyer's written notice of the nonconformity within a reasonable time after discovery, Seller shall, at Buyer's option and at no cost to Buyer, either (i) promptly repair, replace with conforming Products or modify any non-conforming Products or re-perform the Services so that they conform or (ii) refund to Buyer the price/fees for the non-conforming Product or Services. If Seller is unable to remedy such nonconformity within a reasonable time period, Buyer may purchase replacement products or services, and Seller shall reimburse Buyer for any reasonable costs incurred by Buyer for such replacement products or services.
 - 10. Indemnification.** Seller shall defend, indemnify and hold harmless Buyer, Buyer's parents, affiliates, subsidiaries, and their respective employees, officers, directors and agents (collectively, the "**Buyer**")

Indemnitees"), from and against any and all claims, liabilities, losses, damages, costs or expenses (including reasonable attorney's fees)(collectively, "Claims") arising out of, relating to or alleging (a) the negligence, willful misconduct or other acts or omissions of Seller or Seller's employees, agents or contractors ("Seller's Agents"), (b) Seller or Seller's Agents' failure to comply with or breach of these General Terms or any Order including any warranties, (c) any defect or failure in the Products or Services provided by Seller under an Order, (d) any allegation by a third party that any portion of the Services (including Buyer's or Affiliate's use thereof) or the Products or the manufacture (including any manufacturing method), use, importation, sale or offer for sale of the Products infringes, misappropriates or otherwise violates such third party's proprietary, intellectual property rights or other rights of such third party, (e) claims by Seller's Personnel arising out of or relating to an Order, including any act or omission of Seller in its capacity as an employer; (f) any governmental authority's reclassification or attempt to reclassify any Seller Personnel as an employee of the Buyer or any Affiliate, including without limitation, any tax liability resulting from Buyer's or any Affiliates' failure to pay, deduct or withhold foreign, U.S. federal, and U.S. state and local income taxes; or (g) without limitation, any tax liability resulting from Seller's failure to pay, deduct or withhold foreign, U.S. federal, or U.S. state or local taxes. In addition, if Seller's Agents enter Buyer's premises in the performance of Seller's obligations hereunder or under an Order, Seller will indemnify and hold harmless Buyer and the Buyer Indemnitees from and against any loss, cost, expense or damage to property or injury to person (including death) to the extent caused by Seller's Agents.

11. **Insurance.** Seller, at its expense, shall maintain adequate liability, employer's liability and workers' compensation insurance in amounts satisfactory to Buyer to protect Buyer, its Affiliates, and their respective officers, employees, directors and agents with respect to the obligations hereunder (including indemnification obligations) and any claims under workers' compensation, safety and health and similar laws and regulations, but in no event less than required by applicable Law. Such insurance shall be primary without any right of contribution by Buyer. Seller must maintain and provide a current certificate of insurance evidencing that Seller has in effect the above insurance. Seller shall add Buyer and its Affiliates as additional insureds.

SELLER ACKNOWLEDGES THAT PAYMENT OF AN INVOICE IS CONTINGENT UPON SELLER'S SUPPLYING BUYER WITH EVIDENCE OF COMPLIANCE WITH THESE INSURANCE REQUIREMENTS. SELLER AGREES THAT BUYER SHALL CONTINUE TO BE ENTITLED TO ANY AND ALL DISCOUNTS AND SHALL NOT BE PENALIZED DUE TO ANY DELAY IN PAYMENT WHICH STEMS FROM SELLER'S FAILURE TO COMPLY WITH THESE INSURANCE REQUIREMENTS.

12. **Records and Audits.** Seller shall maintain complete financial records and accurate documentation relating to Seller's provision of Products or Services under the Order for five (5) years after final payment or longer if required by Law. During this same time period, Buyer or its designee has the right (but not the obligation) to audit and inspect (including making copies or extracts of) Seller's records with respect to amounts invoiced to Buyer and Seller's compliance with the Order and these General Terms. If an audit or inspection reveals an error in the amounts charged to Buyer or paid to Seller, then an appropriate adjustment shall be made within thirty (30) days by either Seller or Buyer, as applicable. Buyer shall pay for any audit or inspection unless such audit or inspection is conducted subsequent to Seller's default or overcharge, in which case Seller shall pay for all audit or inspection costs incurred by Buyer.
13. **Subcontracting and Assignment.** Seller may not subcontract or assign any of its duties or obligations hereunder or under any Order without the prior written consent of Buyer. If Buyer does approve the Seller's use of a subcontractor, Seller shall remain liable for all acts and omissions of such subcontractors and require the subcontractors to comply with these General Terms.

14. **Waiver of Liens.** All Products shall be free and clear of all liens, claims or encumbrances. Seller waives and relinquishes all liens and claims that Seller has or later may have as a result of Services or Products (including any labor) provided by Seller in performance of any Order.

15. **Amendments, Modifications, Termination, Cancellation and Force Majeure.** These General Terms may only be modified or amended by a written document signed by both parties. Buyer may, without penalty, (i) terminate these General Terms at any time, and (ii) revoke or cancel an Order at any time prior to Seller's shipment of Products or performance of Services upon notice to Seller. If Seller becomes insolvent or bankrupt, files a petition for bankruptcy, or is subject to an assignment for the benefit of creditors, Buyer shall be entitled to cancel any unfulfilled part of an Order without any liability. Either party, upon prior notice to the other party, may cancel or reasonably delay performance under an Order in the event of circumstances or events beyond its reasonable control, including acts of God, war, riot, terrorism, government action, destruction or loss of premises.

16. **Miscellaneous.** The remedies herein are cumulative and in addition to any other remedies provided by law or equity. No waiver of any provision of the General Terms or an Order by either party is effective unless in a writing signed by the waiving party. Any such waiver does not constitute a waiver of any other breach, right or remedy available to such party, and does not establish a course of conduct that will operate as a waiver of such right or provision. The General Terms and the Orders shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its conflicts of laws provisions. Each provision of the General Terms and any Order are severable and if any provision is found invalid, illegal or unenforceable for any reason that portion shall be limited or curtailed to the extent necessary to make such provision valid, and the remainder of these General Terms shall remain in full force and effect. Nothing in this Agreement shall be construed as creating a partnership or joint venture between Buyer and Seller. Seller is an independent contractor and not an employee of Buyer and Buyer shall not be responsible for any salary, benefits or other employee-related expenses for Seller's Agents. The rights and obligations which by their nature must survive expiration or termination of an Order in order to achieve its fundamental purposes including confidentiality and indemnification, shall survive. Time is of the essence for performance of Services or delivery of a Product under an Order. The word "including" and words of similar import shall mean "including, without limitation."

B. TERMS APPLICABLE ONLY TO THE PURCHASE OF PRODUCTS. These terms are applicable to all Orders for the purchase of Products.

1. **Delivery.** Buyer may refuse any Product and cancel all or any part of an Order if Seller fails to deliver all or any part of the Products in accordance with the terms of that Order. Delivery is not complete until all Products and related deliverables have been received and accepted by Buyer. Acceptance of any part of an Order shall neither bind Buyer to accept future shipments, nor deprive Buyer of the right to reject or return Products already accepted. Seller shall be responsible for payment of any segregation, detention or related charges that result from Seller's failure to tender the freight as specified in the Order.
2. **Invoices.** Seller shall issue an invoice to the address indicated on the face of an Order with each shipment of Products.
3. **Shipment and Risk of Loss.** Notwithstanding any "FOB" terms stated on an Order, property, title and risk of loss or damage for the Products shall remain the responsibility of Seller until Seller has either (i) delivered the Products to the Buyer at the delivery location, or (ii) the Products are picked-up by Buyer at the location specified in the Order, and the Products have been accepted by an authorized Buyer representative at such delivery or pick-up location.
4. **Quality, Warranty and Legal Compliance.**

Quality Control and Regulatory Compliance. Seller represents and warrants to Buyer that all Products (including packaging and labels)

provided under the Order: (i) are free from defects; (ii) comply with any applicable specifications in the Order, including minimum shelf-life requirements; (iii) are of merchantable quality and are fit, safe and sufficient for the purpose intended; and (iv) comply with all applicable Laws. These warranties are in addition to any warranty otherwise offered by Seller or implied by law and survive Buyer's inspection, acceptance and payment for the Products. Buyer may audit Seller's production site, equipment, methods and Products at Buyer's reasonable request. Upon Buyer's request, Seller agrees to provide Buyer with the results of any quality tests conducted on the Products ordered and, if applicable, any third party test reports required by applicable Laws. Seller shall identify the location of all Seller's production facilities utilized for Products provided hereunder upon request and shall promptly notify Buyer of any changes to such locations.

Product Recalls/Market Withdrawals. Seller immediately shall notify Buyer's emergency recall contacts in the event Products must be withdrawn or recalled due to any reason. Seller shall provide Buyer with an emergency contact list with the name, title and contact information for Seller's employees responsible for handling safety and quality issues. Buyer may initiate, if necessary, a local recall or market withdrawal when Buyer reasonably deems it necessary for safety or quality reasons. Seller shall make every reasonable effort to notify Buyer prior to any public announcement of a recall or market withdrawal involving the Products, but such notification shall, in all events, occur within six (6) hours of Seller's decision to recall or announce such market withdrawal. In the event Products must be withdrawn or recalled for any reason, Seller shall, at its expense and Buyer's option, replace all recalled Products or refund the price paid therefor (including all freight, shipping and transportation charges) and shall reimburse Buyer for any costs and expenses incurred as a result of any recalled Products, including restocking, handling, disposal, consultation and laboratory fees. Buyer may dispose of or return, at Seller's expense, any recalled Products if Seller does not pick up the Products within three (3) business days after notice of the recall (or such other reasonable period of time as may be mutually agreed by Buyer and Seller).

Country of Origin Requirements. To the extent applicable to the Products supplied by Seller under any Order, Seller agrees to abide by the laws and regulations imposing country of origin requirements (collectively, the "CO Requirements"). Seller shall provide Buyer with complete and accurate information concerning the country of origin for any such Products consistent with the CO Requirements. Unless otherwise agreed, CO Requirement information shall be provided by printing information conspicuously on retail boxes or bags, on box end labels, bills of lading and invoices. Seller shall maintain complete and accurate records of the country of origin of any Products supplied, and shall retain such records for the period of record retention required by the CO Requirements. Seller shall establish and follow a verifiable segregation plan to keep separate all similar products with different countries of origin. Seller shall produce records and evidence as required by Buyer or a government agency to demonstrate compliance with the CO Requirements.

Importation/Exportation Documentation. Seller shall ensure that all Products shipped or delivered from a foreign country are shipped or delivered in accordance with all applicable Laws of the United States and such foreign country. Seller is responsible for providing all necessary documentation for the Products to the applicable customs or other governmental departments or agencies and shall inform Buyer if Buyer needs to obtain or provide any permits, licenses or other documentation in connection with purchasing the Products.

Title. Seller represents and warrants that title to all Products will be good, and its transfer rightful, and that the Products will be free from all security interests, claims, demands, liens and other encumbrances.

5. **Inspection, Acceptance and Rejection of Products.** All Products shipped or delivered are subject to Buyer's inspection and acceptance within a reasonable period of time after delivery, which

shall be no less than Buyer's normal warehousing period, as applicable. If Products are rejected by Buyer, Seller shall promptly refund Buyer all amounts paid for such Products and Buyer may, at its option, destroy, dispose of or return such Products to Seller at Seller's expense, including transportation and handling costs.

6. **Packaging/Labeling.** At its expense, Seller shall package the Products as specified in the Order or, if the requirements are not specified, in accordance with standard commercial practices customary for similar shipments. In each master carton or container in which the Products are shipped, Seller shall include a packing list indicating the Order number, description, quantity, item numbers and other identifying information corresponding to the information in the Order or reasonably necessary to facilitate delivery in accordance with the requirements of the Order. The packing list shall be easily accessible. Seller shall clearly mark all packages in accordance with applicable Laws. Packaging for Products in general shall also be of sufficient quality and durability to withstand normal wear and tear in connection with shipping and handling. Seller shall label each unit of Product with the country of origin, weight, and name of manufacturer, and shall maintain proper records of all Products produced and packed. Seller shall ensure that a receiving document/proof-of-delivery is issued to Buyer for any shipment made to a third party location.
7. **Spare Parts.** As applicable, for a period of five (5) years after delivery of the Product, Seller will make available to Buyer all spare parts required for the operation and maintenance of the Product.
8. **Software.** If the Product requires software utilization, then the following provisions apply:

Software License. Seller grants to Buyer a perpetual, irrevocable, nonexclusive, worldwide, royalty-free, fully-paid, transferable and assignable license to use the operating systems software and any other software installed on, associated with or delivered with the Product (including Upgrades) (the "**Software**") and all related materials (the "**Documentation**"). Buyer's and its Affiliates' employees, agents, contractors, consultants and third-party service providers are authorized to exercise the rights granted to Buyer under this section. The Software may be used by an unlimited number of the foregoing users. "**Upgrades**" means all Software upgrades, updates, modifications, new versions, new releases, patches, bug fixes, corrections, technological improvements and enhancements (including any additions or modifications made by Seller to the Software, or any replacement by Seller of the Software with new software, regardless of the name given to such new or replacement software) that improve the efficiency and effectiveness of the basic program function(s) of the Product and Software and that do not diminish existing function(s), but may add new functionality.

Software Language. Seller shall provide all Software programs (including source code and object code) and related Documentation in English or in the language of the country of the Product's installation.

Software Support. Seller will provide Buyer contact information for Software support, including local support for the Buyer facility in which the Product is installed.

Software Warranty. Seller represents and warrants that the Software will be free from significant programming errors and from defects in workmanship and materials and will operate and conform to the performance capabilities, specifications, functions and other descriptions and standards applicable thereto as set forth in the Order. This warranty shall not be affected by Buyer's modification of the Software (including source code) so long as Seller can discharge any warranty obligations notwithstanding such modifications or following their removal by Seller. If the Software fails to conform to the foregoing warranty during the warranty period, Seller shall promptly repair or replace the nonconforming Software.

Anti-Virus Warranty. Seller further represents, warrants and covenants that the Software will not contain any software routine, code or instruction, hardware component or combination thereof (collectively referred to and defined for the purposes of this section as

a "Virus"), that is designed to (i) permit unauthorized access to the Software; or (ii) disable, delete, modify, damage, or erase software, hardware or data. The term "Virus" is intended to include, but is not limited to, components that are commonly referred to as "viruses," "back doors," "time bombs," "Trojan Horses," "worms" or "drop dead devices."

C. TERMS APPLICABLE ONLY TO PURCHASE OF SERVICES.

These terms are applicable to all Orders for the purchase of Services.

1. **Invoices.** Seller shall issue an invoice upon completion of the Services or otherwise in accordance with the schedule agreed upon by the parties.
2. **Warranties.** Seller represents, warrants and covenants the Services will (i) be performed in a timely, professional and workmanlike manner in accordance with industry best practices and standards and using competent personnel having expertise suitable to their assignments, and (ii) conform to all specifications and documentation agreed upon and contained in the Order.
3. **Onsite Services.** If the Services will be performed on Buyer premises, then Seller shall comply with all applicable Buyer policies including those related to security, facilities, personnel, safety and environmental health, which Buyer will communicate to Seller. Seller shall reimburse Buyer for all property or equipment that is lost, stolen or damaged due to theft by or negligence by Seller or any Seller Agent. Seller shall not permit any Seller Agent to provide any further Services for Buyer or an Affiliate if, in Buyer's reasonable determination, such Seller Agent has engaged in any wrongdoing on any Buyer or Affiliate premises. Seller at all times

shall provide Services through employees or independent contractors having a skill level appropriate for the Services. Seller represents and warrants that all Seller Agents providing Services hereunder are legally authorized and fully documented to work in the United States and shall provide written certification and any other evidence reasonably requested by Buyer of such. Seller shall be liable for all acts and omissions of Seller Agents. Buyer may require Seller to remove any of Seller Agents from the performance of the Services at any time and for any legally permissible reason.

4. **Corrections.** Seller shall promptly correct, at its expense, any errors or inaccuracies in the Services ("**Errors**"), including any materials or parts used by Seller that, in Buyer's reasonable opinion, are defective, deficient or unsatisfactory. Buyer shall not be required to pay for Services rejected in good faith and shall be entitled to an immediate refund of any fees already paid for such rejected Services.
5. **Equipment, Supplies.** Seller, at its sole expense, shall be responsible for all tools, machinery, equipment and supplies ("**Equipment**") necessary to perform the Services and for any risk of loss or damage to such Equipment.
6. **Occupational Safety and Health Act ("OSHA") Requirements.** Seller shall train (or cause to be trained) all Seller Agents performing Services for Buyer on the safe handling and use of any Equipment in performance to the Services. If applicable to the Services, Seller shall provide all Seller Agents with protective equipment, gear and supplies identified on the material safety data sheets as required by the OSHA Hazard Communication Standard or that is otherwise required by OSHA standards, including, if applicable, lockout/tagout procedures. Seller shall be solely responsible and liable for any Seller Agents' failure to follow lock-out/tagout procedures, where required.

Accepted and agreed by:

Buyer: Insert applicable Peak Utility Group company

Seller:

By: _____
 Signature

Print Name

Title

By: _____
 Signature

Print Name

Title