

**TERMS AND CONDITIONS**

This Equipment Lease ("Lease") is entered into by and between Piper Environmental Group, Inc. ("PEG, Inc."), a California corporation located at 11600 California, Castroville, California 95012, and \_\_\_\_\_ ("Lessee"), a \_\_\_\_\_ <state of incorporation goes in this blank> corporation located at \_\_\_\_\_, \_\_\_\_\_ <City, State, Zip>. PEG, Inc. wishes to lease to Lessee and Lessee wishes to lease from PEG, Inc. certain equipment ("**Equipment**"), as described on Exhibit B attached to this Lease, to be used for commercial purposes. Capitalized terms used herein that are not defined have the same meaning as in the Lease Overview contained in Exhibit A, attached hereto. Accordingly, the parties agree as follows:

**1. Term.** This Lease will become effective on the Commencement Date stated in the Lease Overview contained in Exhibit A. Commencement date is \_\_\_\_\_ weeks from signature. PEG, Inc. will ship the Equipment to Lessee on the Commencement Date, unless Lessee opts to delay the delivery of the Equipment. A shipment delay requested by Lessee will not change the Commencement Date. This Lease shall remain in effect for the Initial Term stated in the Lease Overview, unless earlier terminated by PEG, Inc. as provided herein. Upon expiration of the Initial Term, this Lease shall be automatically extended on a month-to-month basis unless Lessee (i) notifies PEG, Inc. at least fifteen (15) days before the expiration of the Initial Term of its desire not to extend the lease and (ii) returns the Equipment to PEG, Inc. upon the expiration of the Initial Term. This Lease may not be terminated by Lessee during the Initial Term, except in the event of a material breach by PEG, Inc.

**2. Deposit, Rent, and Late Payment Fee.** The Mobilization or Set-Up Fee, if any, first and last months' rent, and security deposit as stated in the Lease Overview in Exhibit A are all due and payable upon execution of this Lease. The Equipment will not be built, assembled, tested, crated, or shipped to Lessee until these amounts have been paid in full. Monthly Rent in the amount stated in the Lease Summary is due and payable each month, beginning 30 days after shipment from warehouse. (*Example:* if the Shipment Date is March 3<sup>rd</sup>, Monthly Rent for the second month is due on April 3<sup>rd</sup>.) Any delinquent balance will be subject to an interest charge computed on a daily basis for each day that the payment is delinquent, at the lesser of (i) eighteen percent (18%) per year or (ii) the maximum rate permitted by law.

**3. Delivery.** Lessee shall arrange for shipment of the Equipment from the PEG, Inc. facility to Lessee's facility. Lessee will determine the method of shipment and will select a common carrier, if applicable. All costs of shipment and full value replacement insurance shall be borne by Lessee.

**4. Ownership.** The Equipment shall remain the property of PEG, Inc., and Lessee shall have no right or interest in the Equipment except as expressly set forth herein. The Equipment may not be sold by Lessee, and Lessee will not grant a security interest in, or otherwise encumber the Equipment. The Equipment is, and will at all times remain, personal property notwithstanding that it may become affixed or attached to real property or any improvements thereon. All additions or improvements to the Equipment of any kind made by Lessee or anybody acting on Lessee's behalf shall become component parts of the Equipment, and title thereto shall immediately vest in Lessor.

**5. Responsibility for Loss or Damage.** All risk of loss of or damage to the Equipment, from any cause whatsoever, shall pass to Lessee upon delivery to the common carrier or upon Lessee's removal of the Equipment from the PEG, Inc. facility, and shall remain with Lessee until the Equipment is returned to PEG, Inc.'s facility specified in Exhibit C "Return Instructions", attached hereto. In the event of any loss or damage to the Equipment, Lessee shall promptly inform PEG, Inc. and shall pay PEG, Inc. all costs to repair the Equipment, except that Lessee's liability shall be limited to the current replacement cost of the Equipment; and if the Equipment is no longer available, then Lessee's liability shall be limited to the current replacement cost of comparable equipment. Upon receipt by PEG, Inc. of payment of full replacement cost, Lessor's interest in the Equipment shall be transferred to Lessee, "AS IS" and where is. Occurrence of any such loss or damage shall not relieve Lessee of any obligations to make payments under this Lease.

**6. Insurance.** Lessee shall procure and continuously maintain and pay for: (i) All risk insurance against loss of and damage to the Equipment, in an amount at least equal to the full replacement value of the Equipment, naming PEG, Inc. as loss payee; and (ii) combined public liability and property damage insurance with limits as approved by PEG, Inc., naming PEG, Inc. as an additional named insured. The insurance shall be in such form and with such company (ies) as are reasonably acceptable to PEG, Inc., and shall provide at least thirty (30) days advance written notice to PEG, Inc. of any cancellation, change or modification, and shall provide primary coverage for the protection of Lessee and PEG, Inc. without regard to any insurance that PEG, Inc. may have protecting against similar risks.

Lessee hereby appoints PEG, Inc. as its attorney-in-fact with power to make claims, receive payments, and execute and endorse all documents or checks necessary in order to receive payments due under any insurance policy required under this Lease, for the loss of or damage to the Equipment.

Upon execution of this Lease, Lessee shall provide PEG, Inc. with a copy of the required insurance policies or certificates of insurance.

**7. Taxes.** Lessee shall pay all sales, use, excise, personal property, and any other taxes, fees, fines, and penalties relating to ownership, possession, or use of the Equipment during the term of this Lease, except taxes on the net income of PEG, Inc.

**8. Location of Use.** The Equipment may be used solely at the location specified in the Lessee Information at the end of this Lease, and may not be moved without the prior written consent of PEG, Inc. Upon reasonable advance notice, PEG, Inc. may enter Lessee's premises to inspect the Equipment.

**9. Care and Use.** Lessee shall, at its own expense, maintain and keep the Equipment in good repair, condition, and working order. Lessee will comply with all applicable federal, state, and local laws and ordinances, including Underwriters Laboratories (UL) requirements, relating to the possession, use, or maintenance of the Equipment, and shall use it in a careful and proper manner. Lessee may not alter the Equipment without Lessor's prior written consent. If PEG, Inc. has provided Lessee with a standard maintenance schedule for the Equipment, Lessee shall follow such schedule as the minimum maintenance compliance. Lessee will, upon request, provide PEG, Inc. with evidence of compliance with any such maintenance schedule.

**10. Indemnity by Lessee.** Lessee shall indemnify and defend PEG, Inc. against all third-party claims, suits, losses, expenses, and liabilities (including PEG, Inc.'s reasonable attorney's fees) relating to Lessee's use of the Equipment. This indemnity is conditioned upon PEG, Inc. (i) giving Lessee prompt notice in writing of such claim, suit, proceeding or threat thereof, (ii) giving Lessee sole control, through counsel of its choice, to defend and/or settle such suit and (iii) giving Lessee all the needed information, assistance and authority, at the Lessee's expense, to enable the Lessee to defend or settle such suit.

**11. Return of Equipment.** Lessee shall return the Equipment to PEG, Inc. immediately upon the expiration or earlier termination of this Lease, in the same condition as received from PEG, Inc., reasonable wear and tear excepted. Lessee shall pay all costs relating to returning the Equipment to PEG, Inc. Return instructions to be followed are stated in Exhibit C. Lessee is responsible for any loss of or damage to the Equipment while in transit to back to PEG, Inc.

**12. Services.** Any Services described in Exhibit D will be invoiced separately. If the charges are within Lessee's credit limits as established by PEG, Inc., payment terms are net fifteen (15) days after the date of the invoice. If credit has not been established, payment for all Services will be due and payable immediately upon their completion.

**13. Warranty and Warranty Exclusions.**

**13.1 Equipment Warranty.** The Equipment provided hereunder is used, and is warranted by PEG, Inc. as stated on the product manual accompanying the Equipment, for a period of thirty (30) days after

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installation if installed by PEG, Inc. or for a period of thirty (30) days after receipt by Lessee if Equipment installation is done by Lessee or a third party. If Equipment fails to work as warranted, it will be repaired or replaced at PEG, Inc.'s option. PEG, Inc. reserves the right to terminate this Lease if, in PEG, Inc.'s judgment, the cost of repair or replacement is prohibitive. In that event, PEG, Inc. will pay transportation and insurance for return of Equipment. Lessee should contact PEG, Inc. for instructions to follow to obtain warranty service.

*For Services provided under Exhibit D, Sub-section 13.1 above is replaced with the following Sub-section 13.2:*

**13.2 Services Warranty.** PEG, Inc. warrants that its Services will be of a professional quality conforming to generally accepted industry standards and practices. Upon notification by Lessee of any defect or other condition covered by this warranty, PEG, Inc. will promptly work with Lessee to correct such defect or condition. The duration of this warranty is thirty (30) days after the Services are rendered.

**13.3 Warranty Exclusions.** PEG, INC. SHALL NOT BE LIABLE UNDER THESE WARRANTIES IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT OR MALFUNCTION IN THE EQUIPMENT DOES NOT EXIST OR WAS CAUSED BY LESSEE'S OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO OPEN, REPAIR OR MODIFY THE EQUIPMENT, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, POWER CUTS OR OUTAGES, OTHER HAZARDS, OR ACTS OF GOD.

**13.4. Exclusive Remedy.** TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE. THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED

#### **14. Limitation of Liability**

**14.1 Limitation of Liability for Lease.** TO THE FULL EXTENT ALLOWED BY LAW, PEG, INC. SHALL NOT HAVE ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR ANY DAMAGES THAT ARE NOT DIRECT ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, POSSESSION, USE OR OPERATION OF THE EQUIPMENT, EVEN IF PEG, INC. HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. PEG, INC.'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE MANUFACTURER'S LIST PRICE OF THE EQUIPMENT AS INDICATED ON EXHIBIT B.. IF NO PRICE IS STATED ON EXHIBIT B, THE MANUFACTURER'S LIST PRICE FOR COMPARABLE EQUIPMENT IN EFFECT AS OF THE COMMENCEMENT DATE OF THE LEASE WILL BE USED.

*For Services provided under Exhibit D, Sub-section 14.1 immediately above is replaced with the following Sub-section 14.2:*

**14.2 Limitation of Liability for Services.** TO THE FULL EXTENT ALLOWED BY LAW, PEG, INC. SHALL NOT HAVE ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF ANY SERVICES HEREUNDER, EVEN IF PEG, INC. HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. EXCEPT FOR DIRECT DAMAGES RESULTING FROM BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY PEG, INC.'S NEGLIGENCE OR WILLFUL MISCONDUCT WHILE ON LESSEE'S PREMISES, PEG, INC.'S LIABILITY TO LESSEE HEREUNDER, IF ANY, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO PEG, INC. BY LESSEE RELATING TO THE SERVICES GIVING RISE TO THE LIABILITY.

**15. Termination.**

**15.1 Termination for Cause.** PEG, Inc. may terminate this Lease at any time upon written notice if Lessee (i) is in material breach of its obligations hereunder and fails to cure such breach within ten (10) days following written notice of such breach, or (ii) becomes insolvent or files or has filed against it a petition under bankruptcy or insolvency law which remains undismissed after sixty (60) days, makes an assignment for the benefit of creditors, or takes any similar action under applicable bankruptcy or insolvency law.

In the event of default or breach of this Lease by Lessee, PEG, Inc. may exercise any one or more of the following remedies in addition to terminating this Lease for cause:

- (i) To declare the entire balance of rent hereunder immediately due and payable;
- (ii) To take possession of the Equipment, without notice or demand, including the removal of any physical obstructions and the disconnecting and separating of the Equipment from any other property, without any court order or any other process of law. Lessee hereby waives any and all damages caused by such repossession;
- (iii) To pursue any other remedy available at law or in equity.

Lessee represents that all information provided to PEG, Inc. is true and correct, and acknowledges that any material misrepresentation will be grounds for termination for cause without an opportunity to cure.

**15.2 Termination for Convenience.** After the Initial Term, either party may terminate this Lease, without cause, on thirty (30) days' written notice. PEG, Inc. may also terminate this Lease as provided in Section 13.1 – Equipment Warranty.

**15.3 Obligations upon Termination or Expiration.** Termination or expiration shall not relieve Lessee of the obligation to pay any sums due hereunder.

**16. Miscellaneous**

**16.1 Relationship of Parties.** The parties hereto are independent contractors and shall not be deemed to be partners, joint venturers or agents of each other.

**16.2 Assignment.** This Lease shall not be assigned by either party without the prior written consent of the other, which will not be unreasonably withheld or delayed; except that PEG, Inc. may assign its rights and delegate its obligations hereunder in connection with a merger, acquisition, spin-out or other transfer of all or substantially all of the business, stock or assets of PEG, Inc. to which this Lease relates, provided such assignee agrees in writing to be bound by this Lease. Any attempted assignment in violation of this provision shall be null and void. From and after the making of any such assignment and delegation by the assignor, the assignee shall be substituted for the assignor as a party hereto and the assignor shall no longer be bound hereby, except for breaches occurring prior to assignment. Subject to the foregoing, this Lease is binding upon, inures to the benefit of, and is enforceable by the parties hereto and their respective successors and assigns.

**16.3 Joint and Several Liability.** If more than one Lessee is named in this Lease, each shall be jointly and severally liable for the performance of all obligations set forth herein.

**16.4 Additional Documents.** Upon request by PEG, Inc., Lessee shall execute and deliver to PEG, Inc. any documents PEG, Inc. deems necessary or desirable to protect PEG, Inc.'s interests in the Equipment, including UCC filings.

**16.5 Notices.** Notices shall be given in writing to the address stated at the beginning of this Lease, or to such other address as shall be given by either party to the other in writing. Any notice involving non-performance or termination shall be sent by recognized overnight courier or by certified mail, return receipt requested. All other notices may be sent by regular mail or by fax or e-mail with a confirmation of transmission by the transmitting machine. All notices shall be deemed to have been given and received

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on the earlier of actual delivery (except that faxes and e-mails sent on a non-business day will be deemed received on the next business day) or three (3) days from the date of postmark.

**16.6 Waiver.** Failure of either party to enforce compliance with any provision of this Lease shall not constitute a waiver of such provision unless accompanied by a clear written statement that such provision is waived. Any waiver of a default in performance hereunder shall be deemed a waiver of the particular instance only and shall not be deemed a consent to any continuing default. The exercise of any right or remedy provided in the Lease shall be without prejudice to the right to exercise any other right or remedy provided by law or equity.

**16.7 Severability.** If any provision of this Lease is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the parties and the remaining provisions shall in no way be affected thereby.

**16.8 Force Majeure.** Neither party shall be liable to the other for any alleged loss or damage resulting from any delay of performance caused by acts of the other, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, war, riot, accident, shortage, delay in transportation, or any other causes beyond the reasonable control of the party whose performance is delayed.

**16.9 Governing Law.** THIS LEASE SHALL BE CONSTRUED IN ACCORDANCE WITH AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA AS APPLIED TO CONTRACTS MADE AND TO BE PERFORMED IN CALIFORNIA, WITHOUT APPLYING CONFLICT OF LAW RULES. The Superior Court of Monterey County and/or the United States District Court for the Northern District of California shall have exclusive jurisdiction and venue over all disputes between the parties, and Lessee agrees to submit to the jurisdiction of these courts and waives the defenses of lack of personal jurisdiction or inconvenient forum.

**16.10 Attorney's Fees.** In any action to enforce this Lease the prevailing party shall be entitled to be awarded allowable costs and reasonable attorney's fees incurred.

**16.11 Headings.** Headings used in this Lease are for convenience only, and are not intended to be used in its construction or interpretation.

**16.12 Counterparts.** This Lease may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures shall be considered original signatures.

**16.13 Survival.** The following provisions of this Lease shall survive its expiration or termination:

- Section 4 – Ownership
- Section 5 – Responsibility for Loss or Damage
- Section 10 – Indemnity by Lessee
- Section 11 – Return of Equipment
- Section 14 – Limitation of Liability
- Sub-section 15.3 – Obligations upon Termination or Expiration
- Sub-section 16.7 – Severability
- Sub-section 16.8 – Force Majeure
- Sub-section 16.9 – Governing Law
- Sub-section 16.10 – Attorney's Fees
- Sub-section 16.11 – Headings
- Sub-section 16.12 – Counterparts
- Sub-section 16.13 – Survival
- Sub-section 16.14 – Entire Agreement

**16.14 Entire Agreement and Amendment.** This Lease is intended as the complete, final and exclusive statement of the terms of the agreement between the parties relating to the subject matter hereof and

**Piper Environmental Group, Inc.**

**Equipment Lease**

**PEG, Inc. Contract Number [FILL IN]**

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supersedes all prior understandings, writings, proposals, representations or communications, oral or written, relating to the subject matter hereof. This Lease may not be modified except in a writing executed by both parties.

**IN WITNESS WHEREOF**, the parties have caused this Equipment Lease to be executed by their duly authorized representatives on the date(s) shown below.

**Piper Environmental Group, Inc.**

**Lessee**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: Jane Piper

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

Title: CEO

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

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

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

\_\_\_\_\_  
**Lessee**

**EXHIBIT A - LESSEE INFORMATION AND LEASE OVERVIEW**

<b>LESSEE INFORMATION:</b>	
Full Legal Name of Lessee:	_____
DBA (if different):	_____
Tax ID #:	_____
Mailing Address: City, State, Zip	_____
Street Address where Equipment will be used: City, State, Zip:	_____
Technical Person to Contact:	_____
Telephone Number:	_____
Fax Number:	_____
Accounts Payable to Contact:	_____
Telephone Number:	_____
Fax Number:	_____
<b>LEASE OVERVIEW:</b>	
Commencement Date	_____
Initial Term:	_____
Number of Payments:	_____
Monthly Rent:	_____
Mobilization or Set-Up Fee (See Exhibit D for details):	_____
First and Last Months' Rent	_____
Security Deposit	_____
Total Amount Due Prior to Shipment:	_____



\_\_\_\_\_  
**Lessee**

**EXHIBIT C – RETURN INSTRUCTIONS**

*Please follow these procedures carefully to avoid additional charges for damage to skid or Equipment. Thank you!*

Return Address:           11600 California Street           Telephone:       831.632.2700  
                                  Castroville, CA 95012

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**For Generators and Other Equipment Heavier than 70 pounds**

- 1. Return Equipment in original packaging and verify that equipment is well protected.**
2. Generators must be returned with original skid and/or crating. Use only screws, NO nails when securing equipment. Check skid, prior to shipment, to make sure it has not been damaged. If the skid was lost or destroyed, PEG, Inc. will fax plans to make a new skid to our specifications for optimum protection of Equipment
3. Fasten generator to skid on all four corners.
4. If generator has a catalytic destruct unit, secure and protect the fan/motor at the back of ozone generator so it does not get damaged in transit.
5. A generator requires, at minimum, two layers of ½' bubble wrap, from top to bottom and two layers of stretch wrap.
6. Lessee is responsible for payment of all shipping charges and for any loss or damage during transit.
7. Insure Equipment during transit for its full value as noted in Exhibit "B."
8. Review the original packing list and confirm that all Equipment is returned. PEG, Inc. will deduct from security deposit or invoice Lessee for any missing components. Such components may be: Air Dryers, Regulator, Pumps, Monitors, GDT Skid, Destruct Units, Mazzei Injectors, etc.

\_\_\_\_\_  
**Lessee**

**EXHIBIT D – SERVICES**

**Item 1:** There is a one time shop assembly, testing and crating fee of \$4400.00.<this amount varies>

**Item 2:** There is a one time engineering fee of \_\_\_\_\_ to provide electrical drawings, PID, and answer questions regarding how to integrate equipment. This fee covers up to \_\_ hours of engineering assistance. This equipment is supplied as components for others to assemble. If the hours exceed \_\_ additional hours will be charged at the rate of \$150.00 per hour.

**Item 3:** PEG, Inc. has included \_\_\_ days of start-up at \$1200 per day for a total of \_\_\_\_\_. Any additional expenses (travel, hotel, meals, etc.) will be billed after start-up is complete at cost + 10%.

**Total for additional services and mobilization fee noted above:** \_\_\_\_\_

**Note:** When equipment is leased for a period of one year or greater, PEG Inc., will visit the site every six months to perform a preventive maintenance on the equipment. The parts and labor costs of this preventive maintenance are included in the lease. However, the following costs are not included and will be billed: parts damaged through use and not through normal wear and tear, traveling expenses which are billed at cost + 20% and/or mileage at \$0.45 per mile. Costs for service visits requested by Lessee (except for service visits to perform warranty repairs) are billed as they occur and are not included as part of initial financial arrangements under this lease.

In the event of any inconsistency between a provision of the main body of the Lease and a provision contained in this Exhibit D, this Exhibit will prevail.

\_\_\_\_\_  
**Lessee**

**EXHIBIT E – SERVICES BY OTHERS**

To be provided by Lessee:

<Information from proposal>

**Piper Environmental Group, Inc.**

**Lessee**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: Jane Piper

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

Title: CEO

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

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

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