

Welcome to the New York Vehicle Inspection Program



Contract Booklet

Enrollment Instructions

Please read carefully and follow all instructions to avoid delays.

IMPORTANT

- **A separate agreement and signed forms are required for each NYVIP Unit.**
- **You will be signing legal contracts. Read them carefully before signing.**
- **Save this Contract Booklet for future reference.**

This Enrollment Package includes:

1. This Contract Booklet which contains 3 Contracts and include the:
 - Part 1 - Station Participation Agreement (SGS Testcom - Contract #SPA-V1-2004): Allows you to participate in NYVIP gives you access to a variety of valuable services, and establishes your legal relationship with SGS Testcom.
 - Part 2 – Purchase Order Agreement – (SGS Testcom - Contract #POA-V1-2004): Allows you to purchase your NYVIP Unit, and establishes your legal relationship with SGS Testcom.
 - Part 3 – IBM Product Acquisition Agreement (IBM - Contract #IBM-V1-2004): Establishes your legal relationship with IBM.
2. NYVIP Station Enrollment Form
3. NYVIP Signature Page
4. NYVIP Payment Authorization Form
5. NYVIP Unit Order Form with Product Price List

How to complete these Contracts; pay for your NYVIP Unit and sign up for NYVIP Services

Step 1	Read all pages of this Enrollment Package. Understand your obligations and rights.	
Step 2	It is VERY important that you read and understand this Contract Booklet which contains 3 Contracts (SPA, POA, IBM PAA) and sign where indicated (3 times) on the NYVIP Signature Page .	
Step 3	Carefully complete the NYVIP Station Enrollment Form	
Step 3	Select your NYVIP Unit configuration, with or without options, calculate the amount of payment due and fill out and sign the NYVIP Unit Order Form .	
Step 4	Select your method of payment; Certified Check, Money Order, or Credit / Debit Card (Visa or MasterCard ONLY).	
Step 5	If you are using a Credit or Debit Card, you MUST fill out the lower portion of the NYVIP Payment Authorization Form and sign where indicated.	
Step 6	IF MAILING: To complete your enrollment and order your NYVIP Unit, mail us the following: <ul style="list-style-type: none"> ➤ NYVIP Signature Page – completed and signed ➤ Station Enrollment Form – completed ➤ NYVIP Unit Order Form – completed ➤ NYVIP Payment Authorization Page with Bank or Certified Check - OR – credit/debit card section complete and signed 	
	IF Faxing: To complete your enrollment and order your NYVIP Unit using a credit card, Fax us the following: <ul style="list-style-type: none"> ➤ NYVIP Signature Page – completed and signed ➤ Station Enrollment Form – completed ➤ NYVIP Unit Order Form – completed ➤ NYVIP Payment Authorization Form - complete and signed / FAX toll-free to 866-873-8932 	

SGS Testcom Inc.
 2911 Route 9, Ste. 3
 Ballston Spa, New York 12020
 Help Desk: 866-4NY-VIPS (866-469-8477)
 Toll-Free Fax: 866-873-8932

The AGREEMENTS

Part 1 of 3: Station Participation Agreement (“SPA”)

Authority

The New York State Department of Motor Vehicles (“DMV”) has entered into a contract with SGS Testcom Inc. (the “Contract”) wherein SGS Testcom Inc. will offer the services provided for in this Agreement under the terms and conditions specified herein (the “Services”). To participate in the NYVIP, licensed inspection stations (the “User”) MUST use the Services. This Agreement describes the terms and conditions under which the Services will be provided.

Network Services, Break/Fix Services (“B/F Services”) and Training Services will be paid for by the User through a fee charged each time the NYVIP Unit connects to the SGS Testcom NYVIP Information Management Network (the “Network”).

Sections of this “SPA”

What’s Covered in this “SPA”*

Terms and Conditions	<p>This section describes important terms and conditions of our relationship, such as:</p> <ul style="list-style-type: none"> ✓ Permission for us to access your NYVIP Unit for inspection and repair ✓ Your obligations to keep your NYVIP Unit in a safe and secure operating environment, and to properly use and maintain it ✓ How to get assistance from the SGS Testcom Help Desk ✓ Our subcontractors (such as IBM) which will provide certain equipment and services ✓ Limited warranty and limitations of liability ✓ Payment terms and conditions ✓ More
Network Services	<p>This section describes the services and rules (including payment rules) that allow connection of your NYVIP Unit to the Network and to DMV. You must provide and pay for a dedicated phone line for each NYVIP Unit to connect to the Network. You must have ALL of these NYVIP Network Services to participate in the NYVIP.</p>
Break/Fix (“B/F”) Services	<p>Maintenance and repair services (referred to as “Break/Fix” or “B/F” Services) are provided to support your NYVIP Unit. This section describes:</p> <ul style="list-style-type: none"> ✓ what’s covered and what isn’t ✓ the types of B/F Services available to you ✓ repair or replacement obligations ✓ your obligations to provide access and assist with repairs or replacements ✓ prohibition against misuse of your NYVIP unit ✓ our commitment to respond to B/F Service requests or pay a penalty ✓ more
Training & Certification	<p>This section describes the Computer Based Training available and the certification exam required in order for Group 1-A Inspectors to participate in the NYVIP. The exam is available through your NYVIP Unit.</p>

*The summary descriptions above are for information purposes only and do not constitute the agreement or affect or modify the agreement between the parties. The actual agreement is contained in the following pages.

TYPES OF SERVICES PROVIDED

SGS Testcom directly and/or through its subcontractors and suppliers will provide the following services:

- **Network Services** – Allows the NYVIP Unit to connect to the SGS Testcom NYVIP Information Management Network for the purpose of receiving and sending information to DMV involving vehicle inspections and repairs, and reporting the condition and status of your NYVIP Unit to SGS Testcom;
- **B/F Services** - Provides hardware and software Break/Fix Services to Users in order to keep NYVIP Units in good working order;
- **Training Services** – Training and certification of User’s inspectors through a Computer Based Training (“CBT”) program; and
- **Other** - certain other hardware, software and service options available to NYVIP Users.

SGS Testcom Inc.
2911 Rte. 9, Ste. 3
Ballston Spa, NY 12020
Help Desk: 866-4NY-VIPS (866-469-8477)

“SPA” TERMS AND CONDITIONS

General Provisions

1. DEFINITIONS

- a. **Components** – Parts of the NYVIP Unit, hardware or software.
- b. **CRC** – Customer Replaceable Component is a Component of the NYVIP Unit that is to be installed by User (e.g., keyboard).
- c. **CBT** – Computer Based Training.
- d. **Group 1A Inspector** – a person who has successfully completed training under the CBT program, is a NYS-licensed inspector in good standing, and is authorized by the User of the NYVIP Unit to operate and maintain User’s NYVIP Unit. Pursuant to DMV Commissioner Regulations, Part 79, NYS Certified Motor Vehicle Inspectors can only perform inspections on vehicles they are licensed to inspect.
- e. **NYVIP Operator** – a person(s) authorized by the User to operate and maintain the NYVIP Unit.
- f. **NYVIP** – New York Vehicle Inspection Program.
- g. **NYVIP Network** – An electronic telecommunications link provided by SGS Testcom that allows NYVIP Units to connect with the NY DMV registration electronic database(s) in order to receive and send information.
- h. **NYVIP Unit** – The inspection system approved by the DMV and purchased by User, to be used exclusively for approved functions associated with the NYVIP. The NYVIP Unit consists generally of the following Components: a PC including the keyboard, display, printer and interconnecting cables, the 2-D barcode scan tool, the OBD II connector cable and associated NYVIP software.
- i. **Operator** - A person authorized by User to operate the NYVIP Unit to conduct inspections under the NYVIP and who has completed the NYVIP Unit operator training and passed the certification exam required by DMV.
- j. **Operator Manual** – A written document (also available on SGS Testcom’s NYVIP website (the “SGS Testcom NYVIP Website”) provided with the NYVIP Unit. The Operator Manual contains instructions for NYVIP Unit setup, installation, operation, maintenance, troubleshooting and requesting Services. The Operator Manual may be changed, amended or added to from time to time in the sole discretion of SGS Testcom and/or at the direction of DMV, and all such changes, amendments and/or additions thereto shall be communicated to User by means of the SGS Testcom NYVIP Website or otherwise at SGS Testcom’s discretion. User accepts all responsibility for maintaining an up-to-date Operator Manual.
- k. **Services** – The combination of SGS Testcom provided Network Services, B/F Services, Training Services and other services selected and paid for by Users. Network Services will be provided 24 hours per day 7 days per week. Services other than Network Services will be provided Monday through Friday, excluding the following annual holidays: New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas (“Holidays”). On-site B/F Services will be provided from 7:00 a.m. to 7:00 p.m. local time, Monday through Friday excluding Holidays.
- l. **Site Contact** – Designated User personnel who will accept delivery of the NYVIP Unit or related equipment, and will meet SGS Testcom field service technicians or other repair personnel at User site with full authority to authorize and accept B/F Services.
- m. **Specifications** – The DMV-approved written description of the physical, operational and performance features of the NYVIP Unit and the SGS Testcom NYVIP Network.
- n. **User** – A New York State (“NYS”) licensed vehicle inspection station participating in the NYVIP.

When the SPA starts and ends

2. TERM OF AGREEMENT

This Agreement shall commence on the date of execution of the Agreement by Business Owner however, the actual provision of Services hereunder may not commence until the date DMV deems the SGS Testcom NYVIP Network operational (the “Operational Start Date”). This Agreement shall remain in effect until the occurrence of any of the following (in all cases User shall pay SGS Testcom for all Services rendered prior to the date of termination):

- a. breach or default of this Agreement by User;
- b. the date of the expiration, termination or cancellation of the Contract;
- c. the User terminates its participation in the NYVIP or its participation is terminated by DMV or SGS Testcom; or
- d. seven (7) years from the Official Start Date; unless DMV extends the Contract, in which case this Agreement between User and SGS Testcom shall automatically be extended under the extension terms, conditions and rates then approved by DMV.

3. AGREEMENT COVERAGE

This Agreement provides for the connectivity and maintenance support of one (1) NYVIP Unit. **A separate Station Participation Agreement is required for each additional NYVIP Unit purchased by User.** Each NYVIP Unit, in order to qualify for the Services hereunder, shall be used by User and the Operator(s) solely for NYVIP related business, professional or trade purposes only, and not for any personal, family or household purposes.

Other important terms and conditions

4. TRANSFERABILITY

This Agreement and the Services to be provided hereunder are not transferable. In the event User transfers ownership of the NYVIP Unit to another party, this Agreement shall automatically terminate and such other party shall be required to execute a new Station Participation Agreement in order to participate in the NYVIP. A reconnection fee may apply and SGS Testcom reserves the right to inspect the NYVIP Unit prior to reactivation. User shall pay SGS Testcom for all Services rendered prior to SGS Testcom being notified in writing of the transfer of ownership of the NYVIP Unit.

5. ADVERTISING AND PROMOTION

User agrees not to use the name of SGS Testcom or any of its subcontractors, suppliers or vendors in any advertising, promotion or publicity, without SGS Testcom’s prior written consent.

6. NYVIP UNIT UPGRADES

SGS Testcom, with the approval or at the direction of DMV, may from time-to-time require hardware or software upgrades in order to improve NYVIP Unit efficiency, reliability, utility, maintainability, functionality or other. In such cases, User agrees to cooperate promptly and fully with SGS Testcom in the installation of any such upgrades, including but not limited to installing new hardware and installing new software via a download from the SGS Testcom NYVIP Website, the Network and/or the Internet and/or installation of software from an electronic medium such as a CD. Failure to cooperate and successfully complete such upgrades in a timely manner will result in suspension or termination of Services hereunder.

7. NYVIP UNIT OPERATING ENVIRONMENT

User agrees that only qualified Operators will be allowed to use the NYVIP Unit. User agrees to provide and maintain through the term of this Agreement a safe and secure operating environment for the NYVIP Unit. Correct operation and maintenance procedures are described in the Operator Manual. Any misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by User will result in termination of Services. User shall: ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of Services; inform SGS Testcom in advance in writing of any known actual or potential hazards or dangers not found in a normal motor vehicle repair shop operating environment that may effect SGS Testcom’s provision of Services at User’s site, including, for example, presence or risk of radiation, toxic or noxious or explosive materials, environmental pollution or poisons; and, fully exercise all of User’s rights and discharge all of its liabilities and/or comply under any relevant contract with a third party and/or at law.

8. NYVIP HELP DESK ASSISTANCE – TOLL FREE 866-469-8477 (866-4NY-VIPS)

The SGS Testcom NYVIP Help Desk is designed to assist User with: the initial setup and installation of the NYVIP Unit, including connection to the Network; troubleshooting the NYVIP Unit; ordering replacement Components; ordering optional equipment and Services that may be offered by SGS Testcom from time-to-time; and, answering User questions relating to the Services hereunder. Help Desk hours are Monday through Saturday 7 AM to 7 PM, except for Holidays. The hours of the NYVIP Help Desk operations may change from time-to-time with DMV approval. Changes will be listed on the SGS Testcom NYVIP Website.

HELP is a phone call away

9. SGS TESTCOM SUBCONTRACTORS

SGS Testcom will use subcontractors and/or other suppliers to perform certain work hereunder. SGS Testcom will, on its NYVIP Website, inform User of the identity of such subcontractors together with their areas of responsibility. User agrees to provide SGS Testcom's subcontractors with the highest levels of cooperation hereunder and understands that such subcontractors are acting under the NYVIP. SGS Testcom may delegate the performance of all or part of the Services to an agent or subcontractor, and User authorizes SGS Testcom to disclose to the agent or subcontractor all of its and other information necessary for such performance. In the event that User has any questions or concerns regarding the actions or inactions of subcontractors hereunder, User shall direct such questions to the NYVIP Help Desk for resolution.

10. NYVIP UNIT MAINTENANCE

All deliveries of replacement Components or upgrade Components, unless otherwise agreed to in writing by SGS Testcom, will be "inside deliveries" and will require acceptance and signoff by the User's designated Site Contact or backup Site Contact. Unless properly used for return of a Component to SGS Testcom, removal and disposal of packing materials for Components are the responsibility of the User. Disposals by User of old equipment and packing materials for the NYVIP Unit shall be in compliance with all local, state and federal laws, regulations and guidelines.

The User shall: (a) ensure that sufficient information, instructions and documents are given in due time to SGS Testcom to enable the Services to be performed; (b) procure all necessary access by SGS Testcom to the premises where the Services are to be performed and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services; and (c) supply any required special equipment and all User personnel necessary for the performance of the Services.

11. LIMITED WARRANTY

SGS Testcom warrants that the Services provided under this Agreement shall conform to the Specifications. This limited warranty includes only the repair or replacement (at SGS Testcom's sole discretion) of Components of the NYVIP Unit in accordance with the B/F Services descriptions and limitations contained herein, accomplished (at SGS Testcom's sole discretion) by either dispatch of Components to User location for installation by User or by a field service representative visit to User location.

REPAIR OR REPLACEMENT OF A FAULTY COMPONENT THAT RESTORES THE NYVIP UNIT TO OPERATING CONDITIONS PURSUANT TO THE SPECIFICATIONS SHALL CONSTITUTE FULFILLMENT OF ALL LIMITED WARRANTY OBLIGATIONS HEREUNDER ON THE PART OF SGS TESTCOM. ANY MODIFICATIONS TO THE NYVIP UNIT THAT ARE NOT PROVIDED FOR AND APPROVED BY SGS TESTCOM, ANY AUTHORIZED UPGRADES NOT INSTALLED BY USER IN A TIMELY MANNER, OR USE OF THE NYVIP UNIT FOR ANYTHING OTHER THAN THE NYVIP SHALL VOID ALL WARRANTY OBLIGATIONS. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE SERVICES FOR ANY PARTICULAR PURPOSE. PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS - WITH ALL FAULTS."

SGS Testcom's obligation to repair or replace Components under the Limited Warranty will not apply to the extent that there has been misuse (including but not limited to use of any NYVIP Unit capacity or capability not expressly authorized by SGS Testcom), accident, modification, (including, without limitation, unauthorized installation on the NYVIP Unit of features, devices, parts, options, software, alterations, components and/or attachments or the like not authorized and provided by SGS Testcom in connection with the NYVIP) unsuitable physical or operating environment, operation in other than the specified operating environment, improper maintenance by User, Loss (defined below), and/or failure caused by a product for which SGS Testcom is not responsible hereunder. With respect to the NYVIP Unit, the Limited Warranty is voided by unauthorized removal or alteration of the NYVIP Unit or Components identification labels. To regain Limited Warranty status, the NYVIP Unit must be restored to proper configuration and operating condition which may require replacement of Components and/or an on-site inspection by SGS Testcom - all at the expense of the User.

Items Not Covered by Warranty

SGS Testcom does not warrant uninterrupted or error-free operation of the Network and/or the NYVIP Unit or of any other product or Services hereunder or that SGS Testcom will correct all defects. SGS Testcom will from time-to-time identify hardware and/or software that it does not warrant hereunder.

Unless SGS Testcom specifies otherwise in writing, SGS Testcom gives NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, for any non-SGS Testcom goods or services. However, non-SGS Testcom manufacturers, developers, suppliers, or publishers may provide their own warranties to User. Warranties, if

any, for non-SGS Testcom goods or services may be found in their license or purchase/sale agreements.

12. SEVERABILITY

If any provision of this Agreement or the application of this Agreement to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, that judgment shall not impair or invalidate the remainder of this Agreement.

13. TERMINATION FOR CAUSE

User understands and agrees that, should User fail to abide by the terms of this Agreement, SGS Testcom shall have the right to terminate Services hereunder. Should termination be for reasons other than non-payment of an invoice, SGS Testcom shall provide a written explanation within 10 days of the termination.

14. UNAUTHORIZED USE

Should any unauthorized person gain access to User's NYVIP Unit, User will notify the SGS Testcom Help Desk immediately. User agrees that it shall be responsible for promptly paying all Connection Charges, whether authorized or not, made by or through User's NYVIP Unit.

15. SECURITY

User agrees that it is responsible for any and all NYVIP Unit and/or Network access and security controls and tools (such as passwords), and that such controls and tools will not be shared and will be kept secure. User's NYVIP Unit Connection Charges that are erroneous, fraudulent, and/or unauthorized are the sole responsibility of User and User shall promptly pay all Connection Charges as set forth herein.

16. LATE PAYMENT

Connection Charges and late charges will be due and payable upon receipt by the User of the billing statement ("Invoice") from SGS Testcom. SGS Testcom will send User a monthly Invoice, and the Invoice will include all Connection Charges and late charges for the prior month. The amount set forth on any Invoice which is not paid within thirty (30) days of the date set forth on the Invoice shall be considered late, and will be subject to late charges of 1.5% per month from the date of the Invoice. In the event the due date of an Invoice falls on a weekend or holiday, the next business day shall be the due date. In the event of late or non-payment of an Invoice, SGS Testcom shall have the right to terminate Services and access to the Network. SGS Testcom may (but is not obligated to) provide written or other notice to User of such suspension or termination. User shall not retain or defer payment of any Connection Charges or late charges due to SGS Testcom on account of any dispute, counterclaim or set off which it may allege against SGS Testcom hereunder. SGS Testcom may elect to bring action for the collection of unpaid fees and late charges in any New York court having competent jurisdiction. User shall pay all of SGS Testcom's collection costs, including attorneys' fees and related costs. In the event any unforeseen problems or expenses arise in the course of carrying out the Services for User, SGS Testcom shall endeavor to inform User and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the Services. If SGS Testcom is unable to perform all or part of the Services for any cause whatsoever outside SGS Testcom's control including an event of force majeure (defined below) or if User fails to comply with any of its obligations hereunder, SGS Testcom shall nevertheless be entitled to payment for all Services rendered and late charges hereunder.

17. RECONNECTION FEE

In the event of termination of Services due to breach of this Agreement (including for unpaid or late paid Invoices), User may request reconnection, and will be reconnected provided User cures all breaches and has paid to SGS Testcom all outstanding Invoice amounts, including late charges to the date of actual payment, plus a reconnection fee of \$75. If User is disconnected more than once for late or non-payment of Invoices, SGS Testcom may also require prepayment and/or a security deposit. With the prior consent of DMV, SGS Testcom reserves the right to change the reconnection fee from time to time during the term of this Agreement.

18. INVOICE DISPUTE

In the event of a dispute concerning an Invoice, User shall notify SGS Testcom in writing at the address listed above. If User does not give SGS Testcom written notice of a dispute within forty five (45) days from the date of the Invoice, such Invoice shall be deemed undisputed and binding on User. User shall be responsible for paying any undisputed Invoice amounts by the required payment due date.

19. FAULTY PAYMENT

User agrees that there will be a \$25 fee for each Invoice payment dishonored due to insufficient funds or otherwise. Failure to pay the outstanding Invoice amount plus the

Some of your
maintenance obligations

Important
payment terms

\$25 fee within ten (10) days of notification by SGS Testcom may result in the termination of Services and/or User's disconnection from the Network. With the prior consent of DMV, SGS Testcom reserves the right to change this faulty payment fee from time to time during the term of this Agreement.

20. ADDRESS CHANGE AND TRANSFER OF USER ACCOUNT

User shall notify SGS Testcom immediately in writing of any address change or departure from the User address listed above in this Agreement. This includes any changes to any information provided by User (including, without limitation, telephone or fax numbers, email address, Site Contact name(s), billing address, etc.). Only User or an authorized representative of User can make changes to User's account information. User accounts are not transferable to other parties without the prior written consent of SGS Testcom and/or the DMV. Any attempt to transfer a User account without advance written consent of SGS Testcom shall at the sole option of SGS Testcom automatically terminate this Agreement.

21. DMV ADMINISTRATIVE ACTION

User understands that DMV may stop User's NYVIP Unit and/or User's right to Services hereunder as a result of administrative action, which stop will prevent the User NYVIP Unit from connection to the Network and thus prevent User's conducting of vehicle inspections. A stop of Services at the request, direction or instruction of DMV shall not under any circumstances be deemed a breach of this Agreement by SGS Testcom, nor shall SGS Testcom have any liability or responsibility whatsoever to User for such stop. When the message on User's NYVIP Unit screen indicates the following: SERVICE STOPPED BY NYS DMV, (or other similar message), User shall immediately contact DMV for further information.

22. KEEPING NYVIP UNIT OPERATIONAL

SGS Testcom provides certain types of Services to keep User's NYVIP Unit in, or restore it to, conformance with Specifications. **Successful Services hereunder: (a) depend on the full, complete and accurate cooperation of the NYVIP Unit User and/or Operator and (b) require that the User and/or Operator properly care for and maintain the NYVIP Unit, and when necessary, perform certain troubleshooting functions. User agrees to use its BEST EFFORTS to successfully take and complete all troubleshooting actions.** Troubleshooting actions by the User consist of: First, referring to the then most current Operator Manual and following the instructions in the "Trouble Shooting" section. Second, and in the event User is unable to correct a problem by using the Operator Manual, User may call the SGS Testcom Help Desk at the number set forth in the Operator Manual or the number available on the SGS Testcom NYVIP Website for further assistance. When calling the SGS Testcom Help Desk for Trouble Shooting assistance, User must have the Operator Manual and the NYVIP Unit available during the call.

Caring for your NYVIP Unit

23. SERVICES REINSTATEMENT INSPECTION

In the event SGS Testcom or DMV suspends or terminates Services for any reason, SGS Testcom reserves the right to inspect the NYVIP Unit prior to any reinstatement of User to the NYVIP.

24. LIMITATION OF LIABILITY: INDEMNIFICATION OF SGS TESTCOM BY USER

SGS Testcom is neither an insurer nor a guarantor and disclaims all liability in such capacity. Users seeking a guarantee against Loss (defined below) or damage should obtain appropriate insurance. SGS Testcom shall not be liable for any delayed, partial or total non-performance of any Services arising directly or indirectly from any event outside SGS Testcom's control, including any event of force majeure (defined below) or failure by User to comply with any of its obligations hereunder. The liability of SGS Testcom in respect of any claim (including, without limitation, claims based on breach of warranty, breach of contract, negligence or strict liability in tort) for loss, damage or expense of any nature and howsoever arising hereunder shall in no circumstances exceed a total aggregate sum equal to the amount of fees paid hereunder by User for the twelve (12) months prior to the date of the claim. SGS Testcom shall have no liability for any indirect, incidental or consequential damages or loss (including, without limitation, loss of profits, loss of use, loss of goodwill, economic or special damages). In the event of any claim, User must give written notice to SGS Testcom within 30 days of discovery of the facts alleged to justify such claim and, in any case, SGS Testcom shall be discharged from all liability for all claims for loss, damage or expense unless suit is brought within one (1) year from: (a) the date of performance by SGS Testcom of the Service which gives rise to the claim; or (b) the date when the Service should have been completed in the event of any alleged non-performance. All limitations of liability hereunder shall apply hereto even if this Agreement is found by a court of competent jurisdiction to fail of its essential purpose. User shall hold harmless and indemnify SGS Testcom and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature

arising from the actions or inactions of User and any of its personnel, inspectors, Operators, agents, representatives and/or subcontractors, including all legal expenses and related costs, howsoever arising.

25. GOVERNING LAW

All disputes arising from the provision of Services or related to this Agreement shall be governed by the substantive laws of the STATE OF NEW YORK exclusive of any rules with respect to conflicts of laws.

26. FORCE MAJEURE

The term "force majeure" shall include all acts of God, work stoppages due to labor disputes, strikes or otherwise; fires; explosions; epidemics; riots; acts of terrorism; utility failures or outages not isolated to the Contractor's system; war; rebellion; sabotage; or other catastrophic events. Each party shall be responsible for its own costs incurred as a result of the force majeure event. Force majeure shall not apply to the payment of money owed under this Agreement. Force majeure shall not cause User to transfer to SGS Testcom any expense or risk of loss. Neither party shall have any claim to damages against the other resulting from delays or non-performance caused by force majeure.

27. ENTIRE AGREEMENT

This Agreement, which includes all of the terms and conditions hereof, and all exhibits, riders or other documents attached hereto (if any), is the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of products or services hereunder.

There are no promises, representations or understandings made in connection with this Agreement or contemporaneous with the execution hereof, except as set forth in this Agreement.

28. SGS TESTCOM AS USER AGENT

With respect to the procurement of the NYVIP Unit, Services and/or other products and/or services hereunder that relate to the NYVIP, User hereby appoints SGS Testcom as its agent for purposes of (a) ordering and payment collection and remittance services hereunder and (b) indicating to International Business Machines Corporation ("IBM") that, by virtue of, among other things, User's execution and delivery to SGS Testcom of the document entitled "Purchase Order Agreement - Part 2" and the "IBM PAA - Part 3", User has entered into a contractual agreement with IBM as set forth in "Purchase Order Agreement - Part 2" and the "IBM PAA - Part 3", such that User is contractually bound to the terms and conditions of the Purchase Order Agreement ("POA") and to that part of the POA entitled "IBM Product Acquisition Agreement" ("IBM PAA"). Business Owner and/or User further authorize SGS Testcom to provide a copy of the executed SPA, POA and IBM PAA to IBM and/or NYS DMV at any time.

User hereby consents and grants to SGS Testcom and/or its subcontractors the right and/or license to access User's premises or site and to use and/or modify its NYVIP Unit and other NYVIP-related products used by User without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. Further, User understands and agrees that agents of the Commissioners of DMV and DEC shall have access to its NYVIP Unit wherever located.

Giving us access to your NYVIP Unit

29. USER SITE ENVIRONMENT

User must ensure that its site and/or station environments, including the location of the NYVIP Unit(s), must meet reasonable safety and serviceability requirements as a condition precedent to SGS Testcom's obligation to provide Services. SGS Testcom shall have the right to deny the provision of B/F Services hereunder in the event the NYVIP Unit is in an environment not deemed to be in acceptable condition, until the User corrects the problems.

Network Services Overview

User assumes full responsibility for all connection charges resulting from User's operation of its NYVIP Unit and its connection to the Network (the "Connection Charges"), and agrees to follow all rules of Network use specified in the Operator Manual so that the NYVIP Unit can connect to the Network. User shall, at its sole cost and expense, provide the telephone line connection to the Network. Entering into this Agreement is not intended to affect User's relationship with User's current telecommunications provider(s).

These sections explain the Network Services provided to you

30. CONNECTION CHARGES

The Connection Charges are per call charges paid to SGS Testcom by the User and such Connection Charges shall be in accordance with the Contract. The Connection Charges to inspection stations are on a per call basis, whether the inspection or re-inspection occurred real time or in an offline mode. The number of Connection Charges per inspection is based upon the type of inspection being performed.

- "One call" inspections include safety only, diesel, trailers and heavy-duty inspections.
- "Two call" inspections include low enhanced, high enhanced and OBDII inspections.
- Types of inspections may be modified in the future by changes to the Commissioner's Regulations Part 79.

Pursuant to the Contract, the Connection Charges for the first Contract year shall be \$.365 per call and may be adjusted upward or downward at least annually. Notice of any changes in the Connection Charges and the effective date for such changes shall be provided to the User by DMV directly and/or by SGS Testcom no less than 10 calendar days prior to the effective date of the change.

Connection charges may change year to year

31. NETWORK CONNECTION TROUBLESHOOTING

Instructions on operation and trouble shooting of the NYVIP Inspection Unit and connecting with the Network are contained in the Operator Manual. Questions should be directed to the SGS Testcom Help Desk at the number set forth in the Operator Manual and/or on the SGS Testcom NYVIP Website.

Break/Fix Services

32. B/F SERVICES - OVERVIEW

Break/Fix Services (B/F Services) will be provided to User and are described in this section of the Agreement. These B/F Services are available for the NYVIP Unit used solely for NYVIP-related business, professional or trade purposes, and not for personal, family or household purposes. All references in this Agreement and/or in the Operator Manual and/or on the SGS Testcom NYVIP Website to "repair" and/or to "maintenance services" (or the like) shall be the B/F Services described herein.

These sections explain the Break/Fix services available to you

SGS Testcom and/or its subcontractors will provide B/F Services for the NYVIP Unit and Components provided by SGS Testcom and/or its subcontractors to the User under the NYVIP. Prior to placing a B/F Services call to the SGS Testcom Help Desk, User, its Operator(s) and its other personnel, are solely responsible for following every manufacturer's guideline or instruction pertaining to: (a) User or Operator responsibilities; (b) maintenance procedures; and (c) supplies.

33. B/F SERVICES COVERAGE

SGS Testcom will inform User of the date on which B/F Services will be deemed effective. Such effective date will follow successful installation and setup by User of the NYVIP Unit at its facility named above and the NYVIP Unit's successful connection to the Network. SGS Testcom reserves the right to inspect the NYVIP Unit at User's facilities at any time after the Operational Start Date. If the NYVIP Unit is not in acceptable condition for B/F Services, User shall have it restored to such condition and there will be a charge from SGS Testcom for such restoration.

34. TYPES OF B/F SERVICES

At SGS Testcom's sole discretion, SGS Testcom will: 1) either repair or exchange a faulty Component of the NYVIP Unit, and/or 2) provide the B/F Services either at User's facility location set forth above or at a service center. SGS Testcom agrees to ship or deliver (at its sole discretion and expense) a replacement Component for the NYVIP Unit after completion (with User participation) of the troubleshooting process and SGS Testcom's issuance of an authorization for replacement. When SGS Testcom requires User delivery of a failing Component to a service center, User shall ship it (at SGS Testcom's expense) suitably packaged per SGS Testcom's instructions to the service center SGS Testcom designates. Provided User follows such instructions, SGS Testcom is responsible for loss of, or damage to, the Component while it is in transit. If repair requires on-site access to a NYVIP Unit and/or Components, User must grant access to SGS Testcom or its subcontractor for B/F Services during normal business hours. Normal business hours for access to NYVIP Units are defined as Monday – Friday from 7am to 7pm local time excluding Holidays.

35. USER RESPONSIBILITIES

User and/or the Site Contact shall execute SGS Testcom's or its subcontractors' Site Signoff documents (or the like) upon completion of any on-site Services provided hereunder.

Some Components of the NYVIP Unit are Customer Replaceable Components (CRCs). User agrees to return any identified defective CRC as directed by SGS Testcom within 3 days of User's receipt of the replacement CRC.

36. NO PROBLEM FOUND

In the event User obtains authorization from SGS Testcom to return a Component of the NYVIP Unit, and such Component is then determined to have NO PROBLEM, SGS Testcom will notify Business Owner of this determination in writing, including at SGS Testcom's option, via email. In the event such Component is determined to have NO PROBLEM and SGS Testcom has already shipped a replacement Component to User, User agrees to reimburse SGS Testcom for the cost of the replacement Component and the cost of shipping both the suspect Component to SGS Testcom and the replacement Component to User. User understands that User then shall **own both** the new Component shipped to User and the NO-PROBLEM-found Component, which shall be returned to the User, unless User directs otherwise.

In the event SGS Testcom dispatches a field service technician to provide B/F Services hereunder, and NO PROBLEM is found, User agrees to pay SGS Testcom a NO PROBLEM fee of \$75 per visit. This NO PROBLEM fee may increase with the approval of DMV, in which case Users will be notified in advance of any such increase.

In the possible occurrence of either a NO PROBLEM FOUND Component or a NO PROBLEM FOUND visit, SGS Testcom will inform the User, prior to shipment or dispatch, of the possibility of a NO PROBLEM fee being charged.

In the event User disagrees with the finding by SGS Testcom that the User damaged or misused the Component, User may contact DMV for assistance.

Delays caused by User site unreadiness or inability to gain access to a **mutually agreed time** to a User site, Site Contact, designated work area, loading dock, elevator, locked equipment or the like will also result in the assessment of a NO PROBLEM FOUND fee. NO PROBLEM FOUND fees may also be assessed in the event the Site Contact (or backup Site Contact) is not onsite or available to accept deliveries or during delivery and/or during a field service technician on-site B/F Service call. In the event a NO PROBLEM FOUND fee is assessed, SGS Testcom shall be relieved of its obligation to provide for the restoration of the NYVIP Unit and Components, until a later time of its choosing, and shall have no liability whatsoever for the lack of use of the NYVIP Unit or access to the Network by User in the interim.

37. REPLACEMENTS UNDER THIS AGREEMENT

When B/F Services involve the exchange of a faulty NYVIP Unit Component, the item replaced and returned to SGS Testcom shall no longer be the property of User, but the replacement hardware Component becomes the property of User, at no additional cost. User represents and warrants that all items or Components removed from the NYVIP Unit shall be the same as those delivered to User. Replacement items or Components may not be new, but will be in good working order and functionally equivalent to the item(s) replaced.

Before SGS Testcom replaces a defective Component of the NYVIP Unit, User agrees to remove all features, parts, options, alterations, and attachments that were not part of the NYVIP Unit when it was first delivered to User. User shall also ensure that the item is free of any legal obligations or restrictions that prevent its replacement or exchange.

User is responsible for downloading designated code and software updates from the SGS Testcom NYVIP Website or from other electronic media, and following the instructions provided.

38. MISUSE, ACCIDENT, LOSS NOT COVERED BY B/F SERVICES

User understands that NYVIP Units or Components thereof that do not function properly as a result of theft, misuse (including, without limitation, the timely installation of upgrades by User as required by Section 6 above), accident, loss, modification, unsuitable physical or operating environment or improper maintenance by User or others, or other actions or inactions of the User ("Loss") are NOT covered under the B/F Services described in this Agreement. Accordingly, in such event where B/F Services do not cover malfunctioning NYVIP Units or their Components due to Loss, SGS Testcom will sell replacement Components to User at the then current rates therefor posted on the SGS Testcom NYVIP Website. User may contact the SGS Testcom Help Desk for further information hereunder in the event B/F Services do not apply to a malfunctioning NYVIP Unit or Component as set forth herein.

39. ITEMS COVERED UNDER B/F SERVICES

B/F Services cover the following NYVIP Unit Components:

- a. The PC unit including memory, hard drive and CPU;

- b. The 2-D barcode scanner, keyboard, mouse, display and interconnecting cables; and
- c. The OBD II connector cable and the printer.

Items b. and c. are CRC's. Certain optional equipment that User may have purchased from SGS Testcom (if any) may have their own separate (and different) service fees and/or rules different from those set forth herein for B/F Services. User will have to obtain such different service rules and/or services fees for optional equipment from the SGS Testcom Help Desk and/or the SGS Testcom NYVIP Website (www.NYVIP.us).

40. ITEMS NOT COVERED UNDER B/F SERVICES

B/F Services do not cover the following:

- a. Consumable accessories, supply items (for example, paper, toner, maintenance kits) and certain parts such as batteries, frames, covers, surge protectors and printer cartridges);
- b. Certain optional equipment purchased (as indicated with such equipment);
- c. NYVIP Unit Components damaged by Loss (defined above), misuse, accident, unauthorized modification, unsuitable physical or operating environment, maintenance by an unauthorized party);
- d. NYVIP Units with removed or altered NYVIP Unit or Component identification labels;
- e. Failures caused by a product or utility connection for which SGS Testcom is not responsible;
- f. Service of NYVIP Unit alterations not requested by SGS Testcom or DMV;
- g. Service of a NYVIP Unit on which User is using capacity or capability, other than that authorized by SGS Testcom in writing;
- h. User site preparation work of any kind;
- i. Theft of all or any portion of the NYVIP Unit;
- j. Obtaining permits of any kind, working with asbestos or other hazardous materials or environments outside of the normal motor vehicle repair shop operating environment, drilling through walls, ceilings or floors, moving of furniture or desks;
- k. Engineering change activity unless directed by a manufacturer, or preventive maintenance;
- l. Updates to microcode or firmware; and
- m. any installation by a party other than SGS Testcom (or any of its subcontractors) of a feature, device, part, option, alteration, component, software and/or attachment or the like not provided by SGS Testcom.

41. B/F SERVICE LEVELS

Provided that, in accordance with this Agreement; (a) access to the NYVIP unit is granted in a timely manner by the User, and (b) User has complied, in a timely manner, with all of its obligations, SGS Testcom has an obligation to provide B/F Services in a timely manner to licensed inspection stations. Any station that has NYVIP Unit that has been inoperable for more than five (5) consecutive business days after User has notified SGS Testcom thereof (Monday through Friday, excluding Holidays) shall be entitled to be paid the User's "lost" inspection fees by SGS Testcom, so long as the Station is in good standing with the DMV and SGS Testcom (i.e. no outstanding payments due and not in breach of its agreement with the SGS Testcom). These "lost" fees shall be based on average daily volume for that particular NYVIP Unit based on the previous reported inspections. In the event that the amounts paid to stations for lost revenue reaches \$1,000,000 in the aggregate for all stations at any time during the term of the Contract, SGS Testcom may be in default under the Contract and may be terminated by DMV. For a complete description of this Service Level requirement, visit the SGS Testcom NYVIP Website (www.NYVIP.us).

NYVIP Training & Certification Services

42. OVERVIEW

Group 1-A Inspectors, in order to conduct official OBD vehicle inspections using the NYVIP Unit, must successfully complete the On-Board Diagnostics Inspector Certification Exam, provided in the NYVIP Unit, prior to being allowed to conduct an OBD inspection. Results of the Inspector Certification Exam will be recorded by SGS Testcom and provided to DMV. To assist Inspectors in passing the Exam, Computer Based Training ("CBT") is available in the NYVIP Unit or on the SGS Testcom NYVIP Website (www.NYVIP.us).

43. INFORMATION AVAILABLE ON SGS TESTCOM NYVIP WEBSITE

The Group 1A Inspector CBT will be amended and updated from time-to-time at the discretion of SGS Testcom and/or at the direction of the DMV. Details of the CBT and the instructions and rules for its use are available on the SGS Testcom NYVIP Website (www.NYVIP.us). Group 1A Inspectors each agree to comply at all times with the CBT rules, instructions and/or procedures specified on the SGS Testcom NYVIP Website. Violation of such CBT rules, instructions and/or procedures by the Group 1A inspectors may result in termination or suspension of Services hereunder, and/or DMV's suspension or revocation of an inspector license or station license.

44. CONFIDENTIALITY

The Inspector Certification Exam contents are confidential and shall not be disclosed by any Group 1A Inspector taking the Inspector Certification Exam. Users agree to enforce the confidentiality of the Group 1A Inspector Certification Exam content. Violation of this confidentiality requirement by User, one of its inspectors, employees, operators or other personnel will result in the breach of confidentiality being reported to DMV and may result in serious consequences for the User and violating persons.

End of Station Participation Agreement

Part 2 of 3: Purchase Order Agreement (“POA”)

This Purchase Order Agreement (hereinafter the “POA”) is for **ONE** (1) NYVIP UNIT, and is made by and between SGS Testcom Inc. (“SGS Testcom”), a New York corporation, with offices at 2911 Route 9, Suite 3, Ballston Spa, NY 12020, and the New York State (“NYS”) licensed inspection station business owner (“Business Owner” or “User”) participating in the NYVIP and identified on the NYVIP Station Enrollment Form and NYVIP Signature Page.

The Business Owner identified on the NYVIP Station Enrollment Form and NYVIP Signature Page (hereinafter sometimes referred to as “you” or “You” or a variation thereof) accepts the terms of this NYVIP Unit Purchase Order Agreement by signing the NYVIP Signature Page and submitting it to SGS Testcom. Pursuant to this POA, SGS Testcom shall act as: (a) your exclusive, limited agent solely for the purpose of ordering for you the NYVIP Unit from IBM (“Seller”), and also as (b) the exclusive, limited agent of Seller solely for the purpose of processing and handling the POA for the purchase of a NYVIP Unit from Seller, collecting the purchase price from you and making remittances to Seller. All communications from you regarding the purchase of the NYVIP Unit pursuant to this POA must be directed to SGS Testcom and not to the Seller. The NYVIP Unit shall consist of: (a) the PC including memory, hard drive, keyboard, mouse and monitor, (b) the 2-D barcode scan tool and interconnecting cable, (c) the OBDII connector cable, (d) the printer with cable, (e) NYVIP Unit software, and (f) a phone cord for connecting your NYVIP Unit to your telephone line. In addition, the delivered NYVIP Unit will include an Operator Manual and instructions for the installation and activation of the NYVIP Unit.

By signing the NYVIP Signature Page and completing the NYVIP Station Enrollment Form and the NYVIP Unit Order Form, you authorize SGS Testcom to place an order with Seller on your behalf for the NYVIP Unit and any other optional equipment selected below by you (the “NYVIP Unit”), at the pricing stated on the current DMV-approved Products Price List:

Sections of this “POA”

What’s Covered in this “POA”*

Description of the NYVIP Unit	This section describes the basic NYVIP Unit and optional items.
Terms and Conditions	This section describes important terms and conditions of our relationship, such as: <ul style="list-style-type: none"> ✓ Methods of paying for your NYVIP Unit ✓ Payment terms and conditions ✓ Your rights and responsibilities ✓ Limited warranty and limitations of liability ✓ More

Description of the NYVIP Unit and Optional Items

BASIC NYVIP Unit

- a. PC including memory and hard drive - Model M50
- b. Keyboard - Model KB-0225
- c. Monitor – Model E54
- d. 2-D barcode scanner and interconnecting cable - Model 3800,
- e. OBDII connector cable – Model KM9020
- f. Lexmark Ink Jet Printer with cable
- g. NYVIP Unit software, and
- h. A phone cord for connecting your NYVIP Unit to your telephone line.

OPTIONAL ITEMS:

- a. **Steel Cart** - with locking cabinet on 4” casters
- b. **Printer Option** – Lexmark Laser Printer
- c. **Monitor option** - IBM Model L150 Flat Screen
- d. **Area Image Barcode Scanner** – HHP 4600

NOTE: The number and types of options offered by SGS Testcom may, with DMV approval, change from time-to-time. For current pricing of the basic NYVIP Unit and available optional items, see the SGS Testcom NYVIP Website (www.NYVIP.us)

“POA” TERMS AND CONDITIONS

General Provisions

1. DEFINITIONS

Components – Parts or components of the NYVIP Unit, hardware or software.

NYVIP Unit– The inspection system approved by the NYS DMV and purchased by User, to be used exclusively for approved functions associated with the NYVIP. The NYVIP Unit consists of the following Components: a PC including the keyboard, display, printer and interconnecting cables, the 2-D barcode scan tool, the OBD II connector cable and associated software (Programs) and any other optional NYVIP Unit option selected by you from the list above and/or from the SGS Testcom NYVIP Website.

Program (machine code) is a computer software program, whether pre-loaded on a NYVIP Unit or provided separately, including related licensed materials such as documentation.

2. POA STRUCTURE

This POA and the IBM PAA is the complete agreement between: (a) you and SGS Testcom regarding your authorization that SGS Testcom act as your limited, exclusive agent for purposes of placing an order for a NYVIP Unit on your behalf with Seller, and (b) you and the Seller regarding your acquisition of the NYVIP Units. A NYVIP Unit and the purchase of said NYVIP Unit becomes subject to this POA and the IBM PAA when you submit the NYVIP Order Form to SGS Testcom. Confirmation of SGS Testcom's receipt of your POA constitutes SGS Testcom's and/or Seller's acceptance of your order. This POA replaces any prior oral or written communications concerning your acquisition of the NYVIP Units. Any additional or different terms in any order or in any other written communications are void. You hereby agree that SGS Testcom may (at its option) provide a copy of any agreement or other contract (including the SPA, this POA and/or the IBM PAA) that you execute to Seller and/or NYS DMV.

3. CHARGES AND PAYMENT

Purchases of a NYVIP Unit hereunder shall be solely by money order, bank or certified check, credit or debit card transactions. Your choice of payment method must be indicated on the NYVIP Payment Authorization Form. If credit or debit card is selected, you must provide your credit card, name, billing address, account number, expiration date and signature authorizing SGS Testcom to debit said credit or debit card for the full purchase price and other charges hereunder. You agree to pay SGS Testcom for the NYVIP Unit as specified above, including any applicable sales, use or similar taxes, fees or duties (unless you supply exemption documentation). You are responsible for taxes, if any, for each NYVIP Unit from the date it is shipped to you. You hereby authorize SGS Testcom, as your agent, to collect the payment for the NYVIP Unit that it receives from you and remit to Seller on your behalf in advance of the shipment of NYVIP Units to you.

4. RESPONSIBILITIES

You agree that under this PO: (a) Seller grants you only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted; (b) you will not bring a legal action concerning the purchase of the NYVIP Unit hereunder more than one (1) year after the cause of action arose, and in no event later than eighteen (18) months after the date of this PO; and (c) neither you, Seller nor SGS Testcom is responsible for failure to fulfill any obligations due to causes beyond our respective control, including for reasons of force majeure (defined below).

You agree: (a) to acquire NYVIP Units only for your own use, and not for remarketing or leasing; (b) that you are responsible for the results obtained from the use of the NYVIP Unit; (c) not to assign, or otherwise transfer, this POA or your rights under it, or delegate your obligations, without SGS Testcom's prior written consent (any attempt to do so is void); (d) to provide SGS Testcom and its agents, representatives, suppliers or subcontractors with sufficient, free, timely and safe access to your facilities so that Seller can fulfill its obligations to you; and (e) to allow Seller and/or SGS Testcom (including, their respective agents, representatives, suppliers and subcontractors) to store your contact information, such as names, phone numbers, and e-mail addresses and to use such information solely as it relates to your purchases hereunder or under any other agreement with SGS Testcom or for purposes of the NYVIP, or to communicate with you regarding the NYVIP Unit and/or the NYVIP. NYVIP Units purchased hereunder may not be exported outside of the United States. You agree that for the duration of your participation in the NYVIP: (a) the NYVIP Unit purchased hereunder shall be used exclusively for NYVIP related business, professional or trade purposes only and for approved functions associated with the NYVIP; and (b) such NYVIP Unit shall not be used for any personal, family or household purposes. You understand that the NYVIP Unit is a **CLOSED SYSTEM** designed to perform **ONLY** NYVIP functions, and is not useful for any other non-NYVIP purposes. You further

agree not to install or have installed by a party other than SGS Testcom (or any of its subcontractors), for the duration of the term of the Contract between SGS Testcom and NYS DMV any feature, device, part, option, alteration, component, software and/or attachment or the like not provided by SGS Testcom, Seller and/or NYS DMV. Any violation of the foregoing may render your Station Participation Agreement (described below in Section 5) null and void in whole or in part.

5. STATION PARTICIPATION AGREEMENT

You understand that the NYVIP Unit is not usable without the Services provided under the Station Participation Agreement (“SPA”), which include, among other Services, connectivity of your NYVIP Unit to the NYVIP network.

6. TRANSFERABILITY

Transfer of the NYVIP Unit to a third party must be in accordance with the terms of the Station Participation Agreement.

7. TITLE AND RISK OF LOSS

Title to the NYVIP Unit purchased hereunder shall transfer to you upon shipment of the NYVIP Units to you from Seller and/or its supplier(s). The risk of loss for the NYVIP Unit shall pass to you on the date on which the NYVIP Unit is delivered to you.

8. PROGRAMS (MACHINE CODE)

For the NYVIP Unit, Programs (Machine Code) are provided. Programs (Machine Code) are copyrighted and **licensed, not sold**, (including, but not limited to the Microsoft XPe® operating system) under the terms of the license agreement(s) provided with the NYVIP Unit. You accept the terms of the licenses for Programs (Machine Code) according to the specified license.

9. WARRANTIES

The NYVIP Unit (excluding consumable accessories and supply items such as paper, toner, printer cartridges, paper and the like) is warranted in accordance with the terms of sellers' respective statements of Limited Warranty accompanying each NYVIP Unit. Warranties for Programs, if any, are in accordance with the warranty terms included in the applicable license agreement.

The warranties will be voided by theft, misuse, negligence, accident, modification, unsuitable physical or operating environment, improper maintenance by you or an unauthorized party, removal or alteration of NYVIP Units or parts identification labels, or failure caused by a product other than those provided by SGS Testcom or its agents. The warranties will also be voided by installation by you or a party other than SGS Testcom (or any of its subcontractors) of any feature, device, part, option, alteration, component, software and/or attachment or the like not provided by SGS Testcom, Seller and/or NYS DMV.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. IN THAT EVENT SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.

There is no warranty that the NYVIP Units will operate in an uninterrupted or error-free manner.

10. PATENTS AND COPYRIGHTS

For purposes of this Section, the term "NYVIP Unit" includes Programs. If a third party claims that a NYVIP Unit infringes that party's patent or copyright, Seller will defend you against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards, provided that you: (a) immediately notify SGS Testcom in writing of the claim (no later than 5 business days after your receipt or knowledge of the claim); (b) allow SGS Testcom and/or Seller to control, the defense and any related settlement negotiations; and (c) fully and promptly cooperate with SGS Testcom and/or Seller in the defense or settlement of the claim. If such a claim is made or appears likely to be made, you agree to immediately notify SGS Testcom and permit SGS Testcom and/or Seller to enable you to continue to use the NYVIP Units, or to modify them, or replace them with ones that are functionally equivalent. If it is determined that none of these alternatives is reasonably available, you agree to return the NYVIP Units to SGS Testcom (or its designee(s)) on SGS Testcom's request. SGS Testcom will then give you a credit equal to your net book value provided you have followed generally-accepted accounting principles. This is SGS Testcom's and Seller's entire obligation to you regarding any claim of infringement.

11. CLAIMS FOR WHICH SGS TESTCOM AND/OR SELLER ARE NOT RESPONSIBLE

SGS Testcom and Seller each have no obligation regarding any claim based on any of the following: (a) anything you provide which is incorporated into a NYVIP Unit; (b) your modification of a NYVIP Unit, or a Program's use in other than the NYVIP Unit and Programs with which it is designed to operate, as described in the NYVIP specifications; (c) the combination, operation, or use of a NYVIP Unit with other NYVIP Units not provided by Seller as a system, or the combination, operation, or use of a NYVIP Unit with any product, data, apparatus, feature, device, part, option, alteration, component, software and/or attachment or the like not provided hereunder in connection with the NYVIP.

12. LIMITATION OF LIABILITY

Circumstances may arise where you may be able to recover damages hereunder. In each such instance, regardless of the basis on which you are entitled to claim damages hereunder (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), SGS Testcom is not liable for more than one hundred dollars (\$100), and Seller only is liable for no more than: (a) the payments made by you hereunder, as set forth above; (b) damages for bodily injury (including death) and damage to real property and tangible personal property; and (c) the amount of any other actual direct damages, up to amount you paid for the NYVIP Units, that is the subject of the claim. This limit also applies to any other sellers or suppliers of NYVIP Units hereunder. It is the maximum for which all SGS Testcom and Seller are collectively responsible.

For purposes of this item, the term "NYVIP Unit" includes Programs. This limit also applies to any of Seller's suppliers, subcontractors and Program developers. It is the maximum for which Seller, its subcontractors and suppliers, Program developers and SGS Testcom are collectively responsible.

13. ITEMS FOR WHICH THERE IS NO LIABILITY

Under no circumstances are SGS Testcom, Seller and Seller's suppliers liable for any of the following: (a) third-party claims against you for damages (other than those under the first two items listed above); (b) loss of, or damage to, your records or data; or (c) special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if they are informed of their possibility. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusion or limitation may not apply to you. Notwithstanding the foregoing, the Station Participation Agreement provides you with certain compensation under circumstances described therein for failure of SGS Testcom or its subcontractors to provide maintenance for the NYVIP Unit according to the terms stated therein.

14. GENERAL

Any terms of this Agreement which by their nature extend beyond the Agreement termination shall remain in effect until fulfilled, and apply to all respective successors and assigns.

All your rights and all of Sellers' and SGS Testcom's obligations hereunder with respect to the NYVIP Units are valid only in the United States. Any PO's for delivery to addresses that are not valid and within the United States are not accepted and shall not be processed.

You consent to the application of the laws of the State of New York to govern, interpret, and enforce all of your rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this PO, without regard to conflict of law principles.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

Removal and disposal of old equipment and all packing materials for the products are your sole responsibility, and you agree to undertake such removal and disposal in compliance with all laws and regulations.

All deliveries of NYVIP Units will be "inside deliveries" and will require acceptance and signoff by your designated site contact(s).

You hereby consent and grant to DMV, SGS Testcom, Seller and/or their respective subcontractors the right and/or license to access your premises or site and to use and/or modify your NYVIP Units and the NYVIP related hardware, software, firmware and other NYVIP products used by you without infringing the ownership or license rights (including patent and copyright) of the providers, suppliers, and/or owners of such NYVIP Units and products.

You shall ensure that your site and/or station environment(s), including the location of the NYVIP Units, meet reasonable safety and serviceability requirements.

The term "force majeure" shall include all acts of God, work stoppages due to labor disputes, strikes or otherwise, fires, explosions, epidemics, riots, acts of war, acts of terrorism, utility failures or outages, rebellion, sabotage, or other catastrophic events.

You shall not have any claim for damages resulting from delays or non-performance caused by force majeure hereunder.

You have reviewed and fully understand this POA and all information provided by you is true and correct. By signing the NYVIP Signature Page, you agree: (a) to the terms and conditions of this POA, (b) that you are responsible for paying for the NYVIP Units hereunder before they will be shipped to you, and (c) that your credit or debit card (if used) information set forth on the NYVIP Payment Authorization Form is accurate, true and complete, and (d) that your signature on the NYVIP Payment Authorization Form confirms the foregoing and constitutes your express authorization that SGS Testcom may debit your card with all amounts due hereunder. The person who signs the NYVIP Signature Page represents and warrants that he/she is duly authorized to sign on your (the Station named on the NYVIP Enrollment Page) behalf.

End of Purchase Order Agreement

Part 3 of 3: - IBM Product Acquisition Agreement

("IBM PAA")

By your signature on the NYVIP Signature Page you hereby (a) accept the terms and conditions in this IBM Product Acquisition Agreement (the "IBM PAA") and (b) acknowledge and agree that (by virtue of your signature on the NYVIP Signature Page) the IBM PAA below is an agreement by and between International Business Machines Corporation and you. Carefully read these terms under which IBM provides Products to you. You accept the terms of this IBM PAA by any of the following:

- a. By your act of ordering the Product,
- b. By your payment for the Product,
- c. By your acceptance of delivery of the Product, and/or
- d. By your use of the Product

"IBM PAA" TERMS AND CONDITIONS

General Provisions

1. DEFINITIONS

- a. **NYVIP Unit** consists of (i) the hardware and software furnished by IBM and (ii) the software image furnished by SGS Testcom.
- b. **Code** is microcode, BIOS, utility programs, device drivers, and diagnostics delivered with the NYVIP Unit.
- c. **Product** is a product and/or a Program sold, licensed or sublicensed hereunder through SGS Testcom under the NYVIP.
- d. **Program** is a computer software program, whether pre-loaded on a NYVIP Unit or provided separately, including related licensed materials such as documentation.

2. AGREEMENT STRUCTURE

This Agreement, including its associated warranty statements and license agreements, is the complete agreement between you and IBM regarding your acquisition of the Products. This Agreement replaces any prior oral or written communications between you and IBM concerning your acquisition of these Products. Any additional or different terms in any order or written communications from you are void.

3. RESPONSIBILITIES

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