Print Form

DEPARTMENT OF CONSUMER AFFAIRS
Bureau of Automotive Repair
STATE OF CALIFORNIA – STATE AND CONSUMER SERVICE – GOVERNOR EDMUND G. BROWN JR.
Audits and Inspections-Fleets
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Rancho Cordova, CA 95670
916.403.0313 Telephone
916.464.3423 Fax
BARFleets@dca.ca.gov Email
www.smogcheck.ca.gov

PRINT FORM

CLEAR FORM

TO: GOVERNMENT FLEET MAINTENANCE FACILITIES

RE: Next Generation Electronic Transmission (NGET)

ATTENTION: Fleet Manager, RME and Shop Supervisors

The California Bureau of Automotive Repair (BAR) has awarded SGS Testcom Inc. the contract to provide the Next Generation Electronic Transmission (NGET) data management services for the California Smog Check Program.

This Package contains all the information you will need to sign-up with SGS Testcom to participate in the California Smog Check Program. Please review the Station Participation Agreement carefully as it contains all of the terms and conditions pertaining to your participation in this program. It also contains complete enrollment instructions.

To enroll, you must completely fill out and return to the Bureau of Automotive Repair, Fleet Operations Unit, the completed and signed Enrollment Form for facility verification. The Enrollment Form will then be forwarded to SGS Testcom to initiate NGET service. SGS Testcom has a full service NGET Help Desk ready to take your questions and assist you in the enrollment process. The NGET Help Desk can be reached toll-free at (866)-9NO-SMOG. (1-866-966-7664)

The SGS Testcom/NGET service will not replace the Annual Reporting Transmittal (form 79-21) requirement. The Annual Reporting Transmittal is mandatory by law, and every agency must continue to submit this report annually on or before December 31, of each year.

Station Participation Agreement "SPA" TERMS AND CONDITIONS

General Provisions

1. Authority

The California Bureau of Automotive Repair ("CA BAR") has entered into a contract with SGS Testcom Inc. (the "State Contract") whereby SGS Testcom Inc. provides to you (also hereinafter referred to as "User") its Next Generation Electronic Transmission System ("NGET System") services (the "Services").

2. Term of Station Participation Agreement

When the SPA starts and ends

This SPA shall commence on the date of execution of the SPA by User however, the actual provision of Services (further defined below) hereunder may not commence until the date CA BAR deems the SGS Testcom Inc. NGET System (the "NGET" System) 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 Inc. for all Services rendered prior to the date of expiration, termination or cancellation):

a. breach or default of this SPA by User;

b. the date of the expiration, termination or cancellation of the State Contract;

c. User terminates its participation in the NGET Program in accordance with the requisite procedures or its participation is terminated by CA BAR or SGS Testcom Inc.; and/or

d. seven (7) years from the date of the State Contract which is October 13, 2011, unless CA BAR extends the State Contract, in which case this SPA between User and SGS Testcom Inc. shall automatically be extended under the extension terms, conditions and rates then approved by CA BAR.

3. Advertising and Promotion

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

4. NGET Program Help Desk – Toll Free 866-9NO-SMOG (866 966-7664)

HELP is only a phone call away

The SGS Testcom Inc. NGET Program Help Desk is designed to assist User with station enrollment, billing, ACH Certificate sales, NGET Program communications, and answering User questions relating to the SGS Testcom Inc.'s Services (further defined below). Help Desk hours are Monday through Friday 7:30 AM to 6 PM (PST), and Saturdays, 8am to 5pm (PST), except for holidays. The hours of the NGET Program Help Desk operations may change from time-to-time with CA BAR approval. Any such changes will be immediately communicated to User.

5. Unauthorized Use

Should any unauthorized person gain access to User's ETS Unit(s), User must notify the SGS Testcom Inc. Help Desk, Tel: 866 - 9NO - SMOG, immediately. User agrees that it will pay for all tests (authorized or not) made by and/or through User's ETS Unit(s).

6. Security

User agrees that it is responsible for any and all ETS Unit(s) and/or NGET Program and/or system access and security controls and tools (such as passwords), and that such controls and tools will not be shared and will be kept secure. Charges relating to User's ETS Unit(s) that are erroneous, fraudulent, and/or unauthorized are the sole responsibility of User and User shall promptly pay all NGET Program Charges to SGS Testcom Inc. as set forth herein.

7. Late Payment

Important payment terms

SGS Testcom Inc. will send User a monthly invoice ("Invoice") for "per test" (defined below) and other related charges. All Invoices are due and payable upon User's receipt of an Invoice. If any amount set forth on an Invoice is not paid within thirty (30) days of the date of the Invoice, such amount shall be considered late, and will be subject to late charges of one and one-half percent (1.5%) per month on all unpaid balances. If User does not pay an Invoice in full within thirty (30) days of the date of the Invoice, SGS Testcom Inc. will send User an initial late payment notice (the "Initial Notice"). If payment is not received by SGS Testcom Inc. within thirty (30) days of the date of the Initial Notice (i.e., within 60 days of the date of the Invoice), SGS Testcom Inc. will send User a second late payment notice (the "Second Notice"). The Second Notice will warn User that deactivation and/or station lockout may occur if payment of the Invoice in full is not immediately received by SGS Testcom Inc. If User does not pay an Invoice in full within ninety (90) days after the date of the Invoice, User and/or User's ETS Unit(s) will receive a disconnect notice ("Disconnect Notice") and User will be immediately disconnected from the NGET System. Except as otherwise required by CA BAR, by law and/or by virtue of SGS Testcom Inc.'s debt collection efforts, User's payment records regarding Invoices shall be kept strictly confidential. Notwithstanding anything to the contrary herein, SGS Testcom Inc. reserves all of its rights and remedies at law and in equity (including, without limitation, the right to engage the services of attorneys and/or collection agencies) with respect to User's overdue accounts.

8. Connection to NGET System

User assumes full responsibility for all charges resulting from User's operation of its ETS Unit(s), User's participation in the NGET Program, and/or User's connection to the NGET System (the "Charges"). User shall, at its sole cost and expense, provide the telephone line(s) connection to the NGET System. Entering into this SPA is not intended to, and does not, affect User's relationship with User's current and/or future telecommunications provider(s).

9. Services

SGS Testcom Inc. "Services" hereunder shall include: (a) providing User with access to the NGET System through User's ETS Unit(s) and the telephone line(s) provided by User, and (b) providing User with limited assistance with station enrollment, billing, ACH Certificate sales, NGET communications and with User's questions through the NGET Program Help Desk.

10. Charges

Charges are "per test" and paid to SGS Testcom Inc. by the User. Users shall be invoiced monthly for inspections they conduct, plus any applicable administrative fees. Billable inspections are:

a. Completed emissions inspections that result in a Vehicle Inspection Report. (VIR)

b. Full inspections, pre-inspections, training mode, and aborted tests that result in the transmission of a test record to the ET System

c. Offline inspections that result in a Vehicle Inspection Report. (VIR)

Per Test Charges may change year to year

Pursuant to the State Contract, the Charges for the first year under the State Contract (**initially, *$1.084 per test***) may be adjusted upward or downward no more frequently than annually in accordance with the State Contract. Notice of a change in the "per test" Charges and the effective date for such change(s) will be provided to User by CA BAR and/or SGS Testcom Inc. no fewer than ten (10) calendar days prior to the effective date of the change(s).

11. Reconnection Fee

If User and/or User's ETS Unit(s) experience station lockout and/or are disconnected from the NGET System, User may request SGS Testcom Inc. to reconnect User and User will have the right to be re-connected to the NGET System on the condition that User pay: (a) all outstanding Invoices (including, without limitation, all unpaid balances, late payment charges, non-sufficient funds ("NSF") charges and all other applicable charges), and (b) a reconnection fee of seventy-five dollars ($75.00).

12. Invoice Dispute

If User disputes any charge in an Invoice, User must notify SGS Testcom Inc. in writing at 3110 Gold Canal Drive, Rancho Cordova, CA 95670 within fifteen (15) days of the date of the Invoice in question, otherwise all Invoices shall be deemed to be correct, accepted by and binding upon User. If User disputes a portion of an Invoice, User must follow the foregoing procedure and must also pay all undisputed portions of an Invoice by the required due date.

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13. Faulty Payment

User agrees to pay SGS Testcom Inc. a twenty-five dollar ($25.00) fee each time a check or other form of payment tendered by User is dishonored due to NSF or otherwise. User will be notified, in writing that a payment was dishonored due to NSF or otherwise. User's failure to pay outstanding amounts owed to SGS Testcom Inc. plus the twenty-five dollar ($25.00) NSF fee per occurrence within fifteen (15) days of the postmark date of the NSF notification may result in lock out or disconnection from the NGET system.

14. ACH Electronic Smog Certificate Purchases

User understands and agrees that the terms of payment for a book of fifty (50) electronic Smog Certificates (the "Certificates") through Automated Clearing House (ACH) debit transaction process (the "ACH Process") are as follows:

- **Debit Amount Authorized**: SGS Testcom Inc., acting, as agent for the California Department of Consumer Affairs ("DCA"), shall facilitate the debit of the User's designated bank account (User's Account") for the exact amount of the electronic billing for Certificates ordered by User.
- **The amount** debited to the User's Account shall be the price for fifty (50) DCA Certificates, which price shall be established by DCA.
- **Date ACH Certificate Fees Due**: For purposes of this SPA and the ordering of electronic Smog Certificates using the ACH Debit Transaction Process through the NGET System, the full amount of fees for the electronic Smog Certificates must be in the User's Account on the day the Smog Certificate order is first placed by User. When the payment due date for electronic Smog Certificates falls on a weekend or holiday, the next business day shall be the payment due date.
- **Proof of Payment**: DCA shall accept as proof of payment for electronic Smog Certificates purchased through ACH Debit Transaction process, information received daily via CA BAR/DCA's Certificate Payment and Reconciliation process.
- **Credit Watch**: If a User is placed on "Credit Watch" by DCA, SGS Testcom Inc. or otherwise due to NSF, a return or otherwise, future Smog Certificate issuance will be delayed five (5) business days, to allow time for the transaction to clear the ACH Process and/or the bank. Credit Watch status will remain in effect for 90 days.
- **Change of Authorization**: Any change in a User's authorized bank and/or account number(s) must be provided to SGS Testcom Inc., by completing and mailing (or faxing) a new Station Enrollment Form, at least 5 business days prior to the change. SGS Testcom will respond by fax within 24 business hours that the form has been received and will fax or phone the User within another 24 business hours that the account information has been updated.

15. Address Change And Transfer Of User Account

User agrees to notify SGS Testcom Inc. in writing immediately if User changes User's billing address, bank and/or account number(s). Changes to User's billing address and ACH information can only be made by User's authorized representative(s), in writing, by completing and submitting a new Enrollment Form to SGS Testcom Inc. at 3110 Gold Canal Drive, Suite A, Rancho Cordova, CA 95670, or by fax to (877) 598-8642. All other changes to User's licensing record must be coordinated and made through the CA BAR Licensing Unit at (916) 255-3145. User's account information will remain as set forth in the SGS Testcom Inc. records until such time as SGS Testcom Inc. receives the appropriate written change information from User's authorized representative(s).

16. CA BAR Administrative Action

User understands and agrees that User is responsible to comply with all Bureau of Automotive Repair mandated requirements for Smog Check Stations. User understands and agrees that CA BAR may lock out and/or direct SGS Testcom Inc. to lock out and/or deny access to the Services and/or User's use of the NGET as a result of failure to maintain all Bureau of Automotive Repair mandated requirements for Smog Check stations and/or pursuant to a disciplinary proceeding or other compulsory legal process User's connection to the NGET System may also be terminated by SGS Testcom Inc. and/or CA BAR upon the sooner of: (a) termination of User's participation in the NGET program, (b) termination and/or material alteration of the NGET System program by CA BAR, or (c) termination or expiration of the State Contract.

17. Limitation of Liability: INDEMNIFICATION OF SGS TESTCOM INC. BY USER

SGS Testcom Inc. is neither an insurer nor a guarantor and disclaims all liability in such capacity. User's seeking a guarantee against loss or damage should obtain appropriate insurance. SGS Testcom Inc. 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 Inc.'s control, including any event of force majeure (defined below) or failure by User to comply with any of its obligations hereunder or failure by any third party to comply with its obligations. The liability of SGS Testcom Inc. in respect of any claim whatsoever (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 Charges paid hereunder by User for the twelve (12) months prior to the date of the claim. SGS Testcom Inc. shall have no liability for any indirect, incidental or consequential damages or loss (including, without limitation, loss of profits, loss of use, and loss of goodwill, economic or special damages). In the event of any claim, User must give written notice to SGS Testcom Inc. within 30 days of discovery of the facts alleged to justify such claim and, in any case, SGS Testcom Inc. 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 Inc. 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 SPA is found by a court of competent jurisdiction to fail of its essential purpose. User shall hold harmless and indemnify SGS Testcom Inc. and its directors, 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 CA BAR and/or User and any of their respective personnel, inspectors, operators, agents, representatives and/or subcontractors, including all legal expenses and related costs, howsoever arising.

18. 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 CALIFORNIA exclusive of any rules with respect to conflicts of laws.

19. 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; war; rebellion; sabotage; or other catastrophic events. Each party shall be responsible for its own costs incurred as a result of a force majeure event. Force majeure shall not cause User to transfer to SGS Testcom Inc. 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; provided, however, that force majeure shall not apply to the payment of any Charges or other money owed under this SPA to SGS Testcom Inc.

20. Severability

If any provision of this SPA or the application of this SPA 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 SPA.

21. Termination for Cause

User understands and agrees that, should User fail to abide by the terms of this SPA, SGS Testcom Inc. shall have the right to terminate its Services hereunder.

22. Entire Agreement

This SPA, which includes all of the terms and conditions hereof, is the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all prior negotiations and prior written or oral agreements between the parties. There are no promises, representations or understandings made in connection with this SPA or contemporaneous with the execution hereof, except as set forth in this SPA.

Retain this copy for your records

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SGS Testcom Inc. Enrollment Form
Government Fleet Maintenance Facility
NEXT GENERATION ELECTRONIC TRANSMISSION (NGET)

For Department Use Only

Facility Number: _____

INSTRUCTIONS:
1. Submit completed form to the Bureau of Automotive Repair at the above address.
2. The monthly invoice for all charges incurred will be sent to the billing contact at the billing address listed below.
3. If you have any questions, call NGET at 1(866) 966-7664.
4. IF ANY INFORMATION IS OMITTED, THIS FORM WILL BE RETURNED TO YOU FOR COMPLETION.

Please type or print legibly

Agency Name:		Bar File Number:	
Division Unit:		Shop Designation:	
Street Address:	City:	State: **CA**	Zip Code:
RME/Shop Supervisor:	Phone Number: ( ) -	FAX Number: ( ) -	
Billing Contact Telephone with Area Code: ( ) -	Billing Contact FAX Number with Area Code: ( ) -		
Billing Contact Name: First	Middle	Last	
Billing Street Address:	City:	State:	Zip Code:
Billing Mailing Address (If different than above):	City:	State:	Zip Code:

List BAR 97 EIS/ETS unit numbers and dedicated modem phone numbers for each analyzer at this facility: *Attach additional sheet if needed*

BAR 97 EIS/ETS Unit Number: _____ Dedicated Telephone Number: ( ) -

BAR 97 EIS/ETS Unit Number: _____ Dedicated Telephone Number: ( ) -

I have reviewed this form and believe all information is true and correct. **By submitting this signed form, I understand that we are responsible for payment of all authorized costs incurred for NGET in accordance with SGS Testcom Inc. Station Participation Agreement "SPA" TERMS AND CONDITIONS.**

Authorized Signature _____ Date _____

Print Name _____ Title _____

INSTRUCTIONS (Continued)

(Please Type or Print Clearly)

BAR FILE NUMBER:	Enter the "G" file number issued to your agency by the BAR. EXAMPLE: GA970000, GB910000, GF950000
AGENCY NAME:	Enter your agency's administrative name (i.e., state of, county of, city of, etc.) EXAMPLE: City of Sacramento
DIVISION / UNIT:	Enter your division or unit within the administrative agency (i.e., police department, fire department, motor pool, general services, transportation, equipment, etc.) EXAMPLE: Police Department
SHOP DESIGNATION:	Enter the shop number or shop name and number (i.e., shop #09 or Florin shop #14) EXAMPLE: Mayhew shop #03
STREET ADDRESS:	Enter the street location address of division/unit shop facility. Do not list a post office box for the street or shop location address.
RME / SUPERVISOR:	Enter name of RME or shop supervisor of the shop facility. Include the telephone number, and the FAX number if available.
BILLING TELEPHONE:	Enter the telephone number and a FAX number of the billing address location.
BILLING CONTACT:	Enter the complete name of the person that will be responsible for the SGS Testcom Inc. billings.
BILLING ADDRESS:	Enter the location address, and a mailing address where the SGS Testcom Inc. billings will be sent.
BAR 97 ETS:	Enter the EIS/ETS unit number from the status page of the emissions analyzer. Include the telephone modem number dedicated for use by the emissions analyzer. (This form maybe duplicated, if necessary, to report additional analyzers).
AUTHORIZATION:	Enter the name and title of the person authorizing the SGS Testcom Inc. billing approval. The original copy of this form must be signed, dated and returned to the Bureau of Automotive Repair.