

State of Washington Motor Vehicle Emissions Testing Program

Authorized Testing Facility Inspection Equipment Agreement

For Workstation Serial Number: _____

This Authorized Testing Facility (ATF) Agreement hereinafter "Agreement") is made this _____ day of _____, 20__, by and between Applus Technologies, Inc., a Delaware corporation with principal offices located at 444 North Michigan Ave., Suite 1110, Chicago, IL 60611 (hereinafter "Applus") and _____, a business authorized by the Washington State Department of Ecology as an Authorized Testing Facility for the state's Motor Vehicle Emissions Testing Program (hereinafter "Authorized Testing Facility" or "ATF").

WHEREAS, Applus is obligated by the State of Washington Contract Number 03910 to: provide testing equipment for sale or lease to the Authorized Testing Facility; and collect and manage test data in a Vehicle Inspection Database (VID) for all the tests conducted by the ATF.

WHEREAS, Authorized Testing Facility wishes to obtain testing equipment required to perform emissions inspections in the Washington Motor Vehicle Emissions Testing Program in accordance with this Agreement.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. DEFINITIONS

- 1.1. For purposes of this Agreement, each of the following terms shall have the meanings set forth below:
- a. "Agreement" shall mean the terms and conditions contained in this document, including any Attachments or Exhibits attached hereto and all specifications and documents made a part of this Agreement or incorporated herein by reference.
 - b. "Authorized Tester (AT)" shall mean a business authorized by Ecology to conduct emission testing other than Applus Technologies, Inc.
 - c. "Database" or "VID" or "HCS" shall mean the central host computer systems, communications devices, and software that Applus shall establish and maintain to collect, store, analyze and report data on the Program.
 - d. "Day" shall mean calendar day unless otherwise stated.
 - e. "Ecology" shall mean the Washington Department of Ecology.
 - f. "Effective Date" shall mean the date on which Applus signs this Agreement, subsequent to signature by Authorized Testing Facility.
 - g. "Expiration Date" shall mean June 30, 2017, the date on which State Contract No. 03910 is scheduled to be completed unless extended or cancelled.

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- h. "Inspection" shall mean the emissions inspection of a motor vehicle conducted for compliance with the Washington Motor Vehicle Emissions Testing Program.
- i. "Inspection Station" shall mean the facility or business location of an Authorized Testing Facility that has executed an Authorized Testing Facility Inspection Equipment Agreement with Applus and secured the equipment and trained inspectors necessary to perform inspections in the State of Washington Motor Vehicle Emissions Testing Program.
- j. "Operating Manual" shall mean the handbook or reference guide for the safe and proper use and operation of the testing equipment.
- k. "Option Term" shall mean the term extension beyond the Initial Term.
- l. "Contract" shall mean Contract No. 03910 between Applus and The State of Washington, including any amendments and/or attachments thereto.
- m. "Program" shall mean the Washington Motor Vehicle Emissions Testing Services Program established by the Washington Department of Ecology.
- n. "State" shall mean the State of Washington and its entities, including the Washington Department of Ecology.
- o. "VID" shall mean the Vehicle Inspection Database.
- p. "Workstation" or "Equipment" or "Analyzer" shall mean the complete set of hardware, software and accessories approved by the Washington Department of Ecology to conduct vehicle emissions testing in the State of Washington.

2. CONTRACT DOCUMENTS

- 2.1. The following documents comprise this Authorized Testing Facility Inspection Equipment Agreement:
 - a. Contract No. 03910, including any amendments, schedules, attachments, references, plans and specifications;
 - b. This Agreement, including any attachments and appendices; and
 - c. Any other contract documents which are incorporated herein by reference and made a part hereof.
- 2.2. In the event of any conflict between the provisions of the foregoing documents, the conflict shall be resolved by giving priority to the documents according to the order set forth in Section 2.1 above.

3. SCOPE

- 3.1 This agreement provides for Applus delivery, installation and maintenance of motor vehicle emissions testing equipment approved by the Washington State Department of Ecology for use in the Washington Motor Vehicle Emissions Testing Program.
- 3.2 This agreement establishes the duties and responsibilities of both Applus and the Authorized Testing Facility as related to said equipment, including payment terms.

4. RESPONSIBILITIES OF APPLUS

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- 4.1 **Applus Personnel.** In the design, development and supply of the Workstation, Applus, at its sole discretion, shall utilize any individuals whom Applus believes to possess proper experience and credentials necessary to develop, build and deliver the Workstation. Applus shall provide technical on-site personnel as needed to correct material defects in Applus' design, materials or workmanship.
- 4.2 **Provision of Equipment.** Applus shall produce, deliver and install a Workstation for use in the State of Washington Motor Vehicle Emissions Testing Program, at the physical address and site specified by the Ecology-approved Authorized Testing Facility on their Authorized Testing Facility Enrollment Form, incorporated herein by reference. The workstation configuration will be determined by the testing equipment selected by the ATF on their enrollment form.
- 4.3 **Operating Manual.** Applus shall provide Authorized Testing Facility with an electronic copy of the Operating Manual, unless Authorized Testing Facility requests a printed version. Applus may, from time to time, update the Operating Manual by issuing and delivering replacement and/or additional pages.
- 4.4 **Equipment Warranty Parts Replacement and On-Site Service.** Applus will provide maintenance and repairs of the Workstation (including parts and labor) that are not required to be performed by Authorized Testing Facility as provided herein. Upon receiving a service call from Authorized Testing Facility, Applus will determine the nature of the problem and, at its sole discretion, choose the adequate support, which will include one or more of the following: (i) providing telephone support from Applus; (ii) sending a replacement part, and/or (iii) completing an on - site visit by an Applus Field Service Representative. Said support will be provided within an average of 8 business hours after the call is received by Applus. The Applus help desk will be available and on - site service visits will be completed during business hours. Business hours are defined as Monday through Friday from 8:00 a.m. until 5:00 p.m. Pacific Time, except federal and state holidays, as applicable.
- 4.5 **Limitation of Service Requirement.** Applus will provide warranty service according to the provisions of this Section 4.5. Applus will have no obligation to provide services under this Agreement if the request for service arises as a result of:
- a. Deterioration due to adverse environmental conditions during use or storage of Equipment
 - b. Any system malfunctions due to capacity or inadequate quality of power source
 - c. Fault or neglect of the Equipment user, Authorized Testing Facility owner, employees or representative(s) besides normal wear and tear (i.e. Authorized Testing Facility abuse)
 - d. Any unauthorized repair, modification or tamper to the Equipment
 - e. Any internet or networking use of the Equipment
 - f. Any non - compliance with all obligations of this Agreement
 - g. Any accident or catastrophic event
 - h. Any use of special attachments to the Equipment not provided or authorized by Applus
 - i. Improper use or misuse of the analyzer
 - j. Any software or hardware installed or connected with the Equipment that is not authorized in writing by Applus

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Services resulting from any of the events listed above shall not be subject to the Equipment warranty and shall be billed to the Authorized Testing Facility at the rate of reasonable parts and labor. The labor rate will be \$75.00 per hour. Parts prices shall be based on Applus' most recent Equipment spares price list.

4.6 **Consumables and Non-Warranty Parts.** Authorized Testing Facility acknowledges that this Agreement does NOT provide for the free supply of consumables or non-warranty parts/components, including but not limited to the following (see Attachment C for pricing):

- a. Bar Code Scanner Cable
- b. Bar Code Scanner Extension Cable
- c. Cabinet Air Filter
- d. Calibration Gas High
- e. Calibration Gas Low
- f. Cradle Point
- g. Filter Bowl (Large)
- h. Filter Bowl (Large) - Filter Media
- i. Filter Bowl (Small)
- j. Filter Bowl (Small) - Filter Media
- k. Inductive RPM Pick-Up
- l. In-Line Filters
- m. Keyboard
- n. Keyboard Cover
- o. Leak Check Caps
- p. Monitor Swivel Mount
- q. Non-Contact Extension 12V Battery Clamp
- r. Non-Contact Tachometer Pick-Up 12V Cable
- s. OBD Cable
- t. O2 Sensor
- u. Opacity Meter Cable
- v. Opacity Meter Calibration Filter
- w. Opacity Meter Extension Pole
- x. Printer Drum
- y. Printer Toner
- z. Sample House and Probe (Single and Dual)
- aa. Zero Air

4.7 **Equipment/Workstation Software.** Applus may periodically develop and install software upgrades and/or updates on the Workstation which may change the operation of the Workstation and/or the VID. Such updates may be downloaded by Applus remotely or installed onto the Workstation directly upon request by Applus or by Applus technicians. Except in the case of an emergency update, Applus shall notify the Authorized Testing Facility at least twenty four (24) hours in advance of any upgrade or update that would affect the Inspector's operation of the Workstation. For purposes of this Agreement, an "emergency update" is defined as an instance where the proper operation of the VID is at risk, the ability of the Authorized Testing Facility to conduct valid Inspections is threatened or at Ecology's discretion and direction.

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- 4.8 **Workstation Lockouts.** Applus may lock out the Workstation from testing at any time in Applus' sole discretion: (a) for the security of the Program; (b) to ensure the accuracy of inspections, optimum operation of the Program and/or compliance with this Agreement; (c) to address data transmission problems; (d) for Authorized Testing Facility's failure to pay required Program fees; (e) or at the direction of Ecology.

5. RESPONSIBILITIES OF AUTHORIZED TESTING FACILITY

- 5.1 Authorized Testing Facility will:

Purchase Workstation Lease the Workstation

If Authorized Testing Facility is leasing the Workstation, Authorized Testing Facility agrees to abide by the terms and conditions set out in Attachment D.

- 5.2 **Agreement and Site Preparation.** Authorized Testing Facility shall provide to Applus a physical address for the site location of the testing equipment or a vehicle in which equipment is to be installed. Authorized Testing Facility shall comply with all Applus-supplied site preparation guidelines and installation requirements, and the provisions of this Agreement. Further, Authorized Testing Facility shall be responsible for all necessary modifications to the site and all costs associated with such modifications, and shall ensure that all such modifications meet all applicable state and local zoning regulations and building and electrical codes. Authorized Testing Facility acknowledges that time is of the essence for Applus to meet its obligations to the State, and Authorized Testing Facility further acknowledges that in order for the Program to begin as scheduled, it is critical that Authorized Testing Facility timely prepare the site. If Authorized Testing Facility does not make all necessary site modifications in a timely and proper manner, Applus, in its sole and absolute discretion, may: (a) delay the installation of the Workstation, (b) complete the necessary work at Authorized Testing Facility's expense, or (c) terminate this Agreement. To ensure that the Authorized Testing Facility is able to perform Inspections by the agreed upon delivery date, Authorized Testing Facility shall:
- a. Permit Applus' service personnel to have full and free access to the Equipment in order to provide the services described in this Agreement
 - b. Provide adequate working space and all heat, light, ventilation, electric current and other facilities reasonably required by Applus' service personnel to meet its obligations hereunder
 - c. Provide electrical power, which is free from electrical noise and sufficient to meet the requirements of the Equipment (115 volt AC 20 amp outlet for Cabinet)
 - d. Promptly notify Applus in writing of any change in the location of the Equipment covered in this Agreement
 - e. Provide and pay for dedicated line for the DSL and/or cable modems, including cabling and other ancillary components required to establish connectivity (the line for the modem must be located within five (5) feet of Workstation) (See also Section 5.6 below). Provide an executed Landlord Waiver Form, if property is not owned by the Authorized Testing Facility

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- f. Obtain all applicable permits, consents and approvals prior to installation of the emissions testing equipment, and pay all costs and fees to obtain such applicable permits, consents and approvals
 - g. Provide a clean, clear area for equipment installation (Applus will not move or relocate existing equipment or obstructions)
 - h. Assume liability for all costs associated with unforeseen obstacles, obstructions and/or issues
 - i. Authorized Testing Facility shall provide Applus financial and other Authorized Testing Facility information to allow a credit check to be conducted by Applus to determine the creditworthiness of the Authorized Testing Facility prior to the delivery of any Workstation. Applus shall have sole discretion to determine the Authorized Testing Facility's creditworthiness and provide a written explanation to any Authorized Testing Facility rejected for contractor-provided Workstations as a result of information provided to Applus as a result of the credit check.
- 5.3 **Delivery and Installation.** Applus shall deliver and install the Equipment at the Authorized Testing Facility in accordance with this Agreement and at the direction of Ecology. If Authorized Testing Facility notifies Applus that the site was ready for Equipment installation, and Applus' installation crew is unable to fully install the Workstation on the first visit due to incomplete or improper site modifications, Applus may charge the Authorized Testing Facility at current rates for the return of the installation crew for completion of the Equipment installation. Upon delivery, Authorized Testing Facility must notify Applus within twenty-four (24) hours upon discovery of any inoperable or damaged Workstation or component thereof. Authorized Testing Facility shall not move the Workstation or any of its components from the site without Applus' prior written consent and instructions.
- 5.4 **Compliance with Operating Manual.** Authorized Testing Facility's use of the Workstation must comply with the Workstation operating manual, which shall be provided to the Authorized Testing Facility along with the Workstation, and this Agreement. Authorized Testing Facility shall be responsible for ensuring the operating manual is current at all times. The operating manual shall be considered a confidential document, and shall be handled accordingly, provided however, that all Inspectors, managers and Authorized Testing Facility service personnel have access to the manual. All Authorized Testing Facility personnel must comply with all requirements and procedures specified in the operating manual, including but not limited to maintenance and calibration procedures. The operating manual and its contents shall remain the property of Applus. Any violation of the operating manual may result in Applus' lockout of the Workstation, removal of the Workstation, and/or termination of this Agreement.
- 5.5 **Compliance with Laws.** Authorized Testing Facility's use of the Workstation must comply with all applicable local, state, and federal laws, rules and regulations (collectively, "Laws"). Authorized Testing Facility shall maintain in good standing at all times during the Term all certificates, permits and licenses necessary to conduct its operations. Any violation of any laws may result in Applus' lockout of the Workstation.
- 5.6 **Safe Operation.** Authorized Testing Facility and its employees shall operate the Equipment for Inspections and/or for vehicle repair diagnostic procedures only, in accordance with the

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operating manual, all other instructions provided by Applus and all Laws. Authorized Testing Facility shall ensure that the Workstation is used at such times and in such a manner as to ensure the safety of the public and Authorized Testing Facility's personnel. Authorized Testing Facility shall immediately suspend use of the Workstation and so notify Applus' Program Manager in writing upon any indication that a Workstation malfunction may affect the safety of the public or Authorized Testing Facility's personnel, or the accuracy of Inspection results.

- 5.7 **Telecommunications.** Authorized Testing Facility shall provide a high speed internet connection to be dedicated solely to the Workstation for purposes of transferring data to and from the VID. Authorized Testing Facility shall provide this connection, as well as necessary cables and cords, in advance of Workstation installation and shall maintain availability of the dedicated connection at all times emissions inspections are performed at the Authorized Testing Facility's place of business. The connection, at a minimum, shall allow real-time communication between the Workstation and the VID. All costs associated with the installation, maintenance and use of the dedicated connection are the responsibility of the Authorized Testing Facility.
- 5.8 **License.** During the Term, Applus shall grant to Authorized Testing Facility a limited, non-exclusive, and royalty-free license to use the Workstation software solely in connection with Authorized Testing Facility's rights and obligations hereunder. Except as otherwise provided herein, this license shall automatically terminate upon the termination or expiration of this Agreement. License of the software hereunder shall be terminable by Applus in the event of Authorized Testing Facility's material breach of such license.
- 5.9 **Limitations.** Authorized Testing Facility shall, during the term of this Agreement and after the expiration or termination thereof, ensure compliance with the following obligations:
- a. Authorized Testing Facility shall not reverse engineer, decompile or disassemble any of the software, or transmit or otherwise transfer any of the Software to any third party.
 - b. Should copies of any of the software bear Applus' and/or its suppliers' copyright notice(s) and such other proprietary legends as may appear on the software upon its receipt by Authorized Testing Facility, Authorized Testing Facility shall not remove any such notices or legends.
 - c. Authorized Testing Facility shall treat all software as confidential and shall not use, copy, disclose, or permit any Authorized Testing Facility personnel to use, copy or disclose such software for any purpose that is not specifically authorized hereunder. Any third party desiring to use the software may do so only with specific, prior consent of Applus and a mutual written agreement between such third party and Applus.
 - d. Authorized Testing Facility shall not install or download onto the Workstation ANY software, third-party or otherwise, including screen savers, except at Applus' direction or with Applus' prior express written consent.
- 5.10 **Authorized Testing Facility Access for Maintenance and Service.** During the hours specified herein, Authorized Testing Facility agrees to allow the entry of Applus personnel into the Authorized Testing Facility to conduct maintenance, repairs, updates or other necessary acts related to the Equipment.

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5.11 **Abuse.** Applus' maintenance obligations shall not include, and Authorized Testing Facility shall be responsible for, maintenance and repairs required as a result of any damage caused by Authorized Testing Facility's abuse, misuse, or negligence, neglect or as a result of using any parts or supplies not provided or approved in writing by Applus. Authorized Testing Facility will pay Applus for any such maintenance and repairs on a time and materials basis at Applus' then-current rates.

6. INSURANCE

6.1. **Garage Liability/Garage Keepers' Insurance.** All Authorized Testing Facilities, at their sole expense, shall secure and keep in full force and effect at all times during the Term, garage liability/garage keepers' insurance coverage in accordance with applicable local and state regulations. If the State raises statutory minimum limits of liability from those required hereunder, then Authorized Testing Facility will be required to amend its insurance coverage accordingly. If the regulatory governmental bodies in the State of Washington revise statutory maximum limits of liability from those currently in effect, Authorized Testing Facility shall amend all insurance coverage accordingly. The Authorized Testing Facility must deliver the certificate of insurance for this coverage to Applus prior to final execution of this Agreement by Authorized Testing Facility and prior to delivery of the Workstation.

6.2. **Loss.** Authorized Testing Facility shall be responsible for any loss, theft, destruction of, or damage to the Workstation (collectively, "Loss") resulting from any cause, including but not limited to any accident, vandalism, natural calamity or Authorized Testing Facility's negligence, regardless of insurance coverage, for so long as the Workstation is in Authorized Testing Facility's possession. Authorized Testing Facility shall notify Applus' Program Manager in writing within twenty-four (24) hours of any Loss. At Applus' sole discretion, Authorized Testing Facility will either: (a) pay for the repair of the Workstation so that it is in good condition and working order and conforms to Ecology's requirements; (b) pay Applus the replacement cost of the Workstation (if leased); or (c) pay the remainder of the balance on the original term of this Agreement and take ownership of the Workstation in its present condition (if leased).

7. COMPENSATIONS, FEES AND PAYMENT TERMS

7.1. **Collecting Fees from Authorized Testing Facilities.** Authorized Testing Facilities will pay the following fees to Applus:

- a. An equipment deposit of \$5,000 if leasing the equipment, or \$2,500 if purchasing the equipment, to be held as a credit toward the equipment charge per test, as set forth below. If an ATF chooses to terminate this Agreement before June 30, 2017, and the full deposit has not been used, a prorated portion of the unused deposit shall be returned to the ATF less any portion of the deposit withheld by Applus as compensation for damage to the equipment determined by Applus, to exceed normal wear and tear, and any outstanding balances owed to Applus.
- b. Payment for the testing equipment as elected by the ATF in Attachment A and Attachment D, if applicable, of this agreement.
- c. An equipment installation charge of \$200.00.

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- d. A training fee of \$200.00 per site for the first two (2) hours, and \$75.00 per hour for each hour thereafter up to an eight (8) hour day, when additional training is required beyond that provided during the initial equipment installation. The training must be scheduled in advance with Applus.
 - e. For each test:
 - I. A \$3.18 fee due to the State for each test conducted at an ATF;
 - II. An equipment charge per test of \$10.00 for each test conducted at the ATF to cover any needed upgrade to, replacement of and repairs to (not including the repair or replacement costs of damaged equipment) the testing equipment; and
 - III. A transaction fee of \$2.00 for each test conducted at the ATF.
- 7.2. **Credits to Authorized Testing Facilities.** Applus will apply a \$40.00 a day credit to the ATF's account whenever the ATF is unable to conduct a test due to:
- a. A delay in equipment installation beyond 30 days after the ATF has fully executed this Agreement; whichever is later; or
 - b. Applus' failure to repair or restore the ATF's Workstation(s) to working order within two business days following ATF's request for service, as long as such request is submitted during Applus' office hours (8 a.m. to 5 p.m. Monday through Friday) and when such delay is not attributable to ATF's failure to abide by the terms and conditions set out in this Agreement. For example, if ATF submits a request for service to Applus Monday, the credit is due to the ATF if the ATF is unable to conduct a test by 8 a.m. Thursday. State and local government agencies' Workstations must be returned to proper working order by Applus within 4 business days following such state and/or local government agency's request for service. In this case for example, if Applus is notified on Monday the credit is due the fleet if they are unable to test by 8 a.m. by the following Monday.
- 7.3. **Payment Terms.** Authorized Testing Facility shall pay the fees specified herein using Automated Clearinghouse payments. Authorized Testing Facility shall establish at a U.S. bank or financial institution of its choice an account for automatic payment of the fees, and shall provide written authorization to Applus' financial institution to debit such account. Authorized Testing Facility shall maintain in its account sufficient funds to cover the cost of all fees. Authorized Testing Facility's account shall be electronically debited for all fees, either on the first day of each month or immediately upon Applus receipt of Authorized Testing Facility's order, as applicable. In the event Authorized Testing Facility's account does not contain sufficient funds to pay for the fees required or ordered, the transaction will be denied and Applus will not issue any Test Authorizations to Authorized Testing Facility until all outstanding balances (including any late fees) due under this Agreement are paid in full.
- 7.4. **Taxes.** Authorized Testing Facility shall be responsible for payment of all applicable fees, assessments, charges, and taxes (including without limitation: sales, use, gross receipts, excise, real property and personal property taxes), whether municipal, State, or federal, and all penalties and interest with respect thereto, related to Authorized Testing Facility's possession and use of the Workstation and operation of its business.
- 7.5. **Reconciliation.** Applus shall account for the number of Test Authorizations that Authorized Testing Facility purchases and shall provide Authorized Testing Facility upon its request, but no

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more frequently than once a month, with a reconciliation showing the number of Test Authorizations purchased, used and outstanding. Authorized Testing Facilities will also have access to this data through a secure web site.

8. TITLE

- 8.1. **Workstation.** Authorized Testing Facility shall acquire all title and interest in the Workstation upon full payment of the cost of the Workstation to Applus.
- 8.2. **Inspection Software.** Applus shall be the owner of and shall hold title to the Workstation software. Authorized Testing Facility shall have a limited, non-exclusive, royalty-free license to use the non-hardware items of the Workstation (its software, documentation and results) for vehicle emissions testing in the State of Washington.
- 8.3. **Intellectual Property.** Applus shall have sole ownership of the intellectual property associated with the inspection Equipment including know-how, trade secrets, patents, copyrights, software and source code. Upon installation of the Workstation, Authorized Testing Facility shall be granted a limited, non-exclusive, royalty-free license to use the intellectual property associated with the Workstation for the purpose of performing vehicle emissions testing. Upon completion of the Agreement term as described in Section 15.8 excluding any extensions, provided the Authorized Testing Facility has paid to Applus all Test Authorization fees, Usage Fees and other fees due hereunder, Applus shall convey or cause to be conveyed, title to a Workstation to the Authorized Testing Facility together with a non-exclusive license to use the software installed in the Workstation in the enhanced Motor Vehicle Emissions Testing Program, and upon termination of such Program, for use in diagnostic repairs. Such licensed software shall not be reproduced, decompiled, reverse engineered, modified, or copied without the explicit written authorization from Applus or used for any purpose inconsistent with this Agreement.

9. DATA OWNERSHIP

- 9.1. **Data Ownership.** Ecology shall have and maintain ownership of all emissions test and vehicle repair data and results. In addition to the obligations set forth herein, Authorized Testing Facility may not use, for any purpose other than that which is permitted hereunder, any information in connection with the Program, including but not limited to: motorist information, emissions test and vehicle repair data and results, and any Confidential Information as hereinafter defined. In the event of a breach by Authorized Testing Facility of its obligations hereunder, Authorized Testing Facility shall hold harmless and indemnify Applus, Ecology and/or third parties for damages resulting from such breach. In addition, Authorized Testing Facility may be liable for damages under any agreements it may have with Ecology and/or other government entities.

10. CONFIDENTIALITY

- 10.1. **Confidential Information.** Applus and Authorized Testing Facility recognize that it may be necessary to exchange certain confidential information during the course of this agreement. For purposes of this Agreement, the term "Confidential Information" shall include without limitation

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any and all information about the program, business plans, research and development projects, product formulae, processes, inventions, designs, discoveries, know-how, sales statistics, marketing surveys and plans, costs, profit or loss, prices and discount structures, and any and all information which Applus or its affiliates treat as confidential, and which is disseminated to Authorized Testing Facility in connection with this Agreement and which is not readily available to persons not connected with Applus. All such information shall be identified and treated as confidential by the disclosing party ("Owner").

The recipient ("Recipient") of confidential information shall exercise reasonable care to prevent its disclosure to any third party, and shall limit internal dissemination of confidential information within its own organization to individuals whose duties justify the need to know such information.

Authorized Testing Facility shall not release or disclose to any member of the public, press, business entity or any official body or any third party, unless Applus provides prior written consent permitting such release or disclosure: (i) any information concerning the services provided pursuant to the Agreement or any part hereof; or (ii) all data provided to Authorized Testing Facility by Applus or developed internally by Authorized Testing Facility with regard to the program, including, but not limited to: all files, records, documents or other information as designated, whether prepared by Applus or others, which may come into Authorized Testing Facility's possession during the term of this Agreement. Authorized Testing Facility shall forever keep all such information confidential, except where disclosure of such information by Authorized Testing Facility is required by law, rule or regulation and such disclosure will be limited to that actually so required. Where such disclosure is required, Authorized Testing Facility will provide advance notice to Applus of the need for the disclosure. Further, Authorized Testing Facility and its agents shall not disclose any information in violation of any data access agreement entered into with any State entity, including but not limited to the Driver Privacy Protection Act, 18 U.S.C. 2721, or any other applicable state laws and shall not market any data or information with respect to the program whether or not obtained as a result of the performance of their responsibilities hereunder.

The Recipient of Confidential Information shall return to Owner immediately upon request and, in any event, upon the expiration or early termination of this Agreement, all documents and tangible items which belong to Owner or which contain or refer to any Confidential Information and which are in the Recipient's possession or under its control.

The Recipient of confidential information shall be under no obligation of non-disclosure with respect to information:

- a. Which is available to the general public at the time of disclosure,
- b. Which is obtained by the Recipient from a source other than the Owner,
- c. Which is known to the Recipient when received, or thereafter is developed independently by the Recipient, or
- d. Information that was disclosed by the owner to a third party, excluding Recipient's affiliates and third parties with whom recipient has similar confidentiality agreements.

11. TERMINATION

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- 11.1. **Failure to Perform and Notice to Cure.** In the event that Authorized Testing Facility fails to perform its obligations hereunder or materially breaches any term or condition of this Agreement, Applus may issue a written notice of default and provide a period of time, (not less than 30 days) within which Authorized Testing Facility shall have the opportunity to cure. The amount of time allowed for cure shall not diminish or eliminate Authorized Testing Facility's liability for any other damages. Applus shall not be required to allow Authorized Testing Facility to cure defects if the opportunity to cure is not feasible as reasonably determined by Applus. Applus may terminate this Agreement for nonperformance, breach or default without allowing the opportunity to cure by Authorized Testing Facility if directed to do so by Ecology.
- 11.2. **Termination for Non-Payment.** Applus may terminate this contract in whole or in part for Authorized Testing Facility's breach of its payment obligations to Applus only after giving Authorized Testing Facility written notice of its intent to do so, which notice shall set forth in details any and all amounts claimed to be due and owing from Authorized Testing Facility, and only if Authorized Testing Facility fails to pay amounts due and owing to Applus within a thirty (30) day cure period to pay any outstanding amounts. Said cure period shall begin on the date notice is received by Authorized Testing Facility.
- 11.3. **Termination for Default.** If Authorized Testing Facility fails to perform its obligations hereunder and fails to cure within the period specified by Applus, Applus may, in lieu of or in addition to the remedies provided herein, terminate this Agreement and demand the immediate return of any materials, implements, equipment, appliances or tools furnished by or belonging to Applus.
- 11.4. **Default.** Default, or a breach of a term or condition of this Agreement shall mean any one or more of the following events: (1) Authorized Testing Facility fails to perform the services by the date required or by a later date as may be agreed to in a written amendment to the Agreement signed by Applus; (2) Authorized Testing Facility breaches any warranty or fails to perform or comply with any term or provision in the Agreement; (3) the consistent and regular non-performance of Authorized Testing Facility hereunder; (4) Authorized Testing Facility makes any general assignment for the benefit of creditors; (5) Authorized Testing Facility becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (6) Authorized Testing Facility becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors; (7) any receiver, trustee or similar official is appointed for Authorized Testing Facility; (8) Authorized Testing Facility is determined to be in violation of federal, state, or local laws or regulations and that such determination, in Applus' reasonable opinion renders Authorized Testing Facility unable to perform any of its obligations hereunder.
- 11.5. **Procedure for Termination.** In the event of termination of this Agreement by Applus, Applus' authorized representative shall deliver to Authorized Testing Facility a "Notice of Termination" specifying the extent of termination and the effective date. Upon receipt of a Notice of Termination and except as otherwise directed by Applus' authorized representative, Authorized Testing Facility shall immediately:
- a. Stop all work as specified in the Notice of Termination;

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- b. Place no further subcontracts or orders for materials, service or facilities related to Authorized Testing Facility's performance of its obligations hereunder;
- c. Complete performance of the work or portions thereof not terminated in accordance with this Agreement;
- d. Take any action that may be reasonably necessary, or that Applus' authorized representative may reasonably direct for the protection and preservation of the property referenced herein that is in the possession of Authorized Testing Facility and in which Applus has or may acquire an interest;
- e. Submit complete termination inventory schedules no later than thirty (30) days from the effective date of termination, unless extended in writing by Applus upon written request of Authorized Testing Facility within this thirty (30) day period; and
- f. Allow Applus to access Authorized Testing Facility's facility for retrieval of the Workstation.

12. FORCE MAJEURE

- 12.1. **Force Majeure.** Except for payment of sums due, neither party shall be liable to the other or deemed in default hereunder if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" for purposes of this Agreement means an unexpected occurrence that is beyond the control of the affected party and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, extreme weather conditions, epidemics or other similar occurrences.

If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement.

Applus reserves the right to cancel the Agreement and suspend the work hereunder during the time of force majeure, and Authorized Testing Facility shall have no recourse against Applus. Applus agrees to exercise such right only in the event that Ecology requires Applus to do so.

A breach by the Authorized Testing Facility, or a subcontractor or employee of Authorized Testing Facility shall not be an event of force majeure for purposes of this Agreement.

13. INDEMNIFICATION

- 13.1. **Indemnity.** To the fullest extent permitted by law, Authorized Testing Facility shall indemnify and hold harmless the State (including its officers, agents, officials and employees), and Applus (including its officers, employees, affiliates, parents, subsidiaries and related corporations) from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of Authorized Testing Facility's work provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or

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death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, where arising out of Authorized Testing Facility's performance of this Agreement, or alleged to arise out of the performance of this Agreement, in whole or in part by any act or omission of Authorized Testing Facility or anyone directly or indirectly employed by Authorized Testing Facility. Such obligation shall not be construed to negate or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

- 13.2. **Additional Indemnification.** Authorized Testing Facility shall indemnify, defend and hold harmless the state of Washington (including its officers, agents, officials and employees) and Applus (including its officer, employees, affiliates, parents, subsidiaries and related corporations) from and against any and all claims, demands, suits, actions, expenses, judgments, losses and liabilities, including fines and penalties, costs and attorney, consultant and expert fees arising out of Authorized Testing Facility's performance of this Agreement, including those arising out of injury to or death of Authorized Testing Facility's employees, subcontractors, employees of the State of Washington, property, or a member of the general public, whether arising before, during, or after completion of Authorized Testing Facility's services hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence of Authorized Testing Facility or its employees, agents, subcontractors or a member of the general public, provided that the claim, demand, suit, action, expense, judgment, loss or liability is alleged to arise out of Authorized Testing Facility's performance of this Agreement.
- 13.3. **Duty to Defend.** Authorized Testing Facility shall: (i) at its own cost, expense and risk, appear and defend all claims defined in this Section that are brought or instituted by third persons, including, but not limited to, governmental, state or local agencies, or employees of Authorized Testing Facility, against Applus or Ecology, or the agents or employees thereof; (ii) pay and satisfy any judgment or decree that may be rendered against Applus or the State of Washington or the agents or employees thereof arising out of any such claim; and (iii) reimburse Applus or Ecology or their agents or employees for any and all legal expenses incurred in connection herewith or in enforcing the indemnity granted in this Section.
- 13.4. **Intellectual Property.** Authorized Testing Facility, at its own expense, will defend any claim or suit which may be brought against Ecology, the State or Applus for the infringement of United States patents or copyrights arising from Authorized Testing Facility's performance of its obligations hereunder, Applus', Ecology's or the State's use of any equipment, materials, or information prepared or developed in connection with performance of this Agreement and in any suit will satisfy any final judgment for infringement. Applus will give Authorized Testing Facility prompt written notice of any such claim or suit and full right and opportunity to conduct the defense thereof, together with full information and all reasonable cooperation.
- 13.5. **Independence from Insurance.** Authorized Testing Facility's indemnity obligations remain independent from and not limited in any way by the insurance coverage requirements set out herein. Nothing in this Section is intended to prejudice Authorized Testing Facility's right to file counterclaims, third-party claims or cross claims, as permitted by law.

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14. DISPUTE RESOLUTION

- 14.1. **Resolution Process.** In the event of a dispute as to the interpretation of this Agreement or either party's performance of its obligations, the dispute shall first be referred to the primary contact person designated for each of the parties. If they are unable to resolve the dispute within ten (10) days of referral, then the dispute shall be referred to a panel of two (2), one of who shall be from the emissions inspection industry and one from Applus. The referral shall be in writing and shall contain a description of the dispute. The panel shall attempt to convene within five (5) business days of the submission by the submitting party at such location in the State as the parties may agree for the purpose of hearing the dispute, and which shall deliberate on the dispute and resolution on a continuous basis for a period of at least five (5) days, or as mutually agreed, unless the panel resolves the dispute earlier. Any dispute arising out of or related to this Agreement that cannot be resolved by negotiation shall be settled by binding arbitration in the State, in accordance with and subject to the Commercial Arbitration Rules of the American Arbitration Association then applicable (the "Rules"). A panel of three arbitrators will be selected in accordance with the Rules and the arbitrators will allow such discovery as is appropriate and consistent with the purposes of arbitration in accomplishing fair, speedy, and cost-effective resolution of disputes. The arbitrators will reference the Federal Rules of Evidence and the Federal Rules of Civil Procedure, then in effect, in setting the scope of discovery. The arbitrators' award may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly. All costs and expenses of the arbitration, including actual attorneys' fees, shall be allocated between the parties, in the arbitrators' discretion. The arbitrators shall have no power to award any punitive damages or exemplary damages or to ignore or vary the terms of this Agreement and shall be bound by controlling law. The dispute resolution process set forth in this Article shall be the sole and exclusive means for resolving any controversy provided, however, that either party may seek a preliminary injunction, attachments, or other provisional judicial equitable relief, if such action is necessary to avoid irreparable damage or to preserve the status quo.
- 14.2. **Law and Effect.** This Agreement shall be governed by the laws of the State of Washington. Authorized Testing Facility hereby agrees to accept jurisdiction of and service of process in the State of Washington. In the event of any dispute involving this Agreement or Authorized Testing Facility's work performed or to be performed, or any claims by Authorized Testing Facility, Authorized Testing Facility shall continue to perform its work without interruption, deficiency or delay in a diligent manner.
- 14.3. **Attorney's Fees.** Should Applus or Authorized Testing Facility employ an attorney to initiate suit to enforce any provisions hereof, to protect its interest in any matter arising hereunder or to collect damages for the breach of this Agreement, then all costs, expenses expended or incurred by the prevailing party in connection therewith, including reasonable attorney's fees, shall be paid by the non-prevailing party.

15. MISCELLANEOUS PROVISIONS

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- 15.1. **Further Assurances.** Upon request by Applus, Authorized Testing Facility shall execute and deliver such other documents and take such other actions as may be necessary to effect the terms of this Agreement.

- 15.2. **No Assignment.** Authorized Testing Facility may not assign, sell or transfer the Workstation or Authorized Testing Facility's interest hereunder without prior written approval from Applus. Notwithstanding any other provision of this Agreement, all rights of Authorized Testing Facility in and to the Workstation shall be subject and subordinate to the rights of Applus.

- 15.3. **No Waiver.** No waiver, delay or failure to enforce any of Applus' rights hereunder shall be effective unless in writing, and no such waiver shall preclude Applus from enforcing any such rights at a later time.

- 15.4. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto concerning the subject matter hereof and supersedes all prior agreements or understandings, written or oral. No attempted modification or waiver of any of the provisions hereof shall be binding on either party unless in writing and signed by both parties. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall constitute one Agreement. This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

- 15.5. **Severability.** Each of the sections contained in this Agreement shall be enforceable independently of every other section in this Agreement, and the invalidity of any section shall not invalidate or render unenforceable any other section contained herein. If any section or provision in a section is found invalid or unenforceable, it is the intent of the parties that a court of competent jurisdiction shall reform the section or provisions to produce the nearest enforceable economic equivalent.

- 15.6. **Notice.** All notices required or permitted to be given hereunder by Applus to Authorized Testing Facility shall be in writing and are effective when delivered by hand, facsimile, registered mail or electronic mail to the other party at the principal place of business of such other party.

Unless otherwise required by Authorized Testing Facility, all notices required or permitted to be given hereunder by Applus to Authorized Testing Facility shall be in writing and addressed to:

Name: _____
Title: _____
Company: _____
Address: _____
Address Line 2: _____
Phone Number: _____

Unless otherwise required by Applus, all notices required or permitted to be given hereunder by Authorized Testing Facility to Applus shall be in writing and addressed to:

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Program Manager
Applus Technologies, Inc.
5868 South 194th Street
Kent, WA 98032

With a copy to: Legal Department
Applus Technologies, Inc.
444 North Michigan Avenue,
Suite 1110
Chicago, IL 60611
(312) 644-3272

- 15.7. **Independent Contractors (No Agency or Joint Venture).** The parties agree that they are independent contractors. Nothing contained herein shall be construed to cause Authorized Testing Facility to become an agent for or joint venturer with Applus for any purpose whatsoever.
- 15.8. **Term.** This Agreement shall commence on the date first set forth above and continue through June 30, 2017, unless Contract Number 0391 is extended or cancelled, so long as Authorized Testing Facility remains an Authorized Testing Facility. The rights and obligations of the parties which by their nature survive termination or completion of the Agreement, including but not limited to, those set forth in sections relating to indemnity, nondisclosure and confidentiality, shall remain in full force and effect following the term of this Agreement.

IN WITNESS WHEREOF, intending to be bound as of the Effective Date, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

Applus Technologies, Inc.

Authorized Testing Facility

By: _____

By: _____

Name: Barton Richter

Name: _____

Title: Program Manager

Title: _____

Date: _____

Date: _____

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Attachment A

Authorized Testing Facility Fee Schedule

Authorized Testing Facility must pay the following applicable fees as determined by Applus in order to participate in the Program. The fees are as follows:

Equipment

Equipment Configuration	Purchase Price
OBD	\$6,133
OBD/TSI	\$9,249
OBD/Diesel	\$8,446
OBD/TSI/Diesel	\$11,562
Diesel Only	\$8,145

Note: Prices do not include state sales tax.

Test Authorizations (TAs)

50 TAs for \$759.00 (\$15.18 per TA)

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Attachment B

Price List for Optional Features

Optional Feature	Price Per Unit
OBDII Readiness Module (One Monitor Not Ready)	\$130.94
OBDII Readiness Module (Two Monitors Not Ready)	\$137.44
Uninterruptable Power Supply (UPS)	\$96.30
7-Port USB HUB	\$35.70
20-Inch Flat Screen Monitor (Additional)	\$157.13

Note: *Prices do not include shipping and handling fees, or state sales tax.
Pricing good through December 31, 2013.*

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Attachment C

Price List for Consumables and Non-Warranty Parts

Part	Price Per Unit
Bar Code Scanner Cable	\$52.84
Bar Code Scanner Extension Cable	\$18.56
Cabinet Air Filter *	\$3.16
Calibration Gas High*	\$124.81
Calibration Gas Low*	\$54.63
Cradle Point	\$357.13
Filter Bowl (Large)	\$28.57
Filter Bowl (Large) - Filter Media	\$3.57
Filter Bowl (Small)	\$14.29
Filter Bowl (Small) – Filter Media	\$19.50
Inductive RPM Pick-Up	\$60.00
In-Line Filters	\$4.50
Keyboard	\$42.84
Keyboard Cover*	\$21.36
Leak Check Caps*	\$0.17
Monitor Swivel Mount*	\$357.14
Non-Contact Extension 12V Battery Clamp	\$12.84
Non-Contact Tachometer Pick-Up 12V Cable	\$41.47
OBD Cable	\$73.43
O2 Sensor	\$50.00
Opacity Meter Cable	\$89.84
Opacity Meter Calibration Filter	\$357.14
Opacity Meter Extension Pole*	\$28.53

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Printer Drum	\$240.00
Printer Toner	\$109.14
Sample Hose and Probe (Single and Dual)	\$82.00
Zero Air*	\$30.40

Note: *Prices do not include shipping and handling fees, or state sales tax.
Pricing good through December 31, 2013.*

**Items provided on the above Price List for Consumables and Non-Warranty Parts that appear with an asterisk are NOT REQUIRED to be purchased from Applus if an alternate supplier is available to the ATF.*

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Attachment D

Terms and Conditions for Leased Workstations

Equipment Configuration	Monthly Lease Payment	
	36 Months	48 Months
OBD Only	\$198	\$156
OBD/TSI	\$298	\$235
OBD/Diesel	\$273	\$214
OBD/TSI/Diesel	\$373	\$293
Diesel Only	\$263	\$207

Insurance Coverage Requirement for Leased Equipment. Prior to start of Authorized Testing Facility's work, and throughout the term of this Agreement, Authorized Testing Facility shall procure for its work and maintain in force a property casualty line of insurance coverage to cover damage, loss, or theft of the Workstation (the "Policy"). The Policy should reflect a minimum \$10,000 for replacement value of each Workstation and Applus shall be named as loss payee under the Policy. The Authorized Testing Facility must deliver the certificate of insurance for this coverage to Applus prior to final execution of this Agreement by Authorized Testing Facility and prior to delivery of the Workstation. The certificate shall clearly identify Applus as an insured under the Policy.

Applus (including its officers, employees, parents, subsidiaries and related corporations) shall be named and added as additional insureds on the Policy. Failure by Applus to request Authorized Testing Facility to provide proof of its compliance herewith shall not be interpreted as a waiver of this requirement. Authorized Testing Facility's insurance policies shall state that they are primary and not additional to, nor contributing with, any other insurance carried by, or for the benefit of the additional insureds. Any such insurance maintained by an additional insured shall be excess of that maintained by Authorized Testing Facility and franchise's insurers shall have no right of recovery or subrogation against Applus or Ecology. All insurance policies purchased hereunder shall be maintained with insurers.

Payment Terms. In addition to the terms set out in Section 7.3 of the Agreement, if the Authorized Testing Facility account does not have sufficient funds to pay the Monthly Lease Payment, Applus or its representative will lock out the Workstation until such balance is paid in full, and may terminate this Agreement if this occurs more than two (2) times in any twelve (12)-month period or for longer than thirty (30) days at any one time; this may occur regardless of whether the Authorized Testing Facility has Test Authorizations available. For each occasion on which Authorized Testing Facility fails to maintain in

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its account sufficient funds to cover the cost of the Monthly Lease Payment and Test Authorizations ordered by the Authorized Testing Facility, and for each occasion on which a check tendered by Authorized Testing Facility to Applus is not honored for failure to maintain sufficient funds in Authorized Testing Facility's account, Authorized Testing Facility shall pay to Applus a fee of \$20.00, which may be electronically debited from Authorized Testing Facility's account.

Late Payments. When the Monthly Lease Payment is made by check, for each occasion on which a check tendered by Authorized Testing Facility to Applus is not honored for failure to maintain sufficient funds in Authorized Testing Facility's account, Authorized Testing Facility shall pay to Applus a fee of \$20.00 in addition to the face value of the check. Further, Applus will lock out the Workstation until such balance is paid in full, and may terminate this Agreement if this occurs more than two (2) times in any twelve (12)-month period or for longer than thirty (30) days at any one time; this may occur regardless of whether the Authorized Testing Facility has Test Authorizations available.

Title to Workstation. Applus or its financing institution shall be the owner of and shall hold title to the Workstation during the Term of this Agreement. Authorized Testing Facility shall keep the Workstation free of all liens and encumbrances.

Security Interest. Where Applus is required by its financing institution to secure such, Authorized Testing Facility, as security for its full and faithful performance of its obligations hereunder, shall grant to Applus a security interest in and to the Workstation, all replacements, additions, accessions thereto and substitutions hereof and proceeds thereof. Authorized Testing Facility shall execute, if necessary, such documents, including but not limited to UCC financing statements and continuations thereof, reasonably necessary to perfect such security interest.

Compliance with Terms of Third Party Leasing Company. Applus may require ATF to contract with a third-party leasing company in the lease of the equipment. ATF agrees to comply with the terms required by such third-party leasing company.