



STATION PARTICIPATION AGREEMENT  
TERMS AND CONDITIONS

**Authority:** Utah County (“County”) has entered into a contract with Environmental Systems Products, Inc. (“ESP”) known as the “County Contract”, whereby ESP provides to you (“Customer”) a (i) hardware and software upgrade for your UTAH2000 analyzer system (“UTAH2000 System”), (ii) ongoing service for your UTAH2000 System and (iii) VID services all of which are collectively referred to as the “Services” which is further defined below.

**Mandatory Participation:** Establishing and maintaining an agreement with ESP for the Services is required for the Customer’s participation or continued participation in the County’s emissions testing program.

**Term of Agreement:** This Agreement between ESP and Customer shall have an effective date on the date of signing or electronic acknowledgment by the Customer, however the actual provision of services may not commence until the County deems the ESP systems operational (“Start Date”). This Agreement shall remain in effect until the occurrence of any of the following (in all cases Customer shall pay ESP for all Services rendered prior to the date of expiration, termination or cancellation):

- a) Breach or default of this Agreement by Customer;
- b) Customer terminates its participation in the County’s I/M program in accordance with stated procedures or its participation is terminated by the County or ESP; and/or
- c) The date of the expiration, termination or cancellation of the County Contract, unless the County extends the County Contract past the agreed upon term of 36 month.

**Services:**

**UTAH2000 System Upgrade** – ESP will upgrade each UTAH2000 System by providing each system with a (i) Intel Network Card, (ii) a 17” LCD Flat screen display, (iii) a High speed laser printer, (iv) a Decal kit (Red), (v) a Flash software upgrade of Vetronix OBD module to latest revision including LD diesel, (vi) a Zero Air Delivery Kit including 2 bottles of zero air (approximately 200 TSI tests) and (vii) Revised Analyzer software.

**Repair Services** - ESP will provide service for your UTAH2000 System within 24 business hours after receiving notification of malfunction of the covered Equipment. All system repairs, component replacements and adjustments shall be accomplished onsite after authorization from the Customer has been obtained to perform the needed service. Defective parts may be repaired or replaced with new or remanufactured at the discretion of an ESP field service technician. The Repair Services **cover** the following components if provided by ESP: bar code reader, analyzer, hardware and PC, OBD module and LCD display.

These components **are not covered** by the Repair Services: filters, calibration gases, toner cartridge, printer paper, external hoses, rpm contact probe, sample probes, external harnesses, network cabling, cabinetry, additional software, non mandated, add-on, optional printer or other hardware enhancements, added to the County product specifications that is not manufactured by or installed by ESP and could cause conflict with the operational software. Communication problems due to internet service provider, host computer, County installed lockouts and software updates not provided or authorized by ESP. Current labor rates and part replacement costs will apply to these components. **Please note - Utah County customers** participating in Redeploy program are permitted one, (1) per analyzer allotment, replacement exhaust hose, exhaust probe tip, RPM probe, OBD connector and cable if needed for repair each calendar year without charge. Additional usage of these items falls under the consumable category and is not covered in the service agreement.

**VID, (Vehicle Inspection Database), Services** – ESP will provide Customer with access to the VID through the Customer’s UTAH2000 System and the internet connection provided by the Customer. Customer shall, at its sole cost and expense, provide and maintain the internet connection and cable to the VID.

**ESP will have no obligation to provide Services under this Agreement** if (i) the Customer is not in compliance with all obligations under this Agreement or any other agreement with ESP or its affiliated companies or (ii) if the request for service arises as a result of: an unauthorized repair, modification or tamper to the UTAH2000 System by someone other than an ESP representative, the result of an accident, a catastrophe, the use of special attachments not provided by ESP, improper use or misuse of the analyzer, use or storage of the UTAH2000 System in conditions outside its recommended ambient conditions, fault or negligence of the user, employees, representative(s) or deterioration due to adverse environmental conditions and /or system malfunction due to capacity or quality of

power source. If any software or hardware installed or interfaced on the UTAH2000 System that is not manufactured, sold or authorized by ESP is installed at the customers own risk and may cause damage to the UTAH2000 System. The cost to repair or replace parts that are needed to restore the UTAH2000 System by ESP to good working order because of such unauthorized installations is the responsibility of the end user.

**Charges:** The Charge for the UTAH2000 System Upgrade shall be \$1550.00 plus tax.. The Charge for the Repair Services and the VID Services shall be a per test charge which will be included in the Certificate fee effective January 1, 2012. As of the later of December 31, 2011 or the date Customer signs or electronically acknowledges the agreement, the Customer understands and agrees that it shall be charged and it agrees to pay ESP a \$1.00 fee for each unused Certificate which it has on hand. Until Customer pays such fee it will be unable to use such Certificates after December 31, 2011

**Disputed Charges** – Problems related to any charges, fees, and/or invoices should be reported to ESP by calling the toll free number of 800-695-4377 or writing to ESP at [espinfo@esph.com](mailto:espinfo@esph.com) If Customer disputes a portion of any charge, fee, and/or invoice it must pay the undisputed portion of the charge, fee, and/or invoice.

**Address and Account Changes:** Customer agrees to notify ESP in writing immediately if Customer changes its physical address, billing address, bank and /or account numbers. Changes to Customer's physical address, billing address, bank and /or account numbers can only be made by Customer's authorized representative in writing.

**Reconnection Fee:** If Customer and/or Customer's UTAH2000 System is locked out and/or disconnected from the VID, Customer may request ESP reconnect the UTAH2000 System and Customer will have the right to be reconnected on the condition that (i) the County is in agreement, (ii) Customer has paid all outstanding invoices and charges.

**County Action:** Customer understands and agrees that Customer is responsible to comply with all County mandated requirements for participation in their emissions testing program. Customer understands and agrees that the County may lock out and/or direct ESP to lock out and /or deny access to the Services if the Customer fails to meet all of the County's mandated requirements.

**Termination for Cause:** Customer understands and agrees that, should Customer fail to abide by the terms of this Agreement, ESP shall have the right to suspend Services and/or terminate this Agreement.

**Responsibilities of Customer:** Customer shall: (a) Permit ESP's service personnel to have full and free access to the UTAH2000 System in order to provide the Services contemplated by this Agreement; (b) Provide adequate working space and all heat, light, ventilation, electric current and other facilities reasonably required by ESP's service personnel to discharge its obligations hereunder; (c) Provide electrical power, which is free from electrical noise and sufficient to meet the requirements of the UTAH2000 System; (d) Customer shall promptly notify ESP in writing of any change in location of the UTAH2000 System covered by this Agreement, and any such change will result in a reinstatement fee to cover ESP's costs. (e) Provide a functional RJ45 network jack within 10 feet of the analyzer system.

**Warranty & Limitations:** ESP warrants to Customer that goods provided will be free of defects and the services performed by ESP will be performed in a good workmanlike manner. ESP's liability and Customers remedy under this warranty are limited to ESP correcting such goods and services as are shown to ESP's reasonable satisfaction to have been defective, provided that written notice of such defective goods or services, shall have been given by Customer to ESP within 30 days after the delivery of goods and/or performance of services by ESP.

THE FORGOING WARRANTIES ARE EXCLUSIVE AND GIVEN EXPRESSLY IN LIEU OF (i) ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (ii) ANY OBLIGATION LIABILITY RIGHT, CLAIM OR REMEDY IN CONTRACT OR TORT WHETHER OR NOT ARISING FROM ESP'S NEGLIGENCE ACTUAL OR IMPUTED. THE REMEDIES OF THE CUSTOMER SHALL BE LIMITED TO THOSE PROVIDED HEREIN TO THE EXCLUSION OF ANY AND ALL OTHER REMEDIES INCLUDING, WITHOUT LIMITATION, INCIDENTAL OR CONSEQUENTIAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL ESP BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES.

**Limitation of Liability:** The liability of ESP hereunder shall be limited to restoring the UTAH2000 System to good working order provided that ESP shall not be liable for failure to restore the equipment to good working order when such failure is due to causes beyond its reasonable control. Including, but not limited to acts of God, strikes, floods, riots, delays in transportation and inability due to causes beyond its reasonable control to obtain necessary labor or

materials or spare parts. The price allocable in this Agreement, for any parts or service, alleged to be the cause of any loss or damage to customer, shall be the ceiling limit on ESP's liability, whether founded in contract or tort (including negligence) arising out of, or resulting from (i) this Agreement, or the performance, or breach thereof, (ii) the design, manufacture, delivery, sale, repair, replacement, or (iii) the use of any equipment for the furnishing of such service. In no event, shall ESP, have any liability for any incidental or consequential damages.

**General:** No modifications of this Agreement shall be binding unless in writing, and acknowledged by both parties. This Agreement is a complete and exclusive statement of all terms and conditions between the parties concerning equipment maintenance to be furnished by ESP to the Customer and it supersedes and replaces any previous agreement concerning equipment maintenance between ESP and the Customer. This Agreement shall not be varied, supplemented, qualified or interpreted by prior course of dealings, written or oral, or by any trade usage. This Agreement is not transferable or assignable by the Customer under any circumstances. This Agreement shall be construed in accordance with the laws of the State of Utah exclusive of any rules with respect to conflict of laws.