

VERIFI FACILITY PARTICIPATION AGREEMENT

AUTHORITY

The New York State Department of Motor Vehicles (“DMV”) has entered into a contract with Vanguard Direct, Inc. (“Vanguard”), a corporation with its principal offices located at 519 8th Avenue, 23rd Floor, New York, NY 10018, for the development and hosting of a Web-based system for New York State registered dealers to execute and track vehicle ownership transfers and vehicle inventory logs. The system, referred to as the **Vehicle Electronic Reassignment and Integrated Facility Inventory (“VERIFI”)**, is intended to make such functions more efficient and accurate.

Pursuant to DMV regulations at 15 N.Y.C.R.R. 78.9, dealers are required to sign a Facility Participation Agreement (**the “Agreement”**) with Vanguard to use VERIFI. As required by such regulations, the undersigned **dealer (“Dealer”)** has entered into this Agreement.

TERM OF AGREEMENT: This Agreement shall be in effect from the last date of signature below and, unless terminated as provided for below or modified at the direction of DMV, until such time as Vanguard is no longer the VERIFI contractor.

The Dealer agrees with Vanguard as follows:

SERVICES PROVIDED

The following will be managed through the VERIFI System so long as this Agreement remains in effect:

- Book of Registry – digital and Web-based through VERIFI.
- Retail Certificates of Sale (MV-50) – Both secure paper and electronic versions.
- Wholesale Certificates of Sale (MV-50W) – Both secure paper and electronic versions.
- Temporary Certificates of Registration (MV-50TCR) – generated by the VERIFI system.
- Dealer Plate Logs for Plate Issuance dealers.
- Ordering MV-50 and MV-93 documents – facilities must **order these documents through VERIFI’s** online ordering feature.

Dealer acknowledges that an Internet connection is required for proper transmission of, access to and use of the VERIFI System. Dealer is responsible for procuring and maintaining the network connections that connect the Dealer to **Vanguard’s platform, the VERIFI System, and Dealer’s account, including, but not limited to,** “browser” software that supports protocols used by Vanguard, including particular versions of the Transport Layer Security (TLS) protocol or other protocols accepted by Vanguard, and to follow logon procedures for services that support such protocols. Vanguard assumes no responsibility for the reliability or performance of any connections as described in this Section. The current versions of the following browsers are supported:

Chrome
Firefox
Internet Explorer
Microsoft Edge
Safari

Dealer acknowledges that access to the VERIFI System is through a secure portal to Vanguard’s cloud environment. Dealer is responsible for managing its access credentials for the VERIFI System Portal, including assigning credentials, requiring robust passcode and password protocols. If Dealer believes that any **access credentials have been compromised, or if a Dealer employee’s employment is terminated** for any reason, Dealer is responsible to immediately notify Vanguard so that Vanguard can disable such access credentials and promptly assign new credentials. Dealer acknowledges that it shall be liable for all

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unauthorized access to or use of access credentials to the VERIFI System that are assigned to Dealer and its personnel.

Vanguard assumes no liability for any unauthorized party's use of Dealer's password, credentials and/or security questions and answers to access Dealer's account. Dealer will be solely responsible for the confidentiality and use of Dealer's passwords, logins, security questions and/or answers; and Dealer hereby releases and waives any claims against Vanguard and DMV, and agrees to indemnify Vanguard and DMV from any resulting costs, claims or liabilities, if Dealer and/or its personnel shares password, login, security questions and/or answers with third parties intentionally or in error.

EXEMPT DEALERS

Pursuant to 15 N.Y.C.R.R. 78.9(c), the Commissioner of Motor Vehicles may exempt dealers from the requirement to use VERIFI. As required by 15 N.Y.C.R.R. 78.9(c), this Agreement must be signed by exempt dealers. If the undersigned Dealer has received such an exemption, then the requirements of 15 N.Y.C.R.R. 78.9(c) are incorporated into this Agreement and shall replace any terms of the Agreement that are inconsistent with 15 N.Y.C.R.R. 78.9(c).

HELP DESK

VERIFI will operate a Help Desk to support Dealers. Help Desk services will be available 7 days a week, 365 days a year, from 6:00 AM to 8:00 PM EST.

Dealers can contact the Help Desk by one of the following methods -

Phone: 1 833 VERIFINY (1-833-837-4346)

Live Chat: Initiated within VERIFI

Web Form: Initiated within VERIFI

Email: dealersuccess@verifiny.com

The Help Desk will also support a scheduled call back if requested by the Dealer.

FEES & PAYMENTS

Fees.

Dealer will pay the following fees (the "Fees") for access to and use of the VERIFI System beginning on or about the later of July 11, 2018, the date the VERIFI System becomes available, or the date Dealer enters into this Agreement:

- (a) MV-50 Fee. The current cost per MV-50 will remain \$5.00 (MV-50 Cost). This applies to both secure paper and electronic versions.
- (b) Transaction Fee. For each transaction processed through the VERIFI System, Dealer will pay to Vanguard a "Transaction Fee." Currently, the Transaction Fee is \$1.93. The transaction fee may change during the term of this Agreement.
- (c) Secure paper MV-50's. Dealer can order documents (secure paper MV-50 Retail, MV-50 Wholesale and MV-93) through VERIFI. The current cost for secure paper MV-50's and MV-93's is \$5.00 per document.
- (d) For any secure paper MV-50 transaction, the Dealer will pay the Processing Fee directly to DMV, with the Transaction Fee paid through VERIFI to Vanguard.
- (e) In addition to the MV-50 Cost and Transaction Fees, Dealer is solely responsible for all chargeback or collection-related fees (including attorney fees and expenses) that may be assessed if Dealer's payments do not process, are reversed, or if funds in the account are insufficient as well as the related

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administrative fee imposed by Vanguard from time to time, which on the date hereof is \$39 per chargeback.

Payment of Fees.

Upon execution of this Agreement, Dealer shall **establish a “drawdown account”** with Vanguard and deposit funds with Vanguard in accordance with the instructions provided by it. Processing a Transaction through VERIFI will be dependent on there being a sufficient balance of cleared funds in the drawdown account, and all fees shall be deducted from the drawdown account.

During the term of the Agreement, Dealer will at all times maintain in the drawdown account no less than \$346.50 (this covers the cost of 50 MV-50s and 50 VERIFI transactions), or such greater amount as Vanguard may require from time to time; provided that such amount shall not exceed the average monthly Fees paid by Dealer over the 3 preceding calendar months. **The Dealer shall be provided at least 20 days’ notice** by email of any increase in the amount required to be maintained by Dealer in its drawdown account.

At such time as the drawdown account drops to less than \$300.00, Vanguard shall send an email notice to Dealer noting that its balance has dropped below its minimum balance. Another email will be sent by **Vanguard to Dealer if Dealer’s drawdown account balance drops below \$100.00.**

Failure to maintain the required balance in the Drawdown Account may result in administrative action against the Dealership by DMV.

Vanguard may, at its option, permit Dealer the use of electronic payments (ACH), and/or credit and or debit cards as payment for transactions.

A record of transactions and associated drawdown account information will be available through the VERIFI System and such records will be deemed correct unless disputed by Dealer in writing within 60 days following the applicable transaction or account drawdown.

If Dealer is no longer a registered as a dealer with DMV, or otherwise withdraws from using VERIFI, Vanguard will promptly **refund the balance, if any, remaining in the Dealer’s drawdown account, after deducting therefrom any monies due to the DMV and/or Vanguard for prior transactions.**

USAGE

From or after the later of July 11, 2018, the date the VERIFI System becomes available, or the date this Agreement is entered into by Dealer:

1. Dealer will maintain a sufficient stock of secure paper MV-50 or MV-93 forms, to the extent permitted by DMV, to be able to complete transactions that Dealer cannot process at that time through VERIFI. By way of example, certain out-of-state transactions may require completion through paper forms; and network or system issues experienced by Dealer, VERIFI or DMV may require such completion as well.
2. Dealer will only use secure paper MV-50 forms to the extent a transaction cannot be promptly submitted through VERIFI, and to the extent permitted by DMV. Exempt Dealers are exempt from the requirement to directly enter transactions into VERIFI, and must process all transactions through secure paper MV-50 forms.
3. After processing a transaction through a secure paper form, Dealer will register such transaction through VERIFI within 48 hours, or an alternate period determined by DMV, and shall pay corresponding Transaction Fees that are assessed. In place of this process, an Exempt Dealer will register such transaction through the VERIFI Help Desk within 48 hours, or an alternate period determined by DMV, and shall not be assessed a separate Transaction Fee.

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4. **Exempt Dealers must maintain a paper Book of Registry in place of VERIFI's electronic Book of Registry.**

DATA & DATA PROTECTION

Dealer and Vanguard shall each use commercially reasonable efforts to not permit data or information obtained from the VERIFI system to be copied or shared with anyone outside of their respective organizations (or with respect to Vanguard its permitted subcontractors and agents), unless otherwise authorized by DMV; and Dealer must limit access to, and use of, DMV Data to individuals who require access for completing transactions through the VERIFI System. The foregoing notwithstanding, Dealer or Vanguard may disclose any data or information obtained from the VERIFI system in accordance with any subpoena or other request by a government agency provided that before complying with any subpoena or other legal request, the entity subject to the subpoena or other legal request, shall if legally permitted notify DMV of such subpoena or other request and, reasonably cooperate with DMV in its requests to limit any disclosure (at the sole cost of DMV). In the event that Dealer suspects or confirms the unauthorized use or access of VERIFI data or information, or **that Dealer's credentials to access the VERIFI System have been compromised, Dealer shall immediately** notify DMV and Vanguard as follows:

DMV - by email: InformationSecurity@dmv.ny.gov, or by telephone: (518) 402-2676.

Vanguard – by email: InformationSecurity@verifiny.com, or by telephone: VERIFINY (1-833-837-4346).

DEFAULT/TERMINATION

1. If Dealer:

- a. fails to maintain the required balance in the drawdown account,
- b. fails to pay all Fees as and when the same are due, or
- c. otherwise breaches its obligations under this Agreement

then Vanguard will notify DMV for appropriate administrative action.

2. Dealer agrees that Vanguard may, with reasonably contemporaneous telephonic or electronic notice or attempted notice to Dealer, deny **access to the VERIFI System and the Dealer's account if Vanguard reasonably concludes that Dealer, or anyone using the VERIFI System with Dealer's credentials is using the VERIFI System to engage in denial of service attacks, spamming, or illegal activity, and/or use by Dealer of the VERIFI System is causing immediate, material and ongoing harm to Vanguard or others.** Dealer agrees that Vanguard shall not be liable to Dealer or to any third party for any suspension of **Dealer's access to the VERIFI System and Dealer's account under such circumstances as described in this Section.**
3. Dealer acknowledges that DMV may access and receive notice about any Dealer activity or actions involving the VERIFI System as well as any Dealer breach on this Agreement.
4. **If Dealer elects to cease to operate as a "Dealer" in the State of New York, then upon thirty (30) days' prior written notice from the Dealer, with a copy to the DMV, this Agreement will terminate.**
5. If Vanguard will cease to provide the VERIFI System, it may terminate this Agreement upon sixty (60) days' advance notice.

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6. All provisions that would be reasonably understood to survive a termination of this Agreement shall survive any termination of this Agreement.

AMENDMENTS AND WAIVERS

1. Amendment by Law. If the laws change, or the DMV mandates changes to the Vanguard Agreement and/or the VERIFI System, the terms of this Agreement will be changed as required by the DMV and/or any other New York agency or governmental authority having jurisdiction. Prior to the effective date of any such mandated change, Vanguard will provide to you a new or amended Participation Agreement reflected such changes. If Dealer fails to promptly execute and return the new or amended Facility Participation Agreement, Vanguard will deny access by Dealer to the VERIFI System. If Dealer does not return the new or amended Facility Participation Agreement within thirty (30) days, Vanguard reserves the right to terminate this Agreement for cause.
2. Waivers and Other Amendments. (a) No failure on the part of either Dealer or Vanguard to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of either such party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy; and (b) neither Dealer nor Vanguard shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given. Except as otherwise expressly provided in this paragraph, this Agreement may not be amended, modified, altered, or supplemented other than by means of a written instrument duly executed and delivered on behalf of the Dealer and Vanguard.

FORCE MAJEURE

Vanguard is not liable to Dealer for the unavailability of the VERIFI System or its delay in or failure of performance under the Agreement due to a force majeure occurrence. Any such delay in or failure of performance shall not **constitute default or give rise to any liability of Vanguard for damages**. “Force majeure” events include, but are not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage, internet service provider failures or delays, denial of service attacks (DOS, DDOS), civil unrest, war or military hostilities, criminal acts of third parties, **and any payment date or delivery of VERIFI System**. **Force majeure events do not excuse Dealer’s payment of Fees hereunder.**

GENERAL

This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior oral and written understandings, quotations, and agreements between them relating thereto. Dealer shall not assign, sublicense, or otherwise transfer this Agreement or any of its rights, or delegate any of its duties, hereunder, in whole or in part, without the prior written consent of Vanguard. No waiver, alteration, modification, or cancellation of any provision of this Agreement shall be binding unless made in writing and signed by the parties. The failure of a party at any time to enforce or require performance of any provision of this Agreement **will not in any manner affect that party’s right to later enforce or require performance of such provision**. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to any law, such provision shall be amended so that it is enforceable and valid and reflects, to the greatest extent possible, the intent of the parties and the remaining provisions will remain in full force and effect. This agreement shall be binding upon and inure to the benefit of the parties hereto and their

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respective legal representatives, successors, and assigns. This Agreement shall be interpreted as though it were equally drafted by Vanguard and Dealer. Captions are for convenience only and will not be used in interpreting this Agreement. All provisions of this Agreement that would be expected to survive a termination of this Agreement shall survive any termination or expiration of this Agreement. References to including herein mean including without limitation.

This Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the State of New York without regard to its principles of conflicts of law or any international conventions. Each of the parties submits to the jurisdiction of any state or federal court sitting in New York County, New York in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

LIMITATIONS OF LIABILITY

NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM ANY ASPECT OF THE RELATIONSHIP PROVIDED FOR HEREIN. OTHER THAN PURSUANT TO THE INDEMNIFICATION PROVISIONS HEREOF OR A BREACH OF **THE "FEES AND PAYMENTS" SECTION** BY DEALER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR MORE THAN THE LESSER OF \$4,000 OR THE TOTAL TRANSACTION FEES PAID OR PAYABLE BY DEALER TO VANGUARD UNDER THIS AGREEMENT DURING THE THREE MONTHS IMMEDIATELY PRIOR TO THE OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE CLAIM FOR DAMAGES. VANGUARD PROVIDES ALL SERVICES **TO DEALER HEREUNDER ON AN 'AS IS" BASIS AND ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED.**

NOTICES

Notices will be deemed delivered immediately if emailed to the email address of Dealer set forth below or such other address as it may provide to Vanguard from time to time through the VERIFI System. Telephonic communications to Dealer shall constitute immediate notice hereunder, even if left on voicemail, provided that Vanguard shall use reasonable efforts to provide email confirmation of such message within 12 hours. Notices to Vanguard shall be delivered through the VERIFI System. Dealer may update its email address and phone number for notices through the VERIFI System.

(Signatures Follow on Next Page)

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EXECUTION

This Agreement may be executed by electronic transmission of a signature and shall be equally binding as an original copy of this Agreement executed in ink by Dealer.

In Witness Whereof, the undersigned duly authorized representative Dealer execute this Agreement effective as of the Date of Signature of Dealer below. This Agreement shall not be effective until access to the VERIFI System is provided by Vanguard, at which point it will be deemed accepted by Vanguard with the same effect as if it had countersigned this Agreement as of the Date of Signature set forth below.

DMV Facility Number (Dealer Number): _____

Facility Name (Dealer): _____

Facility Address: _____

Email Address: _____

Telephone Number: _____

Signatory Name: _____

Signatory Title: _____

Date of Signature: _____

SAMPLE