

# NYVIP3 Station Agreement

## AUTHORITY

04-25-2022

The New York State Department of Motor Vehicles (“DMV”) has entered into a contract (the “Contract” C000879) with Opus Inspection (Opus) wherein Opus will offer the services provided for in this Agreement under the terms and conditions specified herein (the “Services”). To participate in the New York Vehicle Inspection Program (NYVIP3), a licensed inspection station (the “Station”) MUST use the Services. This Agreement describes the terms and conditions under which the Services will be provided.

Network Services, Warranty Services and Training Services will be paid for by the Station through a transaction fee charged each time the Computerized Vehicle Inspection System (CVIS) transmits a completed vehicle inspection record to the Opus NYVIP3 Information Management Network (the “Network”).

Opus will directly provide the following services:

### ◆ Network Services

- Allows the NYVIP3 Computerized Vehicle Inspection System (CVIS) to connect to the Vehicle Information Database (VID) for the purpose of receiving and sending information to DMV involving vehicle inspections and repairs, and reporting the condition and status of your CVIS to Opus;

### ◆ Warranty Services

- Provides hardware and software Warranty Services to the Station in order to keep the CVIS in good working order;

### ◆ Training Services

- Training and certification of Station inspectors through a Computer Based Training (“CBT”) program; and

### ◆ Other

- Certain other hardware, software and service options available to Stations as described herein.

# Part 1: New York Vehicle Inspection Station Participation and Services

**NYVIP3 Enrollment and Service Agreement (hereafter “Agreement”)** is between **Opus Inspection, 7 Kripes Road, East Granby, CT 06026 (hereafter “Opus”) and,**

**Facility Name:** \_\_\_\_\_

**Facility Address:** \_\_\_\_\_

**DMV Facility Number:** \_\_\_\_\_ **(hereafter "Station").**

Station confirms that it is a licensed Inspection Station in the State of New York. The Agreement shall have an Effective Date as defined under Section 24 and shall continue for an initial term until November 30, 2029, except as otherwise provided herein. Thereafter, this Agreement may be extended by 12- or 24-month intervals equivalent to any additional extensions granted by the State of New York to Opus under its NYVIP3 Contract. This Agreement may be amended from time to time by Opus with DMV approval to ensure compliance with NYVIP3 rules, regulations and guidelines. Station agrees to comply with all licensing requirements for a New York Safety or Safety/Emission Inspection Station.

Station further agrees to comply with Opus’s payment terms. Any past due invoices will result in the Station being locked out from any further official testing should payment not be received in full within 30 days from the due date for the first occurrence. Station will be locked out immediately for any occurrences thereafter and be required to use Automated Clearing House (ACH) for any future equipment and/or transaction fee payments.

## **Invoice Dispute Process**

In the event of a dispute concerning an Invoice, Station shall notify Opus in writing at the address listed above. If Station does not give Opus written notice of a dispute within thirty (30) days from the date of the Invoice, such Invoice shall be deemed undisputed and binding on Station. Station shall be responsible for paying any undisputed Invoice amounts by the required payment due date.

This Agreement provides for the connectivity and maintenance support of one (1) NYVIP3 CVIS (Computerized Vehicle Inspection System), hereafter "CVIS." A separate Agreement is required for each Additional CVIS purchased by the Station. Each CVIS, in order to qualify for the Services hereunder, shall be used by Station solely for NYVIP3 related business, professional or trade purposes only, and not for any personal, family or household purposes.

1. Package Options: Package options and payment terms for purchase are specified in Part 2 of this Agreement.
2. Warranty Services: Opus will provide warranty services for the covered CVIS, upgrades, optional equipment, and spare parts for the term of this Agreement. Warranty services will cover parts replacement and on-site service. Software and/or hardware installed or connected to the CVIS that is not authorized or approved in writing by Opus is strictly prohibited and may void the warranty. Upon receiving a service call, the Opus helpdesk will determine the nature of the problem and, at its own discretion, choose the appropriate support, which will be one of the following: (i) phone support, which is available immediately upon logging the service call, (ii) send replacement part(s), which will typically be dispatched on the same day, or (iii) an on-site visit by an Opus Field Service Representative.

This Agreement does NOT cover replacement of consumables, nor does it cover damage to the CVIS or any other item due to customer abuse. All consumables and replacement parts, with the exception of paper, must be purchased from Opus. Excluded from the warranty are the following parts and consumables:

- ◆ Sample Probe/Hoses
  - ◆ Wireless Network Adapter(s) that fail to connect due to incompatible upgrades made by the station to internet service
  - ◆ Toner/Drum Cartridge (Vehicle Inspection Report (VIR) Printer)
  - ◆ Ribbon (Sticker Printer)
  - ◆ Paper
  - ◆ Wireless Barcode Scanner battery
3. Service Levels: For each service issue that occurs at a Station in New York State, Opus will repair or replace station equipment within the following timeframes at no additional cost to the Station:
    - ◆ First service visit, where required, within two (2) business days.
    - ◆ Second visit, where required, within four (4) business days of the initial service request.

At no time will station equipment be down or inoperable for a period greater than four (4) business days from the initial service request. Business days are defined for this purpose as Monday through Friday 8:00 AM to 6:00 PM and Saturday from 8:00 AM to 2:00 PM. For example, if Opus receives a service-call on Friday at 6:00 PM, service must be provided within 48 hours (i.e., before 6:00 PM on the following Monday, excepting DMV/Opus contractual holidays). In the event the CVIS cannot be repaired after two (2) unsuccessful service calls, the appropriate equipment will be replaced. If the Station is inoperable for more than four (4) business days, the Station will be compensated for lost inspections in accordance with the DMV/Opus contractual provisions.

4. **CVIS Equipment Installation:** The CVIS is designed to be self-installed by the Station and will be delivered with detailed installation instructions. If it is determined the Station requires installation assistance, Opus will install the CVIS provided that the Station has signed this Agreement, paid any amounts due in full, and has provided access to Internet service. Failure to meet the conditions of this paragraph that results in Opus having to reschedule on-site installation after an installation technician has been dispatched to the Station will result in a rescheduling charge of \$195.00.
5. **Help Desk Support:** Opus will provide telephone help desk support during business hours, which are Monday through Friday from 8:00 AM to 6:00 PM and Saturday from 8:00 AM to 2:00 PM, excluding the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas. Opus's staffed helpdesk can be reached for direct support by calling 1-866-OBD-TEST. Outside of the Help Desk business hours, an automated Telephone Hot Line is available under the same number.
6. **Opus's limitation of service requirement:** Opus will have no obligation to provide services under this Agreement if a request for service arises as a result of:
  - ◆ Any system malfunctions due to incapacity or inadequate quality of the electrical power source. You may be able to avoid costly repairs by connecting only the CVIS and its components to an uninterruptible power supply (UPS) rated at 1200VA or a surge protector with a minimum rating of 4,000 joules;
  - ◆ Use of any spare parts not authorized, in writing, by Opus or not provided by Opus;
  - ◆ Any software or hardware installed or connected with the CVIS that is not authorized in writing by Opus
  - ◆ Deterioration due to adverse environmental conditions arising during improper use or storage of the CVIS;
  - ◆ Abuse by the Station owner, its employees, invitees, customers, or representative(s).
  - ◆ Any unauthorized repair, modification, or change to the CVIS not performed by Opus;
  - ◆ Any Internet or networking use of the CVIS not authorized, in writing, by Opus;
  - ◆ Any non-compliance by the Station with this Agreement;
  - ◆ Any accident, catastrophic events or force majeure;
  - ◆ Any use of special attachments or other options with the CVIS not provided by, or consented to in writing, by Opus; or
  - ◆ Improper use or misuse of the Equipment not in conformance with the NYVIP3 User Manual supplied by Opus or any subsequent instructions promulgated by Opus.

Any of the above will void all warranty coverage. The cost to repair or replace parts, including labor costs that are incurred to restore the CVIS to good working order due to such unauthorized installations or use shall be at the sole expense of the Station. Services resulting from any of the above that are deemed necessary by Opus are outside of the provided warranty and shall be billed at a labor rate of \$195.00 per hour adjusted upward at a compounded rate of 3% per year. Parts prices shall be based on Opus's most recent Price List. The Station will have the opportunity to approve an estimate prior to any non-warranty repairs.

7. **Used Equipment:** See Section 20 – “Transferability.”

8. Training Services: Inspectors must successfully complete any required training provided by Opus in order to conduct official vehicle inspections using the CVIS. Training results will be recorded by Opus and provided to DMV. Computer Based Training (“CBT”) is available on the CVIS or on the Opus NYVIP3 Website. Further, only DMV certified inspectors are permitted to conduct NY State vehicle inspections utilizing the NYVIP3 CVIS/CVIL.

9. Station Responsibilities:

Station shall:

- ◆ Provide inspection station license;
- ◆ Provide Internet service with upload speeds (min. 10 Mbps), download speeds (min. 20 Mbps), and data limits necessary to perform all inspections and transfer records in the manner prescribed by DMV (Dialup is **not** supported);
- ◆ Permit Opus’s service personnel to have full and unencumbered access to the CVIS, either remotely or on site, during the Station’s business hours in order to provide the services described in this Agreement;
- ◆ Provide adequate working space and all heat, light, ventilation, electric current and other facilities reasonably required by Opus’s service personnel to complete its obligations hereunder;
- ◆ Provide electrical power which is free from electrical noise and sufficient to meet the requirements of the CVIS; and
- ◆ Notify Opus in writing of any proposed change in DMV approved location of the CVIS covered in this Agreement at least fifteen (15) business days in advance.

10. Optional Registration Renewal Service: Upon approval by DMV, Opus will provide the Station with the optional ability to offer registration renewal services to its customers through the CVIS. If the station elects to offer registration renewals it must complete the application form in Part 3 of this Agreement, which includes agreement to ACH transfer of Opus’s registration handling fees specified in the Station Agreement, and registration renewal fees as specified in the NYS Vehicle & Traffic Law, for each registration transaction. The Station may pass along such fees to the consumer. In addition, the inspection station may charge the consumer a convenience fee for processing the registration renewal, in an amount to be determined by the DMV. No other fees will be permitted for registration renewal without the advance written approval of the DMV. Opus has the right to deactivate the optional registration renewal software module if the Station fails to meet the requirements of the DMV and Opus for offering the service.

11. Transaction Fee: Transaction Fees are per-inspection charges paid to Opus by the Station. Pursuant to the Contract, the Transaction Fee for the first Contract year shall be \$0.436 per transaction. The Transaction Fee may be adjusted upward or downward annually as directed by DMV. Notice of any changes in the Transaction Fee charges and the effective date for such changes shall be provided to the Station by DMV and/or Opus no less than 10 calendar days prior to the effective date of the change.

## 12. Draw-Down Account

In NYVIP3, stations must use a Draw-Down Account to pay for Transaction Fees and Sticker Authorizations. Acceptable methods to fund the Draw-Down Account are ACH transfer, check, money order, credit card or debit card. The minimum replenishment amount when funding the Draw-Down Account with a credit or debit card is \$100; the minimum replenishment amount when using ACH transfer, check or money order is \$50. Station may use the CVIS/CVIL software or a secure website to fund or replenish the Draw-Down Account or contact Opus by phone or mail.

If at any time the Draw-Down Account balance drops below \$25.00, Opus will provide a notice to the station, via the CVIS, indicating the balance is approaching the minimum amount required to perform a complete Safety/Emissions inspection. If the Draw-Down Account balance falls below the required State minimum to perform one (1) Safety/Emissions inspection, administrative action against the station may be taken by DMV and the CVIS will be locked out from testing until the Draw-Down Account is replenished as described above.

The CVIS software will allow the Station to establish a threshold for automatic replenishment when the Draw-Down Account reaches a Station-selected minimum level. Automatic replenishment is only available via ACH transfer. A record of transactions and associated Draw-Down Account information will be available through the NYVIP3 CVIS and such records will be deemed correct unless disputed by the station, in writing, within 60 days following the applicable transaction or account drawdown.

If the station is no longer a registered inspection station with DMV, or otherwise withdraws from participating in NYVIP3, Opus will promptly refund the balance, if any, remaining in the station's drawdown account after deducting any monies due to the DMV and/or Opus for prior transactions or another outstanding balance.

13. Termination by Station: If Station chooses to discontinue participation as a certified emission inspection station in the New York I/M Program, written notice must be provided to Opus at [NYVIP3info@opusinspection.com](mailto:NYVIP3info@opusinspection.com) at least fifteen (15) days in advance.
14. Termination by Default: Any default of this Agreement by Station will result in immediate suspension of services under this Agreement and lockout of the CVIS, preventing Station from performing any further testing under the NYVIP3 program. Failure to make payment within the terms listed in Part 2 constitutes default under this Agreement. Failure to make payment on time will result in immediate suspension of services under this Agreement. Suspension of such services is not in lieu of any other remedies Opus may have against Station.
15. DMV Administrative Action: DMV may stop a Station's right to Services hereunder as result of administrative action, which will prevent the Station's CVIS from connection to the Network and thus prevent Station from conducting vehicle inspections. A stop of Services at the request, direction or instruction of DMV shall not under any circumstance be deemed a breach of this Agreement by Opus, nor shall Opus have any liability or responsibility whatsoever to Station for such stop. When the message on Station's CVIS screen indicates SERVICE STOPPED BY NYS DMV (or other similar message), Station shall immediately contact DMV for further information.

16. **Reconnection Fee:** In the event of termination of Services due to breach of this Agreement (including for unpaid or late paid Invoices), the Station may request reconnection, and will be reconnected provided the Station cures all breaches and has paid to Opus all outstanding Invoice amounts, including late charges to the date of actual payment, plus a reconnection fee of \$95.00.
17. **Indemnification:** Notwithstanding any provision to the contrary, wherever contained, Opus agrees to indemnify, keep and hold harmless the Station, its officials and employees, from any and all claims for direct damages from injury or damage to person or property, deaths, personal injury, infringement or violation of any intellectual property right, losses, damages, and suits arising out of the Services to be performed under this Contract, to the extent caused by the negligence, active or passive, or wrongful or improper conduct or other tort of Opus, its agents or employees (including infringement of any third-party's patents or copyrights). The acceptance or approval by the Station of any order or procedure, method, structure or equipment submitted or employed by Opus will not in any manner relieve Opus of any liability pertaining to Opus' negligence in performing such order or procedure, method, structure or providing equipment; provided, however, that if Opus acts in strict accordance with a specific requirement, specification, instruction, order, mandate (or the like) from the Station, with respect thereto Opus shall not have an indemnification obligation hereunder. Similarly, the Station agrees to indemnify, keep and hold harmless Opus from any and all claims for direct damages from injury or damage to person or property, deaths, personal injury, infringement or violation of any intellectual property right, losses, damages, suits arising from the actions or omissions of the Station related to vehicle inspection services or this Contract, to the extent caused by a violation of this Contract by the Station or the negligence, active or passive, or wrongful or improper conduct or other tort of the Station, its agents or employees (including infringement of any third-party's patents or copyrights).

In the performance of its obligations, Opus and its employees may be granted access to secured offices wherein private/personal information of the Station may be present. Opus shall not disclose any such information to any of the Station's business competitors, and any such information shall only be disclosed to DMV as may be required in connection with DMV's relationship with the Station, or as may be required by law or a court of competent jurisdiction. Similarly, the Station agrees not to disclose or use for any unauthorized purpose any of Opus' confidential or proprietary information (including any reverse engineering) except to the extent required by the DMV or by law or a court of competent jurisdiction.

18. **Limitation of Liability:** Except as otherwise provided in this Agreement including Section 17 (Indemnification) above or as provided in the agreement between Opus and DMV, Opus and the Station shall not be responsible for lost profits, consequential, incidental or punitive damages, or from other indirect losses or damages of Opus or the Station. The liability of Opus hereunder shall be limited to restoring the CVIS to good working order provided, however, that Opus shall not be liable for failure to restore the CVIS to good working order when such failure is due to causes beyond its reasonable control, including, but not limited to Opus's inability to obtain necessary labor or materials or spare parts due to circumstances beyond Opus's control, negligent or intentional acts by the Station, acts of God, strikes, floods, riots, delays in transportation or other inability, due to causes beyond the reasonable control of Opus to obtain necessary labor or materials or spare parts.
19. **Opus CVIS Upgrades:** Opus, with the approval or at the direction of DMV, may from time-to-time require hardware or software upgrades in order to improve CVIS efficiency, reliability, utility, maintainability, functionality or other purposes. The Station agrees to cooperate promptly and fully with Opus in the installation of any such upgrades, including but not limited to, installing new hardware and/or new software.

20. **Transferability:** This Agreement and the Services to be provided hereunder are not transferable. In the event the Station transfers ownership of the CVIS to another party, this Agreement shall automatically terminate and such other party shall be required to execute a new Agreement in order to participate in the NYVIP3. Should the Station desire to have a New York State certified used CVIS accepted into the NYVIP3 Program, Opus will charge a fee of \$195.00 for equipment verification, installation and re-initialization. Opus reserves the right to inspect the CVIS prior to reactivation. Station shall pay Opus for all Services rendered prior to Opus being notified in writing of the transfer of ownership of the CVIS. In the event a station sells its NYVIP3 equipment to another DMV-licensed inspection station, the station's right to receive continuing equipment upgrades will transfer to the new owner of such equipment, on condition that Opus is duly notified of the transfer and the new station executes a DMV-approved Station Participation Agreement with Opus.
21. **Governing Law:** All disputes arising from the provision of Services or related to this Agreement shall be governed by the laws of the STATE OF NEW YORK.
22. **General:** No modification of this Agreement shall be binding unless made in writing and signed by both parties, and approved by DMV. This Agreement is a complete and exclusive statement of all terms and conditions between the parties concerning equipment maintenance to be furnished by Opus to the Station and it supersedes and replaces any previous agreement concerning equipment maintenance between Opus and the Station. This Agreement is not transferable or assignable by Station under any circumstances.
23. **Entire Agreement:** This Agreement, which includes all of the terms and conditions hereof, and all exhibits, riders or other documents attached hereto (if any), is the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of products or services hereunder. There are no promises, representations or understandings made in connection with this Agreement or contemporaneous with the execution hereof, except as set forth in this Agreement.
24. **The Agreement Effective Date is:** 12/01/2022, 12:00:00 AM.



## Part 2: Purchase Order

This Purchase Order (hereinafter the “PO”) is for ONE (1) NYVIP3 Equipment Package (CVIS) and any other optional equipment selected to be delivered to a New York State licensed NYVIP3 Inspection Station (“Station”) identified on the NYVIP3 Station Enrollment Agreement, Part 1: New York Vehicle Inspection Station Participation and Services (“Agreement”).

General Terms: Station accepts the terms of this PO by signing the Agreement Signature Page and submitting it to Opus.

### 1. Package Options

◆ Level 0 – Safety Only Web Application

The Station shall be required to maintain computer equipment compatible with the Opus Web Application and the purchase of all sticker production components.

◆ Level 1 – Safety-Only

The Safety-Only equipment shall consist of:

- (a) PC including memory, hard drive, keyboard, mouse and monitor
- (b) 2-D barcode scan tool and interconnecting cable
- (c) Printer with cable
- (d) Sticker printer with cable
- (e) Camera
- (f) CVIS software, and
- (g) User Manual.

◆ Level 2 – Safety and OBDII

The Safety and OBDII equipment shall consist of:

- (a) PC including memory, hard drive, keyboard, mouse and monitor
- (b) 2-D barcode scan tool and interconnecting cable
- (c) OBDII scan tool with connector cable
- (d) Printer with cable
- (e) Sticker printer with cable
- (f) Camera
- (g) CVIS software, and
- (h) User Manual.

◆ Level 3 – Safety and Opacity

The Safety and Opacity equipment shall consist of:

- (a) PC including memory, hard drive, keyboard, mouse and monitor
- (b) 2-D barcode scan tool and interconnecting cable
- (c) Integrated Diesel Opacity hardware components (e.g. opacity meter, probes, cables, hoses, etc.)
- (d) Printer with cable
- (e) Sticker printer with cable
- (f) Camera
- (g) CVIS software, and
- (h) User Manual.

◆ Level 4 – Safety, Opacity and OBDII

The Safety, Opacity and OBDII equipment shall consist of:

- (a) PC including memory, hard drive, keyboard, mouse and monitor
- (b) 2-D barcode scan tool and interconnecting cable
- (c) OBDII scan tool with connector cable
- (d) Integrated Diesel Opacity hardware components (e.g. opacity meter, probes, cables, hoses, etc.)
- (e) Printer with cable
- (f) Sticker printer with cable
- (g) Camera
- (h) CVIS software, and
- (i) User Manual.

2. Title and Risk of Loss

Title to the CVIS purchased hereunder shall transfer to Station upon shipment of the CVIS and upon payment received in full. The CVIS will remain the property of Opus until fully paid. The risk of loss for the CVIS shall pass to Station on the date on which the CVIS is delivered to Station.

3. Programs (Machine Code)

Programs (Machine Code) provided for the CVIS copyrighted and licensed, not sold, (including, but not limited to the Microsoft® operating system) under the terms of the license agreement(s) provided with the CVIS.

4. Payment Terms

Acceptable methods of payment include:

- ◆ ACH
- ◆ Check or Money Order
- ◆ Visa, MasterCard or Discover
- ◆ Equipment Lease Agreement