

## **PARTICIPATING AUTOMOBILE DEALERSHIP REQUIREMENTS, PROCEDURES, TERMS AND CONDITIONS**

### **SECTION 1: PROGRAM DEFINITIONS**

- “Dealer” or “Dealership” refer to the named Automobile Dealer and its owner, employees, and any person authorized by the Dealership to sell Replacement Vehicles, transfer Retirement Vehicles, or process Program Vehicle Replacement Voucher paperwork.
- “Dismantler” is the approved, participating salvage facility to which Dealer may transfer Retirement Vehicle upon completion of automobile transaction meeting all Program rules and requirements.
- “Participant” refers to a person listed in the “Participant Name(s)” section of the North Central Texas Vehicle Replacement Voucher Letter.
- “Program” refers to the AirCheckTexas Drive a Clean Machine Program in the participating counties in the North Central Texas area, which currently include Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant counties in the state of Texas.
- “Regional Administrator” refers to the North Central Texas Council of Governments, the entity responsible for administering the AirCheckTexas Drive a Clean Machine Program in the North Central Texas area.
- “Replacement Vehicle” is a qualifying Program vehicle purchased by the Participant during a transaction in which a Voucher number and Voucher amount are used.
- “Retirement Vehicle” is the vehicle listed in the “Retired Vehicle Information” section of the Voucher Letter and is the vehicle which will be retired through the Program (the trade-in vehicle).
- “Voucher” refers to the North Central Texas Vehicle Replacement Voucher Letter, the document issued to Participant(s) by the Program which indicates the Retirement Vehicle may be retired through the Program.

### **SECTION 2: PARTICIPATION REQUIREMENTS**

The following requirements must be met by Dealer in order to participate in the Program:

- Be a Texas Department of Motor Vehicles (TXDMV) licensed motor vehicle Dealer; and
- Read and follow the Dealership Requirements, Procedures, Terms and Conditions; and
- Send at least one Dealer representative to a Dealer Workshop for Program training or complete other designated training; and
- Sign and submit a Dealer Participation Agreement outlining the Program rules and regulations to which Dealer will be subjected; and
- Maintain at least two valid email addresses; and
- Attend all mandatory workshops (as required by Regional Administrator); and
- Sell vehicles that meet the requirements listed in Section 5.2; and
- Have internet access for the AirCheckTexas Dealer database and for the public to access the Drive a Clean Machine website; and
- Have credit card transaction processing capabilities with the ability to enter the following information into a terminal:
  - Single use credit card number; and
  - Expiration date (the credit card terminal must accept an expiration date of at least seven (7) years or more, i.e. mm/yy or mm/yyyy; and
  - Customer Validation Number (a three (3) digit number may be required by some credit card terminals); and
  - Ensure the credit card terminal is programmed to use one of the approved Merchant Category Codes (MCC) – 5511, 5521, 5533, 7531, or 7538.

### **SECTION 3: CUSTOMER SERVICE RESPONSIBILITIES**

- 3.1 Dealer is not required to provide special customer service priority to AirCheckTexas Participants; however, Dealer is obligated to conduct business with AirCheckTexas Participants the same as any other customer.
- 3.2 Dealer shall not collect checks or other forms of payment from Participants in order to recoup denied voucher payment from the Regional Administrator. If the Dealer fails to adhere to all Program rules and regulations and the Regional Administrator denies payment, the Dealer must not attempt to collect money from the Participant to cover the loss. The Regional Administrator trains Participating Dealers about Program rules and regulations. It is not feasible to train Participants in the intricacies of the Program. Therefore, Dealer assumes all liability resulting from its inability to follow Program rules and regulations.
- 3.3 Dealer shall not collect fees from Participants relating to the Program, including but not limited to: application fees, fees to fax documents to the Regional Administrator, Voucher processing fees, fees to reimburse the Dealer for cost of processing credit card transactions, fees relating to the storage of the Retirement Vehicle, or any other fee that is not usual and customary for non-Program customers of the Dealer.
- 3.4 Dealer shall not provide misleading information about the Program or run questionable advertisements. Dealer may promote the Program, but must adhere to the Texas Commission on Environmental Quality's guidelines and obtain necessary written approval from the Regional Administrator when utilizing logos or agency names.

### **SECTION 4: EXPECTATION OF SERVICES**

- 4.1 Dealer must have a kiosk or designated computer available for the public to apply to the Program online. Dealer may assist the Participant with their application, but no fee of any kind may be collected by the Dealer in conjunction with application assistance. Program participation is voluntary.
- 4.2 Regional Administrator shall provide the Dealer access to the AirCheckTexas Dealer database once a completed, signed participation agreement form is received and processed and the Dealer meets all Program requirements. The Dealer's username and password provided by the Regional Administrator indicates the Dealer is approved for participation and is for the strict use of the designated Dealer representative and must not be shared with other outside entities or Participants. The Dealer's information shall be published on the Regional Administrator's list of participating Dealerships.
- 4.3 Upon receipt of the signed Dealer Participation Agreement containing a valid TXDMV license number, participation shall be in effect once the dealership representative receives a database username and password from the Regional Administrator and shall continue until participation is terminated by written notice or the end of the fiscal year, whichever comes first. Fiscal year time frame is defined on the agreement form.
- 4.4 Dealer must thoroughly and properly train all sales, finance, and other personnel who are responsible for accepting Vouchers and processing related vehicle sales transactions.
- 4.5 Vouchers must be issued and presented to a Dealer representative by the Participant before entering into negotiations to purchase the Replacement Vehicle. Any evidence that a sale was completed prior to a Participant receiving a Voucher will result in denial of Voucher reimbursement. Vehicle purchase must occur on or before the Voucher expiration date. Voucher paperwork must be signed and dated on or before the expiration date by all parties. No remedy exists to the Dealer in order to obtain reimbursement in these situations.

- 4.6 Dealers must retain copies from each AirCheckTexas Participant sale, including a copy of the Voucher Letter (front and back), all documentation submitted to the Program for Voucher reimbursement, the original Green sheet of the Retired Vehicle Transfer Manifest (after received back from Dismantler after vehicle is recycled), and all other related automobile sales transaction documentation for a minimum of three (3) years as required by Title 30 of the Texas Administrative Code §114.70(c).

## SECTION 5: PROCEDURES FOR ACCEPTING VOUCHER AND PERFORMING SERVICES

- 5.1 Upon presentation of a Voucher Letter, Dealer must verify the following:
- Voucher Letter is genuine by checking for document security features (Voucher Letter verification checklist provided by Regional Administrator); and
  - Voucher Letter is valid and has not expired; and
  - Person who presents Voucher Letter is a Participant (person is listed in the "Participant Name(s) section on the Voucher Letter); and
  - Vehicle identification number (VIN), license plate number, vehicle make, model, and year printed on the Voucher Letter matches the vehicle presented for retirement; and
  - Clear title of Retirement Vehicle is surrendered to the Dealer; and
  - Participant name and address are correct. The Dealer must provide proof of name change or address change to the Regional Administrator. For example, a marriage certificate, divorce decree, or notarized One and the Same Affidavit can be used as proof of name change. A copy of a driver's license or current utility bill can be used as proof of address change.
- 5.2 After verifying the Voucher Letter and Retirement Vehicle, Dealer must assist Participant(s) in locating eligible Replacement Vehicles for purchase. Replacement Vehicles must meet the following requirements:
- Federal Tier 2, Bin 5 or cleaner emissions standards; and
  - Have an odometer reading of not more than 70,000 miles; and
  - Vehicle meets one of the following three requirements:
    - Car of the current model year or the previous three model years (includes minivans and sport utility vehicles); or
    - Truck of the current model year or the previous two model years; or
    - Hybrid, electric, natural gas, or Tier 2 Bin 3 or cleaner vehicle of the current model year or the previous three model years; and
  - Sales price does not exceed \$35,000.00 for a Tier 2 Bin 4 and Bin 5 or \$45,000.00 if hybrid, electric, natural gas, or Tier 2 Bin 3 or cleaner vehicle as documented on line 33 (a) of the Application for Texas Certificate of Title (Form 130-U); and
  - Intended for everyday use and not exceed 10,000 pounds in Gross Vehicle Weight (Buses, campers, recreational vehicles and motorcycles are not considered vehicles for everyday use for purposes of the Program).
- 5.3 Dealer must provide Participant with professional recommendations for Replacement Vehicle purchases and help Participant locate the proper vehicle that meets the Program requirements. The Regional Administrator maintains a list of Tier 2 Bin 5 or cleaner cars and trucks at <http://www.nctcog.org/trans/air/act/index.asp> (under the "Voucher Recipients" tab). This list must be accessed by the Dealer representative prior to the vehicle sale to determine whether the vehicle qualifies based on emissions and parameters of the replacement vehicle details recorded.

5.4 In order to determine replacement vehicle eligibility, the Dealer must accurately record the details directly from the Replacement Vehicle onto the Dealer Checklist (back of the Voucher Letter), including:

VIN	Type of transmission
Year	Drive type (two wheel or four wheel drive)
Make	Fuel type
Model	Odometer reading
Engine displacement	Cylinder count
Underhood ID*	

\*The underhood ID (also known as group number or test group number) must be obtained from a label (vehicle emission control information) located under the hood of the vehicle. If this label is missing or inaccurate (due to the hood being replaced with a used hood from another vehicle), the Dealer must obtain the correct vehicle emissions control label from the vehicle manufacturer and affix it to the vehicle prior to determining eligibility and selling the vehicle.

5.5 All Participants and Eligible Co-signers will be listed on the Voucher Letter. At least one listed Participant must be titled on the Replacement Vehicle. If a co-signer or co-buyer is necessary for a purchase, Dealerships must only use individuals listed as an Eligible Co-signer on the Voucher Letter.

5.6 Leases in lieu of traditional financing are not authorized for Replacement Vehicle purchase for AirCheckTexas Participants.

5.7 Dealer must follow laws requiring an emissions test on resale.

5.8 Dealer must accurately record the mileage of the Replacement Vehicle. Odometer reading must be recorded the same on all paperwork. Evidence of inaccuracy could result in denial of Voucher reimbursement.

5.9 Dealer shall apply the Voucher value as trade-in value on line 33 (b) of the Application for Texas Certificate of Title (Form 130-U) and on the bill of sale and/or purchase agreement, thereby offsetting the taxable sales price of the vehicle and reducing the amount of sales tax the Participant owes. Voucher value is:

- \$3,000.00 for Tier 2 Bin 4 or Bin 5 cars and trucks; or
- \$3,500.00 for hybrid, electric, natural gas, or Tier 2 Bin 3 or cleaner vehicles.

5.10 Dealer shall complete, sign and date the Dealer Checklist (back of the Voucher Letter).

5.11 Dealer and Participant(s) shall complete, sign and date (on or before the expiration date) the following:

- Automobile Dealership Section of the Retired Vehicle Transfer Manifest; and
- Bill of sale and/or purchase agreement; and
- Application for Texas Certificate of Title (Form 130-U).

5.12 Dealer must secure Participant financing before finalizing all sales and transferring the Retirement Vehicle to a participating Dismantler.

5.13 Dealer shall store Retirement Vehicle in a secure location prior to transferring to a participating Dismantler authorized by the Texas Commission on Environmental Quality. Dealer shall ensure vehicle windows are closed and doors are locked. Any parts removed from the vehicle while being stored at Dealer are the responsibility of the Dealer to replace prior to Dismantler transfer.

- 5.14 Dealer shall not drive Retirement Vehicles on public roadways prior to transfer to Dismantler. Any fines or citations received while the Retirement Vehicle is in the possession of the Dealer indicate vehicle has been driven on public roadways and subject Dealer to removal from the Program as a Participating Dealer. Dealer is responsible for paying any fines or citations received while Retirement Vehicle is in Dealer's possession.
- 5.15 Dealer shall transfer the Retirement Vehicle to a participating Dismantler at no cost, and will not accept payment from a Dismantler for any vehicle or service associated with the AirCheckTexas Program.
- 5.16 Dealer shall transfer the Retirement Vehicle to Dismantler in the original condition in which the vehicle arrived at the Dealer. Dealer will not remove or replace any part(s) existing on or around the vehicle, including but not limited to: vehicle battery, tires, wheels, catalytic converter and radio.
- 5.17 Dealer shall ensure the Dismantler representative fills out and signs the Salvage/Dismantling Facility Section of the Retired Vehicle Transfer Manifest at the time the vehicle is picked up, indicating the Retirement Vehicle has been transferred to the Dismantler. Once the Retired Vehicle Transfer Manifest has been signed, the following actions must occur:
- Dealer must make two copies of the white (top) page; and
  - Dealer retains one copy of the white page; and
  - Dealer forwards the goldenrod page of the Retired Vehicle Transfer Manifest and one copy of the white page to the Regional Administrator; and
  - Dismantler retains the original white, green, yellow, and pink pages of the Retired Vehicle Transfer Manifest.

## SECTION 6: PROCEDURES FOR DOCUMENTATION AND PAYMENT

- 6.1 After the financing and sale are final and the Retirement Vehicle has been transferred to a participating Dismantler, the Dealer must enter all Replacement Vehicle information and Dismantler information into the AirCheckTexas database (<https://airchecktexas.nctcog.org>) and click the "Update" button. This step must be completed before submitting the signed voucher documentation to the Regional Administrator.
- 6.2 Dealer must submit by mail the **completed and signed** documentation to the Regional Administrator within 30 days of the Replacement Vehicle purchase date for payment authorization. These documents include:
- Original Dealer Checklist (back of the Voucher letter); and
  - Goldenrod page of the Retired Vehicle Transfer Manifest; and
  - Photocopy of the white (top) Retired Vehicle Transfer Manifest page; and
  - Copy of bill of sale and/or purchase agreement; and
  - Copy of Application for Texas Certificate of Title (Form 130-U) or Title Application Receipt from county tax collector; and
  - Copy of passing Replacement Vehicle inspection report (VIR), if applicable; and
  - Copy of valid Driver License for participant and co-signer (if applicable).
- 6.3 Dealer must submit copies of the final original sales documents to the Regional Administrator. If Dealer submits falsified or otherwise inaccurate documents, Dealer shall be subject to removal from the Program at the Regional Administrator's discretion.
- 6.4 It is the Dealer's responsibility to regularly check the database and verify the status of their submitted vouchers. The database provides the status if the voucher is pending review, denied for payment or authorized for payment. If a submitted voucher is denied for payment, Dealer

must correct the issue and submit the paperwork within the designated fiscal year funding period or by a deadline set by the Regional Administrator. Regional Administrator will not authorize any payments if the correct steps are not followed or if the correct documentation is not received by the deadline.

- 6.5 Once the Regional Administrator releases an authorization for payment, the Dealer shall access the AirCheckTexas Dealer database "Vouchers Authorized for Payment" section to charge the appropriate \$3,000.00 or \$3,500.00 Voucher value using:
- Assigned single use credit card number; and
  - Card expiration date; and
  - Customer Validation Number (CV2).
- 6.6 The Dealer shall have fifteen (15) calendar days from the day the Voucher first appears in the "Vouchers Authorized for Payment" section to access payment information and charge the Program. After that time, the information will expire and the Dealer must contact the Regional Administrator for payment authorization.
- 6.7 Regional Administrator reserves the right to contact the Dealer for reconciliation of ineligible expenses, billing errors, or any other unauthorized charges, and request the Dealer submit appropriate documentation or apply an adjusting credit transaction. Reconciliation of ineligible expense charges and/or transmittal of documentation must be performed within three (3) business days of notification unless otherwise agreed by Regional Administrator.
- 6.8 Dealer shall not process payments without the Regional Administrator's authorization. Ineligible charges or any other unauthorized charges are subject to chargeback to the Dealer at the Regional Administrator's sole discretion. Failure to comply will result in the Regional Administrator charging/billing the Dealer for all unauthorized charges. Regional Administrator may withhold payment for other submitted but unpaid Vouchers to satisfy balances owed for unauthorized charges or ineligible transactions until corrective actions have been completed and the Dealer is in good standing. Any service charges resulting from this will be at the expense of the Dealer.
- 6.9 In the event that a participating Dealer closes business or is sold to another party before processing any released payments, the Regional Administrator will work within its best ability to provide payment to appropriate parties. Depending on the outcome of two attempts to contact them, there may be voucher amounts not processed by the Dealer.

## **SECTION 7: ADDITIONAL TERMS AND CONDITIONS**

- 7.1 For auditing purposes, the Regional Administrator may conduct periodic onsite monitoring visits to ensure compliance with Program rules at participating Dealerships.
- Documentation of vehicle purchases, Retirement Vehicle transfers, and account activity may be reviewed for consistent information.
  - The onsite monitoring visit may include an inspection of any Retirement Vehicle awaiting transfer to an approved Dismantler. Dealership shall provide Regional Administrator staff with access to location where vehicles are stored as well as access to interior of vehicle(s), which may include the engine compartment.
- 7.2 One or more Dealer representatives responsible for administering the Program at the Dealership are required to meet with Regional Administrator staff during the onsite monitoring visit and produce copies of AirCheckTexas documentation for review, as requested.

- 7.3 The Regional Administrator shall notify Dealerships verbally and/or in writing of any findings. Dealership may be given an opportunity to correct these findings. Additional site visits may be required to follow up on these findings.
- 7.4 Regional Administrator may terminate Dealer's Program participation if Dealer is:
- Found out of compliance with Program rules and regulations; or
  - Generating legitimate Participant or Dismantler complaints; or
  - Involved in fraudulent activities against a Participant or the Program; or
  - Involved in any activity that conflicts with the intent of the Program or the orderly administration of the Program; or
  - Found to be involved in any other activity deemed unacceptable, at the sole discretion of the Regional Administrator.
- 7.5 All decisions to terminate Dealer's Program participation are at the sole discretion of the Regional Administrator.
- 7.6 Dealer is obligated to follow any amended or additional rules and regulations communicated by the Regional Administrator. These changes will usually be communicated in advance and may be communicated by the AirCheckTexas Dealer database, email to Dealer's official email addresses on file with the Program, via the United States Postal Service, and/or by phone.

## **SECTION 8: MISCELLANEOUS TERMS AND CONDITIONS**

- 8.1 **Dispute Resolution.** The parties to this Agreement agree to the extent possible and not in contravention of any applicable State or Federal law or procedure established for dispute resolution, to attempt to resolve any dispute between them regarding this Agreement informally through voluntary mediation, arbitration or any other local dispute mediation process, including but not limited to the dispute resolution policies of North Central Texas Council of Governments, before resorting to litigation.
- 8.2 **Availability of Funds.** This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited by the receipt and availability of funds which are received from the funding agencies by NCTCOG dedicated for the purposes of this Agreement.
- 8.3 **Indemnification.** To the maximum extent allowed by law, Dealer covenants and agrees to indemnify and hold harmless and defend and does hereby indemnify, hold harmless and defend North Central Texas Council of Governments, as Regional Administrator, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to persons or property, whether real or asserted, arising out of Dealer's failure to comply with terms and conditions herein and/or any negligent act or omission on the part of Dealer, its officers, agents, servants, employees, or subcontractors and Dealer does hereby assume all liability for injuries, claims, expenses, costs incurred, including attorney fees and costs of litigation or suits for damages to persons, property or whatever kind or character, whether real or asserted, occurring during or arising out of the performance and/or failure of performance of this Agreement and/or as a result of any negligent act or omission on the part of Dealer, its officers, agents, servants, employees, or subcontractors.
- 8.4 **Force Majeure.** It is expressly understood and agreed, that, if the performance of any provision hereunder is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms hereunder to do or perform the same, regardless of whether

any such circumstance is similar to any of those enumerated herein, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such Party was delayed. Each Party must inform the other in writing within reasonable time of the existence of such force majeure.

- 8.5 Severability. In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intents of the Parties.
- 8.6 Assignment. Dealer's obligations hereunder may not be assigned without the written consent of the Regional Administrator.
- 8.7 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Contract shall be in Tarrant County, Texas.
- 8.8 To indemnify and hold harmless NCTCOG, as the Regional Administrator, from any claims arising from or related to services performed by the Dealership pursuant to the Program.
- 8.9 By signing Dealer Participation Agreement form, the named Automobile Dealer requests to become a Participating Dealer in the AirCheckTexas Drive a Clean Machine Program and accept Vehicle Replacement Vouchers issued from the participating counties in the North Central Texas area. If participation is granted, the Automobile Dealer agrees to all of the requirements, procedures, terms and conditions.