

Texas Emissions Reduction Plan
Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) Agreement
TERMS AND CONDITIONS

ARTICLE 1. STATEMENT OF AGREEMENT

1.1. Statement of Agreement: **THIS AGREEMENT** is entered by the parties listed on the Signature Page for the purpose of providing an incentive for the purchase or lease of a LDPLIP eligible vehicle. The purchaser or lessee agrees to operate and register the eligible vehicle purchased or leased under the LDPLIP in Texas for a minimum of one calendar year (12 months) from the date of purchase or lease. If the LDPLIP application is approved and funds are available, the Texas Commission on Environmental Quality (TCEQ) will issue the purchaser or lessee the appropriate LDPLIP rebate for the purchase or lease of an eligible vehicle. All incentives are subject to the Texas Uniform Grant Management Standards and the Agreement.

1.2. Contract Period: The Effective Date of this Agreement is the date on which the Signature Page of the Contract Documents is signed by the last of the parties to sign. This Agreement will commence on the Effective Date and shall terminate one calendar year (12 months) from the date of purchase or lease of the vehicle or 45 days from the Effective Date, whichever occurs later, as provided on the Signature Page of the Contract Documents.

1.3. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, and termination or completion of the Agreement.

1.4. Remedies Available to the TCEQ: In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies in the event of any breach of the requirements of this Agreement; including failure to conform to the requirements of the Agreement or applicable law:

- 1.4.1. reject substandard performance and request corrections without charge to the TCEQ;
- 1.4.2. issue notice of substandard performance or other non-conforming act or omission;
- 1.4.3. request and receive return of any over payments or inappropriate payments; and
- 1.4.4. reject LDPLIP request and suspend payment pending accepted revision of substandard performance or non-conformity.

1.5. Cumulative Remedies: TCEQ may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses rising from or caused by the purchaser or lessee substandard performance or any material non-conformity with the Agreement or the law. The remedies and sanctions available to either party in this contract shall not limit the remedies available to the parties under law.

1.6. Amounts of costs stated in this Agreement are maximum amounts of the LDPLIP. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for the LDPLIP which must subsequently and continually be satisfied by the purchaser or lessee.

ARTICLE 2. FUNDING AND LEGAL AUTHORITY

2.1. This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to and limited to those funds which are both:

2.1.1. appropriated by the Texas Legislature for the purposes of this Agreement; and

2.1.2. actually received and deposited into an account of the treasury dedicated to the TCEQ for the purposes of this Agreement.

2.2. Any state funds provided are appropriated to TCEQ under the Appropriations Act (Senate Bill 1) of the 85th Texas Legislature and expenditure is authorized by Chapter 386, Texas Health and Safety Code.

2.3. This Agreement is entered into by and between the TCEQ and the PERFORMING PARTY pursuant to Chapter 386, Texas Health and Safety Code. Further authority is contained in the Texas Water Code, Chapter 5, Subchapter D, Section 5.124 (Authority to Award Grants) and Section 5.229, pertaining to the TCEQ's general authority to enter contracts.

ARTICLE 3. INCENTIVE

3.1. If the LDPLIP application is approved and signed by both parties, and funds are available, the TCEQ will issue the purchaser or lessee up to \$5,000 for the purchase or lease of an eligible LDPLIP vehicle. Leases will be prorated based on a one to four-year lease term. The approved amount is marked by TCEQ on Form 1 of the application.

3.2. For any purchase or lease, the purchaser or lessee must submit any supporting documentation required or requested by TCEQ.

3.3. The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the purchaser or lessee.

3.4. The TCEQ may at any time, in its sole discretion, in the best interests of the state establish additional criteria and requirements for the LDPLIP.

3.5. The TCEQ is not obligated to make payment until the LDPLIP application is approved by the TCEQ.

3.6. No entitlement. In accordance with this Agreement, the purchaser or lessee does not have an expectation or entitlement of continued receipt of financial assistance under this Agreement. Therefore, the purchaser or lessee waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.

3.7. The purchaser or lessee is not a "vendor" of goods and services within the meaning of Texas Government Code Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Agreement.

ARTICLE 4. ADDITIONAL TERMS AND CONDITIONS

4.1. Laws. This Agreement is subject to: (1) Chapter 386, Texas Health and Safety Code; (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Uniform Grant and Contract Management Standards for State Agencies; (3) Appropriations Act of the 85th Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by state agencies; (4) Texas Government Code Chapter 2261 (pertaining to cost reimbursement contracts); (5) Texas Government Code Section 556.0055 (pertaining to lobbying); (6) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (7) Title 30 Texas Administrative Code Chapter 114, Subchapter K, Division 2, Sections 114.610-114.612; and (8) other applicable Federal and State rules and statutes.

4.2. Notice of Rebates. This Agreement is subject to the criteria established in the Notice of Rebates issued by the TCEQ and under which the LDPLIP application was submitted, and any amendments thereto.

4.3. Child Support. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Grant Agreement, the purchaser or lessee certifies that the individual or business entity named in this contract or application is not ineligible to receive the specified rebate and acknowledges that

this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

4.4. State Auditor's Office. The purchaser or lessee understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor with access to any information the State auditor considers relevant to the investigation or audit. The purchaser or lessee agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested.

4.5. Compliance with Laws. The purchaser or lessee shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the LDPLIP. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring the purchaser's or lessee's compliance with any Laws or Regulations.

4.6. Sovereign Immunity. The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages.

4.7. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the state of Texas, excluding any choice of law rules which may direct the application of laws of another jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Agreement shall be brought in Travis County, Texas. This provision does not waive the TCEQ's sovereign immunity.

4.8. Savings. Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and the purchaser or lessee, who agree that Contract Documents are reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

4.9. Indemnification. To the extent permitted by law, the purchaser or lessee agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the purchaser or lessee in the performance of this Agreement.

4.10. Representations. The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give prompt written notice to the TCEQ if there is any material change in these representations or certifications.

4.11. Additional Evidence. The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

4.12. Offsets for debts owed to the State. The TCEQ may offset against payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas, whether owed under this program or otherwise.

4.13. Maintenance of Records.

4.13.1. The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to requirements of the Agreement, including the Agreement or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the Uniform Grant Management Standards (UGMS), and this Agreement. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

4.13.2. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Agreement.

4.13.3. Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activities under this Agreement and for three (3) years after the termination of this Agreement. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three-year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

4.14. Data and Publicity.

4.14.1. All data and other information developed under this Agreement shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Agreement, if requested by the

TCEQ, all copies of data and information developed under this Agreement, including databases for which the costs of preparation are reimbursed under this Agreement, shall be furnished at no charge to the TCEQ, and shall become the property of the TCEQ.

4.14.2. The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity is publicized or reported in news media or publications.

4.15. By stating at any place in this Agreement that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

4.16. The parties to this Agreement expressly agree that time is of the essence of this contract.

4.17. The terms include, included, including, includes when used in this Agreement shall mean "includes but not limited to".

4.18. Unless authorized in writing by the TCEQ in accordance with this Agreement, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

4.19. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This Agreement is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

4.20. TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 5. TERMINATION

5.1. This Agreement may be terminated in whole or in part by the TCEQ for cause, including a material failure to comply with the Contract Documents.

5.2. Termination of this Agreement under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Agreement or otherwise as provided by law.

5.3. This Agreement may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include without limitation the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which results in the unavailability of funds to complete this project.

5.4. If, during the performance of the Grant Activities, the purchaser or lessee chooses to not complete the Grant Activities and withdraw from the obligations under this Agreement, the purchaser or lessee may terminate this Agreement by providing ten (10) days written notice to the TCEQ and returning any payments already received.

— End of Terms and Conditions —