

# **Oregon's DEQ Too™ Program Terms and Conditions for: Company with a Fleet of Vehicles**

(Version 1/24/2017)

This is an agreement ("Agreement") between my company and the State of Oregon acting by and through the Oregon Department of Environmental Quality (DEQ) setting forth the obligations of the parties for our participation in Oregon's DEQ Too™ Program as a Company with a Fleet of Vehicles.

## **BACKGROUND SECTION**

### **DEQ Develops and Implements Oregon's Air Pollution Control Reduction Strategies**

With the oversight of the Federal Environmental Protection Agency (EPA), the Oregon Legislature and the Environmental Quality Commission (EQC), Oregon's air pollution control strategies are established and implemented by the DEQ. Such strategies include, but are not limited to, permitting, inspections, enforcement, area-specific planning and strategy development, monitoring and measuring, voluntary, financial assistance and incentive programs. DEQ's Vehicle Inspection Program (VIP) is an air pollution reduction strategy involving the periodic inspection of vehicles which is enforced by denying registration until a vehicle passes the inspection.

### **Program Effectiveness**

The Oregon Legislature has determined that, in the best interest of the state of Oregon, vehicles are to be required to have their emissions tested within certain time periods, certain geographic areas and certain model year ranges. The effectiveness of Oregon's VIP program is periodically evaluated and the program is considered one of the most effective vehicle emissions testing programs in the country. A great example of Oregon's approach is that the State does not allow a repair waiver. In the vast majority of states, if a vehicle fails an emissions test, the vehicle owner needs only to produce a receipt that a certain amount of money was spent (some are as low as \$150) on repairs and then it can receive registration renewal. This exemption, referred to as a "repair waiver", means that excessively polluting vehicles are allowed to continue operating in these other states after failing the emissions test and receiving just a partial repair. Oregon does not have a repair waiver program, so vehicles that fail DEQ's test must be fully repaired and are not allowed to continue causing excessive air pollution. DEQ does have a financial assistance program to help motorists who cannot afford to fix their vehicle. As a result of VIP's effectiveness, the Portland and Medford areas have not exceeded the federal standards for ozone or carbon monoxide (CO) in several years. In addition to the VIP program continuing to help reduce ozone and CO concentrations - even as Oregon's population increases - the program also helps to reduce fine particulate, greenhouse gases, and air toxics.

### **Program Efficiency**

Besides its effectiveness, the efficiency of Oregon's VIP program is also regularly evaluated. From self-service kiosks and testing vehicles on an auto dealer's lot, to issuing registration stickers for a unique DEQ/DMV one-stop-shopping experience - Oregon's VIP is considered one of the most innovative, convenient and efficient vehicle emissions testing programs in the country. With DEQ Too, Oregon is now taking efficiency to a whole new level by adding to VIP's range of convenient testing options from which motorists can choose.

**The DEQ Too Test Method is Not about Expanding the Reach of the VIP Program**

DEQ's authority for the VIP program is established by the Oregon legislature and the program's scope is limited in several ways; including those mentioned below. DEQ cannot and does not mandate or provide incentive that vehicle emission tests or repairs be done outside of testing boundaries, model year range, or registration renewal period:

1. *Must Test only within certain Geographic Boundaries.*  
Vehicles must be registered or registering inside specific geographic boundaries in the Portland-Metro and the Medford-Ashland areas.
2. *Must Test only within certain Model Year Ranges:*
  - In the Portland-Metro area, the vehicles must be at least 5 years old and no older than a 1975 model year.
  - In the Medford-Ashland area, the vehicle's model age must be between 5 and 20 years old.
3. *Must Test only within specified Registration Renewal Period.*  
Vehicles must be tested only during the period of their DMV registration renewal. The renewal period is based upon registration which expires every 2 years.

DEQ Too is all about program efficiency; it's a new efficient, convenient test method that motorists can choose to use or not use. DEQ Too's objective is *not* about modifying the program's reach; it does not expand the limited scope of the VIP program. So the DEQ Too test method falls squarely under VIP's limited scope just the same as the existing test methods; inspector-conducted tests at Clean Air Stations, the inspector-conducted tests on the lot of auto dealerships, and the inspector-assisted tests when motorists use self-service kiosks. As such, all of VIP's test methods are limited to the exact same testing boundaries, the same model year ranges and the same registration renewal periods.

It is understood that some vehicles registered outside the established boundaries, outside the model year ranges or outside of their renewal periods can also be in need of emissions system repair. And, in fact, motorists with such vehicles can voluntarily use any of DEQ's test methods which may result in the motorist electing to repair the vehicle. It is also understood that businesses have and use non-DEQ Too approved equipment and methodologies, and use conditions and incentives to diagnose and repair vehicles outside of the scope of the VIP program. But DEQ Too, like all the test methods in the VIP program, *does not and will not mandate or provide incentive* that vehicle emission tests or repairs be done in such "voluntary" circumstances. It is critical that the VIP program scope remains consistently within its legislative directive across all VIP test methods. DEQ Too-approved equipment and methodologies are strictly a part of DEQ's provision of a new efficient, convenient test method that motorists can choose to use or not use.

Therefore testing equipment (e.g. telematics device, cable, display screen) and methodologies (e.g. audio, visual, software, app, website) that are officially approved for the purpose of DEQ Too program participation must *not* be associated with or used in any manner which places required conditions upon or provides incentive (financial or otherwise) to vehicle owners, businesses, or other individuals or entities to test or repair Oregon registered vehicles:

1. That are intended for registration *outside* of the authorized Portland-Metro and Medford-Ashland geographic boundaries.
2. That are *outside* of the authorized model year ranges:
  - In the Portland-Metro area, the vehicles must be at least 5 years old and no older than a 1975 model year.
  - In the Medford-Ashland area, the vehicle's model age must be between 5 and 20 years old.
3. That are *outside* of their registration renewal period.

Vehicles must be tested only during the period of their DMV registration renewal. The renewal period is based upon registration which expires every 2 years.

## **DEQ Too is Oregon's Newest Vehicle Emissions Testing Option**

In Oregon, motorists refer to the smog test as "Going through DEQ" (Department of Environmental Quality). While DEQ offers several convenient Clean Air Station locations, our average wait time is less than 10 minutes, and we provide weekend and evening hours, we understand it can still be a challenge for our operations to match up with everyone's specific needs. That is why we started allowing for another testing option to evolve in 2016. Everyone likes choices. Take the evolution of the banking industry where business was conducted only with in-person tellers at first, then ATM machines were introduced and now banking can also be completed using the internet. Similarly, with DEQ, motorists can receive an emissions test with in-person inspectors or self-service machines at our stations and now testing can also be completed using the internet.

The internet option is called DEQ Too and involves the motorist voluntarily authorizing On-Board Diagnostics (OBD) data to be remotely transmitted from their vehicle to DEQ. Instead of visiting a Clean Air Station, motorists test their vehicle at locations they are driving to already. While taking care of their other car needs at such places, they can take care of their *DEQ too*. Participating businesses (Hosts of Device-Borrowing Locations) will lend motorists a telematics testing device to plug into their car and return it a couple of minutes later. The car's OBD data will be immediately transmitted to DEQ and then at the motorist's convenience they can use their smart phone or other device to check results. They'll be able to view diagnostic trouble codes if their Check Engine light is on. Or, if all looks good to pass DEQ's emissions test, they can order their DMV (Driver and Motor Vehicle Services Division, a branch of the Oregon Department of Transportation) stickers online which will arrive in the mail within as few as 3 business days.

Telematics devices manufactured into a vehicle's system to provide turn-by-turn navigation, roadside and stolen vehicle assistance, etc., can also transmit OBD data. In addition, auto fleet services, usage-based auto insurance programs, and other applications utilize after-market Telematics devices which can also transmit OBD data. DEQ will accept data transmitted from these types of continuously connected devices as well. While originally intended for other uses, these can be used for *DEQ too*.

Auto dealership companies and companies operating a fleet of vehicles will also be able to use telematics devices to test their multiple vehicles without visiting a Clean Air Station.

The bottom line is that DEQ wants to ensure motorists and companies have multiple testing options and can decide what's best for them in their particular situation at any given time. The DEQ Too option saves time and fuel; and even helps reduce air pollution.

## **DEQ Makes the Determination of Test Results**

The Department's Environmental Quality Commission authorizes remote, self-service testing via Oregon Administrative Rule 340-256-0358(1). DEQ is the only entity authorized to determine and provide the emissions testing results to vehicle owners.

## **The 2 Types of Telematics Devices**

1. ***Continuously Connected*** vehicle telematics device (hereinafter interchangeable with "C-type" device). This device is one that is continuously connected, 24/7 to one vehicle. These C-type devices are either built-in to the vehicle's system during auto manufacturing or plugged-in after-market. By comparison, the other telematics device (S-type) can be shared for use by multiple vehicles.

The C-type device has a primary objective *other than* transmitting OBD data to DEQ. Examples of after-market C-type devices include use by auto fleets to optimize driving routes and maintenance schedules and by usage-based auto insurance programs to help motorists achieve lower premiums. Key purposes of built-in, C-type devices are roadside assistance, stolen vehicle assistance, turn-by-turn navigation, hands-free calling, etc. Regardless of their primary purpose, these continuously connected devices can also capture OBD data and so they can be used for *DEQ too*.

2. **Shared** telematics device (hereinafter interchangeable with "S-type" device). A S-type is an after-market plug-in device that can be shared for use by multiple vehicles; one vehicle at a time. By comparison, the other telematics device (C-type) is continuously connected to and used by only one vehicle.

The objective of the S-type device is for use with multiple vehicles to transmit a snapshot of each vehicle's OBD data to DEQ. The general public would use S-type devices by borrowing them from participating Device-Borrowing Locations that exist for a primary purpose other than transmitting OBD data. For example, if a gas station participated as a Host, their primary purpose is for motorists to refuel their vehicle. However, by briefly borrowing the device, motorists could take care of their *DEQ too* while they are refueling.

## The 5 Types of Business Participants

DEQ Too relies on an open market approach whereby voluntary participation in a given role is open to any company that meets certain terms and conditions. Each business participant type and role is as follows:

1. **C-Type Device Provider** is the company with which the vehicle(s) owner enters into the original agreement to lease, own and/or activate the telematics device.

DEQ will only enter agreements with prospective C-Type Device Providers that provide at least one primary service that has shown specific and sustained demand for the service for the last 12 months. It is in the Program's best interest to ensure that any C-Type Device Provider has a proven, sustainable primary service that necessitates a 24/7 continuous connection, rather than becoming a telematics company that goes into business solely to test vehicles. S-Type Device Providers serve in that role via Hosts, Auto Dealerships and/or Fleets. The sustained demand for the service does not necessarily need to be demonstrated by the prospective C-Type Device Provider itself. It can be demonstrated by any company. For example, a new telematics device for Usage-Based Insurance would not need to demonstrate that there's a sustained demand for such a service.

2. **S-Type Device Provider** is the company with which the Host, Auto Dealership and/or Fleet enters into an agreement to lease, own and/or activate the telematics device.

DEQ will only enter S-Type Device agreements with companies that have met specific, technical and sustained demand for the use of OBD plug-in equipment for the last 12 months. This experience demonstrates that the company successfully and actively oversees the quality and technical support of the OBD-related equipment it provides. In an open-market system like DEQ Too, such experience is in the Program's best interest to make certain that the Program itself maintains quality standards to ensure long term viability of the program.

3. **Hosts** own or operate a business that will act as a Device-Borrowing Location that has an S-type device that is used on location voluntarily by a motorist or by the Host on behalf of the volunteering motorist. The objective is to allow transmission of OBD data to DEQ from the business location. Having the S-type device is in addition to the business' primary product(s)/service(s). Examples of possible Device-Borrowing Locations include, but are not limited to: gas station, auto service, repair, parts and car washing companies.

DEQ will only enter agreements with prospective Hosts that provide at least one primary service or product that has shown specific and sustained demand for the service/product for at least 12 months. It is in the Program's best interest to ensure that any Host has a proven, sustainable primary service or product, rather than becoming a business location solely for testing vehicles. That service already exists with the testing service that DEQ provides at its Clean Air Stations. The sustained demand for the product/service does not necessarily need to be demonstrated by the prospective Host itself. It can be demonstrated by any company. For example, a new gas station would not need to demonstrate that there's a sustained demand for such a product.

4. Companies with a **Fleet** of vehicles voluntarily use the devices to transmit OBD data from the vehicles they own/operate to DEQ and subsequently retrieve results from the DEQ Too website.
5. **Auto Dealerships** voluntarily use the devices to transmit OBD data to DEQ from the vehicles they have in inventory to sell/lease and subsequently retrieve results from the DEQ Too website.

When a company enrolls to participate and meets the terms and conditions for one of the above roles, DEQ places them on one of the five list-types as an "Official DEQ Too Business Participant". When a general public vehicle owner voluntarily uses a telematics device to transmit OBD data to DEQ, they do not need to enroll with DEQ Too in advance, but they must agree to certain terms and conditions on the website before results will be shown.

### **The S-type Telematics Design Requirements Encourage Widespread Distribution of Testing Devices**

The Oregon DEQ Too program relies on a free-enterprise, open-market approach whereby the vehicle emissions test can be performed remotely at multiple business locations and the telematics test equipment can vary from location to location; depending on the equipment provider. A primary goal of DEQ in creating the terms and conditions for the S-type telematics device provider is to encourage widespread distribution of the testing devices; *especially* for the general public. To meet this goal, DEQ enters into agreements with providers who can deliver S-type devices and methodologies that work well in *any* type of DEQ Too testing business environment.

To ensure widespread distribution of testing devices, all S-type devices and methodologies are built primarily for less experienced users. Requiring consistent features and user-friendliness for the less experienced users will also work for the more experienced users. Also, all S-type devices and methodologies are built to primarily support workplace environments which are fast-pace, high-volume, with individual employees serving multiple customers at the same time, across multiple point-of-service locations. If the devices and methodologies can function well under those types of working conditions, then they will also function well in lower paced, lower volume type of conditions. Ensuring the devices and methodologies are built in this manner helps achieve and maintain compliance with Oregon Administrative Rule 340-256-0358. Namely, the emissions test needs to be such that it can be performed in any environment by either the vehicle owner *or* by a representative, on behalf of the vehicle owner.

Therefore, DEQ utilizes certain terms and conditions under the Obligations section of the S-Type Telematics Device Provider Terms and Conditions that ensure the testing equipment and process recognizes and/or accommodates high pace/volume businesses:

- By ensuring that the testing equipment/processes provides consistent features for motorists so they can easily use the equipment at any DEQ Too participating business, regardless of which S-type provider made the device.
- Which are accustomed to their customers remaining inside their vehicle while on the business' location. (For example, in Oregon, motorists are not allowed to pump their own fuel at a gas station)
- Which use individual employees to serve multiple customers at the same time, across multiple

point-of-service locations.

- Where the testing equipment will not necessarily be available at every point-of-service location on the premises.

Due to all of these business characteristics, when the testing equipment is not in use it should be in a location that does not require the business' employees to deviate from or interrupt their normal path of service delivery. Therefore DEQ has certain design and process requirements for S-Type devices:

- They must be small and mobile enough for employees to carry in a pocket of pants/shorts/shirt/jacket, on a belt clip/holster or on a breakaway lanyard around their neck.
- They must make for a smooth and uncomplicated passing back and forth through a car window; ergonomically built for ease of holding with one hand.
- They must be capable to be used in a process that takes limited and quick action from start to finish while the motorist is on the business' premises.

### **Vehicle Owners will Obtain Results Using the DEQ Too Website**

- The vehicle owner will enter their license plate or VIN to display their test results.
- If the vehicle is "Unready", the website will indicate what that means.
- If DEQ has failed the vehicle (Check Engine Light has been commanded "ON"), the website will indicate why and provide a link to DEQ's Recognized Auto Repair Shops.
- Once the vehicle has passed the test, the owner will pay DEQ's certification fee via the website.

### **Administrative process for Fleets using the DEQ Too Program**

Companies with a fleet of vehicles must obtain a paper certificate entitled a "DEQ Clean Air Certificate" as proof that the vehicle has passed DEQ's test. If and when a fleet chooses to use the online DEQ Too program, once the vehicle passes DEQ and the fleet pays for their electronic certificate, that E-Certificate will contain the name of the fleet company and a uniquely generated QR code for security and auditing purposes. As with a paper Clean Air Certificate, the E-Certificate is used for proof of passing DEQ's test in the following ways; depending on the type of fleet:

- DMV-Registered-Fleets receive and maintain "Permanent Fleet" license plates from DMV. DMV has a registration renewal process specifically for these privately owned Permanent Fleet companies. While the process includes submittal of a printed E-Certificate to DMV, it does not include renewal stickers nor does it include online renewal with DMV.
- For vehicle's that are a part of a private company's fleet, but not a part of DMV-Registered-Fleets, renewal is required and these fleets' license plates do use registration renewal stickers. The renewal process includes submittal of a printed E-Certificate to DMV when these fleets renew registration through the mail or in-person at a DMV field office. A printout of the E-Certificate is not necessary when these fleets renew online with DMV.
- For vehicles that are a part of a governmental fleet (E-Plate), no DMV registration renewal is required, but the emissions test is still required so DEQ needs the proof of passing. DEQ will view the governmental fleet's E-Certificates online to verify that vehicles have passed the emissions test.

E-Certificates cannot be used for any DMV or DEQ transaction at a DEQ Clean Air Station.

## **PROGRAM OBLIGATIONS**

On behalf of my company, I agree to the following terms and conditions:

### **Company with a Fleet of Vehicles**

We are a company with multiple vehicles that directly or indirectly enters into a lease, purchase or other type of financial agreement with telematics device provider(s) on the current DEQ Too Business Participant List for the purpose of testing our own vehicles, and:

- We will provide to DEQ the physical address of each of our participating business locations along with the telematics device serial numbers assigned to each location.
- Our S-type device(s) will *only* be used at the physical addresses provided to DEQ. If we use C-type devices, the OBD data will be transmitted from wherever the vehicle is at the time of the test.
- We will inform DEQ in advance if a device is no longer being used and/or replaced by another, if they are being relocated to one of our other property addresses, or if the device is missing.
- If we have business locations operating under this agreement using different names than our umbrella company name, we will provide the business location name associated with each address.

### **Testing the Vehicle**

- We will only test vehicles that are owned and operated by our company.
- We will *not* test a vehicle if we notice any visible smoke coming from the tailpipe. In those cases, we will use a different emissions testing option that is conducted by a DEQ inspector.
- We understand that for purpose of consistency across the DEQ Too program, and consistency with the Clean Air Station testing, when it is the customary time for us to test one of our vehicles, we will transmit data to DEQ even if we first recognize that the vehicle's Check Engine Light (MIL) is on or the vehicle is "Unready".
- If we have the capability of clearing MIL/DTCs, we understand that without proper repair, such action does not help vehicles pass emissions testing.
- Our company will not:
  - Refer to the testing device as "Oregon's device", or "DEQ's device" or anything similar. The device is ours; not DEQ's.
  - Adhere to or etch into the device the DEQ Too logo the words "Oregon", "DEQ" or "Too".

### **Tampering with or Altering OBD Systems is a Violation of the Federal Clean Air Act**

Our company understands that it is a violation of Section 203(a)(3) of the Federal Clean Air Act to tamper with or to alter an OBD system from its original equipment configuration. We will not alter the OBD System on any vehicle and we will not alter any data transmission from any vehicle's OBD system.

### **Strictly Within Scope of VIP Program and Only DEQ Makes Compliance Determination**

As described in the Agreement's Background section, we will not allow our DEQ Too-approved equipment and methodology to be used in any manner which places required conditions upon or provides

incentive to vehicle owners, businesses, or other individuals or entities to test or repair Oregon registered vehicles which are outside the scope of the VIP Program. The compliance determination comes solely from DEQ via the DEQ Too website; not our company.

### **DEQ Too Electronic Certificate Security Feature**

The E-Certificates we purchase and print from the DEQ Too website contain a QR code (Quick Response machine-readable optical label). The certificates are unique to our company and to each unique VIN in our fleet of vehicles. The QR code makes it more secure and efficient for scanning and auditing purposes.

### **Maintaining Awareness of how the DEQ Too program works overall**

We acknowledge that DEQ has a strong interest in ensuring the DEQ Too program works properly for companies with a fleet of vehicles. Therefore, our device provider will provide us with training materials to become aware and maintain awareness of how the DEQ Too program works overall. Our device provider will use a manual, a video, hands-on or some similar training method or combination of methods. DEQ provides the minimum training content to all device providers and that content is described in the documentation section of this agreement which will also be referenced in any agreement between our company and our device provider.

### **Third-Party User Interface Software**

If we elect to use third-party user interface software instead of, or in addition to, using the official DEQ Too website, we understand that:

- DEQ does not require that we use any interface software, the DEQ Too website can work for our company as a standalone system, and we will still receive and review the minimum training about the DEQ Too website (as described in the preceding section).
- The software provider is considered our Partner as described under the "Partnerships with Other Companies" obligation section. Prior to using the software, we, or our Partner on our behalf, will first receive DEQ's approval. After demonstrating to DEQ how the interface software works, DEQ will have up to 30 days to indicate what changes, if any, are required.
- DEQ has a strong interest in ensuring that features of the DEQ Too website and program are represented in a certain manner to all users. Therefore, DEQ's review includes, but is not be limited to, the following:
  - The third-party's methodology aligns with the intent of any portions of this Agreement.
  - All the data entry that the DEQ Too website receives via the user interface is authorized by our company and is done as DEQ requires.
  - All the output and communication we receive from the DEQ Too website via the user interface is authorized by our company and is done as DEQ requires. This especially includes indication that test results have been determined solely by DEQ.
  - If any mobile display screen device is used as part of the provider's methodology to complete transactions with the DEQ Too website, then its outermost edges, including any protective casing (built-in or otherwise), shall have the following maximum dimensions:
    - a. 6¼ inches long
    - b. 3¼ inches wide

c. 1¼ inch thick

These dimensions do not apply to any peripheral equipment designed to charge, store or carry the display screen.

- Any problems caused by the software are the responsibility of the software provider.
- The software provider does not indicate to our company that they created the remote OBD testing option in Oregon. The software displays the DEQ Too logo on any user screen that contains vehicle emissions testing activity. Note: The testing method is made possible in Oregon only because DEQ initiated this convenient option. The Oregon Legislature provided the statutory authority to DEQ and its commission to develop rules authorizing remote OBD testing.

### **Communication about Financial Transactions**

We will describe to DEQ the payment mechanism of how we compensate our telematics device provider (lease, sale, per usage fee or other financial payment). If there are periodic payments, we will inform DEQ of the frequency (monthly, etc).

### **Partnerships with Other Companies**

In participating in Oregon's DEQ Too program, we may partner with one or more companies to help implement the DEQ Too program or who may otherwise interface with us or our telematics device providers regarding the DEQ Too program (our "Partner" or a "Partnership"). Example Partners include, but are not limited to, industry associations, systems/software applications provider/integrator, etc. We will provide to DEQ a description of the nature of any Partnership. Since we may change Partners or add some, if anything changes significantly in the nature of our type of Partnerships, we will inform DEQ within 15 days of the change. DEQ may acknowledge that our company and our Partner companies are involved in the DEQ Too program. The form of acknowledgement may include, but not be limited to, DEQ mentioning the partnership on the DEQ Too website. Within 15 days of a written request from DEQ, we will provide to DEQ a list (or website link) of the names of our current Partners. If DEQ deems that our Partnership is not in the best interest of DEQ, DEQ may elect to terminate this Agreement.

We have full responsibility to DEQ for the duties and obligations under this Agreement. We maintain full responsibility regardless of whether they are performed by us or our Partners. If one or more of the following obligations are applicable to the role performed by a particular Partner, then we will provide a copy of this agreement to the Partner and ensure the Partner:

- Complies with any and all of the obligations under the Program Obligations section
- Not act as an Agent or Employee of DEQ
- Keep Confidential Information confidential

### **Advertising and Announcing our Participation in DEQ Too**

We acknowledge that DEQ has a strong interest in ensuring that the communication about the DEQ Too program is accurate and conforms with DEQ trademark usage policies. If we advertise or externally announce our participation in DEQ Too, then we will provide to DEQ for DEQ review and approval all communication content we, or our Partners, intend for explaining and advertising the use of our telematics device with Oregon's DEQ Too program. This includes communication that we or our Partners intend to relay to any external audience that we are involved in remote OBD in the State of Oregon. If DEQ does not provide a response to us within 15 days of receiving the material, then the communication content will

be deemed approved. Such communication related to the DEQ Too program includes, but is not limited to, the use of the DEQ Too logo and any written and verbal messaging to motorists or Partners using mail, coupons, newspaper, magazines, computer/phone applications, texts, emails, newsletters, websites, blogs, TV, radio, social media, etc. Any advertising we do about DEQ Too will reference the name of the program ("DEQ Too") and prominently display the DEQ Too logo (except when advertising isn't visible such as over the radio). And our advertising will not solely be about emissions testing. After all, we are in business for our primary product(s) and/or service(s) which is what we normally advertise about.

DEQ will provide us an electronic copy of the DEQ Too design mark (logo) and grants to us the right to use the logo only after DEQ has placed us upon the DEQ Too Business Participant List. The logo (which resembles an Oregon license plate) and the word mark ("DEQ Too™") are trademarks of DEQ and the property of DEQ. We, and our Partners, shall use the logo and word mark in conformance with the Authorized Use of DEQ Too Trademarks document. Upon removal of our company from the DEQ Too Business Participant List, we will immediately cease the use of the DEQ Too logo and word mark and ensure our Partners also do so.

If and when we advertise or externally announce our participation in DEQ Too, we will always include a reference to the information available at [www.DEQToo.org](http://www.DEQToo.org) and we will not claim to have an exclusive arrangement with DEQ to participate in DEQ Too or claim that DEQ endorses any Business Participant over another. We will ensure our Partners also do so if they advertise about participation in DEQ Too.

## **DEQ Oversight**

We acknowledge that DEQ has a strong interest in ensuring that we are meeting these Terms and Conditions on an ongoing basis. Therefore, we authorize DEQ personnel to come onto our business premises with or without providing us advance notification for the purpose of confirming compliance with these Terms and Conditions. While DEQ personnel are on the property, we understand that they may or may not introduce themselves as being from the DEQ. Using our devices *only* at the physical addresses we've enrolled into the DEQ Too program gives DEQ the capability necessary to provide this oversight. Besides allowing physical visits from DEQ, we will respond within 15 days of a written request from DEQ for information regarding our adherence to these Terms and Conditions.

## **OTHER TERMS AND CONDITIONS**

1. Term of Agreement; Termination of Agreement. This Agreement shall begin upon the date our company is added to the DEQ Too Business Participant List until December 31<sup>st</sup> of the year we were added to the list. Each January 1, the Agreement will automatically renew for one year unless DEQ provides at least 30 days written notice to us or either party otherwise terminates in accordance with this Agreement. The parties can terminate this Agreement as follows: (a) Either party can terminate this agreement with 30 days notice at any time; (b) DEQ can terminate this agreement, or suspend acceptance of data transmitted from our devices, immediately upon our failure to comply with the terms of this agreement; or (c) DEQ can terminate this agreement if it elects to discontinue or suspend the DEQ Too Program for any reason. Without terminating the agreement, DEQ may, at any time, modify the Program Obligations of this Agreement. If DEQ does so, it will provide notice to us and identify the modification. If we do not wish to continue after receiving notice of the modification of the Program Obligations, we can terminate this agreement. Our continued use of the DEQ Too Program for longer than 30 days after we receive notice of the modification of the Program Obligations means we have agreed to the new Program Obligation terms.

When this Agreement is terminated for any reason, (a) we must stop using the DEQ Too logo and (b) DEQ will remove us from the DEQ Too Business Participant List and will no longer accept data transmitted from our devices.

2. Assignment. Except as is expressly allowed below, we shall not assign this Agreement, in whole or

in part, without DEQ's prior written consent, which consent shall not be unreasonably withheld. Our assignment of this Agreement to a parent, affiliate, subsidiary or to a successor organization by merger or acquisition does not require the consent of DEQ. The provisions of this Agreement will be binding upon and will inure to the benefit of any successors and permitted assigns.

3. Survival. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.
4. Confidentiality. We acknowledge that, in the course of performing our responsibilities under this Agreement, we may be exposed to or acquire information that is confidential to DEQ. Any information we receive or acquire relating to DEQ in the performance of this Agreement is deemed to be confidential information of DEQ ("Confidential Information"), with the exception of (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by us; (ii) information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality; (iii) information that was known to us prior to the effective date of the Agreement without obligation of confidentiality; (iv) information that is independently developed by us and documented in writing without use of, or reference to, any confidential information of DEQ; and (v) information required to be disclosed by law.
5. Indemnity. We shall indemnify and hold harmless DEQ, the State of Oregon, and their agents, officials and employees harmless from all claims, demands, suits, actions, proceedings, losses, liabilities, damages, awards and costs (including reasonable attorneys' fees), which may be brought or made against DEQ, the State of Oregon, or their agents, officials or employees and arising out of or related to any of the following (each, an "indemnifiable loss"): (i) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of us, our employees, agents, or representatives in connection with or incident to the use of our devices related to the Agreement; (ii) any act or omission by us that constitutes a material breach of the Agreement, including any breach of warranty; or (iii) the infringement of any patent, copyright, trademark, trade secret or other proprietary right of any third party related to our devices used under this Agreement. DEQ shall promptly notify us in writing of any action, claim or demand of which DEQ becomes aware and which DEQ reasonably expects to result in an indemnifiable loss. Our obligation under this section does not extend to any indemnifiable loss to the extent caused by the negligence or willful misconduct of DEQ, the State of Oregon, or their agents, officials or employees.
6. Defense of Claims. To the extent we are required under this Agreement to defend DEQ against claims asserted by third parties, DEQ shall reasonably cooperate in good faith, at our reasonable expense, in the defense of the claim and we shall select counsel reasonably acceptable to the Oregon Attorney General to defend the claim and shall bear all costs of counsel. The Oregon Attorney General's acceptance of counsel may not be unreasonably withheld, conditioned or delayed. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, DEQ, its officers, employees or agents. DEQ may elect to assume its own defense with an attorney of its own choice and its own expense at any time DEQ determines important governmental interests are at stake. DEQ shall promptly provide notice to us of any claim that may result in an obligation on the part of us to defend. Subject to these limitations, we may defend a claim with counsel of our own choosing, on the condition that no settlement or compromise of any claim may occur without the consent of DEQ, which consent must not be unreasonably withheld, conditioned or delayed.
7. Governing Law; Jurisdiction; Venue. This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon, unless the claim must be brought in a federal forum, in which case it must be

brought and adjudicated exclusively within the United States District Court for the District of Oregon. We hereby consent to the personal jurisdiction of these courts, waive any objection to venue in these courts, and waive any claim that either of these courts is an inconvenient forum. In no way may this section or any other term of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court.

8. Not a part of DEQ. We shall not act as an agent or employee of DEQ.
9. General Representations and Warranties. We represent and warrant to DEQ that (i) we have the power and authority to enter into and perform this Agreement; (ii) this Agreement, when executed and delivered, will be a valid and binding obligation of us enforceable in accordance with its terms; (iii) we will, at all times during the term of this Agreement, be qualified to do business in the State of Oregon.
10. Limitation of Liability. In no event shall either party be liable for any lost profits, lost savings, lost data or other consequential or incidental damages.
11. Tax Compliance Certificate. Our company will provide to DEQ a signed tax compliance certification that certifies the following:

By executing this tax compliance certification, I certify under penalty of perjury that I am authorized to act on behalf of the Company and that, to the best of my knowledge, we are not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 (Miscellaneous Taxes) and ORS chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Forest Products Tax) and 323 (Cigarettes And Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

12. Liability Insurance. At all times while participating in the program:
  - We agree to carry Commercial General Liability or Garage Liability insurance with a minimum \$1,000,000 per occurrence for any number of claimants.
  - If not otherwise covered by our liability insurance, we also agree to carry insurance that protects our company in the event of damage to vehicles under our custody.
13. Notice and other Communication that is required of us under this Agreement will be provided in writing or email delivered to DEQ at the below addresses:
  - Email - [deqtoo@deq.state.or.us](mailto:deqtoo@deq.state.or.us)
  - Mail - Attention: DEQ Too Program, 1240 SE 12<sup>th</sup> Ave, Portland, Oregon 97214.

## **DOCUMENTATION**

We understand that DEQ will not include us on the DEQ Too Business Participant List without first receiving documentation demonstrating that we meet the requirements of this program. Our documentation will be submitted within 7 days following our electronic submittal of the DEQ Too Business Participant enrollment form using [www.DEQToo.org](http://www.DEQToo.org). We understand that the final determination of our participation is made by DEQ and that DEQ's goal is to make their determination within 30 days of receiving our documentation. DEQ will inform us in writing when we are added to the DEQ Too Business Participant List.

It's possible that we may not be able to provide to DEQ the items on the documentation list that have an asterisk until *after* we have an agreement with a telematics provider. Since that agreement may not be achievable until *after* both parties have assurance that our company has documented all the other items necessary to be placed on the DEQ Too Business Participant List. To assist with such assurance:

- When our company provides all the other documentation items within the required 7 day timeframe, we will identify to DEQ which of the items with asterisks are not yet available due to the lack of an agreement with a telematics provider.
- DEQ will provide us with written communication indicating that once the items with asterisks are received by DEQ, our company can be added to the DEQ Too Business Participant List and that we have 90 days from the date of DEQ's written communication to provide the items.

If our company does not submit the remaining items on time, DEQ will have insufficient documentation to add us the DEQ Too Business Participant List. At that time, if we wish to attempt enrollment again, we may do so by submitting a new electronic form and starting the enrollment process all over again.

We understand that the documentation must include, but may not be limited to:

1. A written statement and signature making it clear to DEQ that the individual agreeing to the terms and conditions via the DEQ Too electronic enrollment form has the authority to commit to the agreement on behalf of the company.
2. \* Demonstrate (e.g. contract page showing both parties' signatures) how we are the company with which the telematics device provider(s) directly or indirectly enters into agreement for us to lease, own and/or otherwise activate device.
3. The physical address and operating name of each our participating business locations and the \*telematics device serial numbers assigned to each location.
4. An operational contact name, telephone number and email address will be provided to DEQ for DEQ's internal use only.
5. A customer service phone number and/or electronic address so that DEQ can provide this contact information upon request from our customers if/when they experience difficulties with our device/process.
6. \* A description of the payment mechanism to our telematics device provider (lease, purchase, per usage fee or other financial payment). We will provide a description of any periodic payments (monthly, etc).
7. The Certificate of Insurance.
8. The signed Tax Compliance Certificate (DEQ provides the certificate needing our signature).
9. Certification that our company is legally authorized to do business in the State of Oregon.
10. A description of the nature of any Partnerships that we currently have and their role(s). If one or more of the following obligations are applicable to the role performed by a particular Partner, then we will provide DEQ with a written description and any accompanying documentation of how we ensure the Partner:
  - Complies with any and all of the obligations under the Program Obligations section
  - Not act as an Agent or Employee of DEQ

- Keep Confidential Information confidential

11. If applicable, the initial communication content and methods we, or our Partners, intend for advertising or externally announcing that our company participates in Oregon's DEQ Too program.
12. \* If applicable, materials demonstrating how our third-party user interface software is intended to work.
13. \* Acknowledgement that we have received DEQ Too program training materials from our telematics device provider and the materials cover at least the following:
  - a. That DEQ Too only works for vehicles with an electronic vehicle identification number (E-VIN) which are typically model year vehicles 2005 and newer.
  - b. That Newer Model Year vehicles in Oregon ([www.DEQToo.org/nmy](http://www.DEQToo.org/nmy)) are not required to be tested. If they are tested using DEQ Too, they will always be passed by DEQ and there is no charge for DEQ's E-Certificate.
  - c. That vehicles registered to addresses outside of DEQ's boundary ([www.deq.state.or.us/VIP/default.aspx](http://www.deq.state.or.us/VIP/default.aspx)) are not required to be tested.
  - d. The typical locations of the OBD port under in vehicles and how to use the DEQ Too website's port locator by vehicle type.
  - e. How to ensure the key (including push-button ignition) is at least in the "On" position in order for the telematics device to work.
  - f. How to plug-in and unplug the device.
  - g. An understanding of the three messages the device communicates to user.
  - h. The communication method(s) our device uses to communicate to user.
  - i. That the DEQ Too program is used for two purposes; both of which are intended to help ensure vehicles are maintained properly for the betterment of air quality and public health: a) to understand why a Check Engine Light is illuminated, and b) to meet DEQ's testing requirement in order to maintain DMV vehicle registration.
  - j. How ***ONLY*** DEQ (not our company) makes the pass/fail determination; utilizing the DEQ Too website.
  - k. That the domain name for the DEQ Too website is [www.DEQToo.org](http://www.DEQToo.org).
  - l. How to retrieve test results from vehicles within our fleet using the DEQ Too website.
  - m. Where to find and print the instructions associated with the result.
  - n. How to pay for an E-Certificate using DEQ's E-Commerce payment system.
  - o. The importance of and how to obtain a paper and/or electronic receipt from DEQ's E-Commerce payment system as it provides proof in case there is a discrepancy.
  - p. How to print an E-Certificate containing our fleet company name and unique QR code.
  - q. How the administration process works for various fleets. Fleets not using the DEQ Too option must obtain a paper certificate entitled a "DEQ Clean Air Certificate" as proof that the vehicle has passed

DEQ's test. If and when a fleet chooses to use the DEQ Too program, once the vehicle passes DEQ and the fleet pays for their electronic certificate, that E-Certificate will contain the name of the fleet company and a uniquely generated QR code for security and auditing purposes. As with a paper Clean Air Certificate, the E-Certificate is used for proof of passing DEQ's test in the following ways; depending on the type of fleet:

- DMV-Registered-Fleets receive and maintain "Permanent Fleet" license plates from DMV. DMV has a registration renewal process specifically for these privately owned Permanent Fleet companies. While the process includes submittal of a printed E-Certificate to DMV, it does not include renewal stickers nor does it include online renewal with DMV.
- For vehicle's that are a part of a private company's fleet, but not a part of DMV-Registered-Fleets, renewal is required and these fleets' license plates do use registration renewal stickers. The renewal process includes submittal of a printed E-Certificate to DMV when these fleets renew registration through the mail or in-person at a DMV field office. A printout of the E-Certificate is not necessary when these fleets renew online with DMV.
- For vehicles that are a part of a governmental fleet (E-Plate), no DMV registration renewal is required, but the emissions test is still required so DEQ needs the proof of passing. DEQ will view the governmental fleet's E-Certificates online to verify that vehicles have passed the emissions test.

E-Certificates cannot be used for any DMV or DEQ transaction at a DEQ Clean Air Station.