



WOODSTOVE CHANGEOUT



PARTICIPATING RETAILER AGREEMENT FORM

Parties: This is an agreement for services between the American Lung Association in Michigan®, a not-for-profit corporation, and _____ (the “Participating Retailer”),
[Name of Retail Business]
effective as of the date of signing as indicated below.

Subject Matter: The subject matter of this Agreement (“Agreement”) is the Lower Peninsula of Michigan Woodstove Changeout Program (the “Program”) as coordinated by the American Lung Association in Michigan (“Program Administrator.”) Detailed services to be provided by the Participating Retailer pursuant to this Agreement are described hereinafter and in Attachment A, which is incorporated by reference herein.

Program Details: The details of the Program are contained in the Lower Peninsula of Michigan Woodstove Changeout Program Guide (the “Program Guide”) as provided by the Program Administrator.

Agreement Term: The period of the Participating Retailer’s performance shall begin upon the date this Agreement is signed by the Program Administrator and shall end upon the earlier of August 31, 2018 or the date the funding for the rebates is depleted, by notification of the Program Administrator, in which case the Agreement is terminated immediately upon notification.

Amendment: No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the Program Administrator and the Participating Retailer. Any request for an amendment to this Agreement must be made in writing at least 30 days prior to the end date of this agreement.

Cancellation: This Agreement may be cancelled by either party by giving written notice to the other at least 30 days in advance.

Contact persons:

Participating Retailer Contact Information

Name: _____

Address: _____

Phone: _____ E-mail: _____ Website Address: _____

MI Mechanical Contractor License, NFI, CSIA number or other applicable licenses: _____

Program Administrator Contact Information

Name: Jocelyn Hayward, American Lung Association in Michigan

Address: PO Box 402
Williamston, MI 48895-0402

Phone: 1-248-220-5223

E-mail: Jocelyn.Hayward@lung.org

Participating Retailer (“Retailer”) agrees to the following:

1. Retailer agrees to comply with all aspects of the Program as detailed in the *Program Guide*.
2. Retailer understands that the Program is being funded by Consumers Energy. Consumers Energy’s actions and expenditures for this Environmental Mitigation Project (EMP) administered by the American Lung Association in Michigan are required by a Consent Decree, U.S. v Consumers Energy Company, Civil Action 14-13580, U.S. District Court for the Eastern District of Michigan. The Consumers Energy name and/or logo is not to be used in any promotional items or other publications pertaining to the Program.
3. Retailer understands that incentive funds for the Program are limited and available on a first-come, first-served basis. In order to assure funds are available, Retailer must submit the **Participant Application Form** on behalf of the Program Participant (“Participant”) and receive approval confirmation from the Program Administrator prior to selling a new appliance and/or removing an old appliance.
4. Retailer understands that it is the Program Administrator’s responsibility to determine an applicant’s eligibility to participate in the Program and that no separate agreement between Retailer and customer will be honored by the Program Administrator under this Program.
5. Retailer understands that it is their responsibility to ensure that all installation or retrofits are done in accordance with all applicable codes and ordinances and that neither Consumers Energy nor American Lung Association in Michigan will assume any responsibility or liability for the removal of the appliance, the purchase and installation of replacement appliances, or any other element of the replacement or retrofit process.
6. Retailer understands that in order to receive payment, they will be required to submit the below items to the Program Administrator, none of which will be returned:
 - a. Completed **Voucher Reimbursement Form** listing Participant, Retailer, and Installer information; type, manufacturer, and model of old and new appliances; and proper disposal methods.
 - b. Digital color photos of the old appliance, including evidence of old appliance being rendered inoperable, and the newly-installed appliance.
 - c. Copy of Participant appliance purchase receipt showing retailer and manufacturer discounts, if applicable.
7. Retailer agrees to address and resolve unanticipated issues expeditiously with Program Administrator.
8. Retailer agrees that the Program Administrator cannot be held liable for any dispute arising from the relationship between the Participant and the Retailer.
9. Retailer agrees to inform all Participants that their establishment, employees and/or subcontractors are not acting as an agent of the American Lung Association in Michigan or Consumers Energy Company.
10. Retailer agrees to place these same requirements and restrictions on any subcontractors or installers associated to perform work related to this Program.
11. Retailer understands that the Program Administrator name and logos are official trademarks. The use of these logos is reserved for official publications or other approved publications. Use of these logos without prior approval is prohibited. All marketing and promotional materials must be submitted to the Program Administrator for approval prior to publication.
12. Retailer understands and agrees that the award of any rebate voucher and rebate is within the sole discretion of the Program Administrator and that the Program Administrator’s decision(s) are final.

American Lung Association in Michigan

By: _____ Date: _____

Name: Barry Gottschalk, President and CEO

Name of Participating Retailer: _____
(Please Print Name of Retail Business)

By: _____ Date: _____
(Authorized Signature)

Name of Authorized Signatory: _____
(Please Print Name and Title of Authorized Person Signing)

RETAILER AGREEMENT

ATTACHMENT A: STANDARD AMERICAN LUNG ASSOCIATION IN MICHIGAN PROVISIONS

1. **Entire Agreement:** The Agreement represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** The Agreement will be governed by the laws of the State of Michigan.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Retailer, with whom the American Lung Association in Michigan ("Program Administrator") is executing the Agreement.
4. **Independent Contractor:** The Party understands that it is at all times an independent contractor of the Program Administrator and that it is not acting as an employee of the Program Administrator. The Program Administrator will not provide to Party, its employees or agents, any compensation or benefit commonly associated with employment, including, but not limited to, retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to Program Administrator employees, nor will Program Administrator withhold any state or federal taxes. The Party understands that all applicable federal, state and local tax returns; including but not limited to, income, withholding, sales and use, or business taxes, must be filed by the Party; and all applicable taxes must be paid by the Party.
5. **Indemnification:** The Party shall indemnify, defend and hold harmless the Program Administrator and its officers, directors, managers, employees, agents and other representatives, as well as Consumers Energy Company, (collectively, "Indemnified Parties"), against any and all damages, expenses, costs, attorneys' fees, claims, demands or suits arising, whether directly or indirectly, in whole or in part, from any act or omission of the Party, any officer, director, manager, employee, agent or other representative of the Party, its affiliates and subsidiaries, in connection with any performance by the Party under the terms of the Agreement (collectively, "Claims"). The Indemnified Parties shall notify the Party in writing in the event of any such Claim instituted against it, and the Party shall immediately implement the terms of this indemnification.
6. **Insurance:** Before commencing work under this Agreement, the Party must provide to Program Administrator certificates of insurance to show that the minimum coverages referenced below are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the Program Administrator throughout the term of the Agreement. No representation is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the Indemnified Parties.
 - a. *Workers Compensation:* With respect to all operations performed, Parties with employees, shall carry workers' compensation insurance in accordance with all applicable laws.
 - b. *Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including, but not limited to, hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.
 - c. *General Liability and Property Damage:* With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage, including, but not limited to Premises – Operations; Products and Completed Operations; Personal Injury Liability; and Contractual Liability. The policy shall be on an occurrence form and limits shall not be less than:
 - \$1,000,000 Per Occurrence
 - \$1,000,000 General Aggregate
 - \$1,000,000 Products/Completed Operations Aggregate
 - \$ 50,000 Fire/ Legal/Liability
7. **Reliance by the Program Administrator on Representations:** All payments by the Program Administrator under the Agreement will be made in reliance upon the accuracy of all representations by the Party, including, but not limited to, those made in the Agreement, bills, invoices, voucher tracking forms and other proofs of work.
8. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under the Agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by the Program Administrator or any party designated by the Program Administrator. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims

or audit findings involving the records have been resolved. The Program Administrator or any authorized representative of the Program Administrator, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under the Agreement.

9. **Fair Employment Practices:** Party agrees to comply with all federal, state and local laws or regulations relating to fair employment practices to the full extent applicable, including, but not limited to, nondiscrimination, wage and hour and disability.
10. **Sub-Agreements:** Party shall not assign this Agreement to any other party without the express prior written approval of the Program Administrator.
11. **No Gifts or Gratuities:** Party shall not agree to give or give title or possession of anything of value (including, but not limited to, property, currency, travel and/or education programs) to any officer, director, manager or employee of the Program Administrator during the term of the Agreement.

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