

**NMEDA QUALITY ASSURANCE PROGRAM DEALER PARTICIPATION AGREEMENT**

**Between**

**THE NATIONAL MOBILITY EQUIPMENT DEALERS ASSOCIATION And**

\_\_\_\_\_  
(Print Dealer Name)

This is an Agreement between the National Mobility Equipment Dealers Association (hereinafter NMEDA), a corporation organized under the Florida State Not-for-Profit Corporation Law having its principal place of business at 3327 W Bearss Ave., **Tampa, FL 33618**, and \_\_\_\_\_, a corporation of the State of \_\_\_\_\_ having a place of business at \_\_\_\_\_ (hereinafter "dealer").

**WHEREAS**, NMEDA sponsors an accreditation program known as the Quality Assurance Program (QAP), under which, mobility industry dealers certify that designated vehicles that they modify while in this program, are done so according to the most current version of the NMEDA Guidelines, and/or the NMEDA Guideline Manuals.

**WHEREAS**, said dealer wishes to participate in QAP and NMEDA has found said dealer eligible to participate based on the dealer's completed confidential questionnaire/application, and the eligibility criteria set forth in the QAP Overview.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, NMEDA and dealer agree as follows:

**1. Definitions**

- a) **Validation:** The process by which a separate determination is made by a third party that the dealer's accreditation is in accordance with the program guidelines.
- b) **Administer:** To perform the executive duties required to manage the affairs of QAP.
- c) **Label:** As used in this Agreement, the term "label" or "QAP label" refers to an affixable label on a QAP dealer modified vehicle that contains the NMEDA and QAP administrator names, trademarks, and/or logos, and other information, required by or permissible under the QAP. The label shall be in form consistent in Attachment A, which is incorporated herein by reference. A separate label shall be used for each modified vehicle qualified to carry a label under this program. No alteration in the form or content of labels is permitted.
- d) **Guidelines:** Refers to the written procedural, and substantive methods, procedures, instructions and best practices set forth in the NMEDA Guidelines, attached hereto as Attachment B and made a part hereof, which specify the terms and conditions that said dealer must follow in order to remain in QAP. The NMEDA Guidelines may be amended from time to time in NMEDA's sole discretion. Notice of any changes of alteration shall be provided in accordance with Paragraph 21 herein, and such changes shall be effective thirty (30) days after the date of such notice.
- e) **Administrator:** Refers to a company and/or individual contracted by NMEDA to perform inspections/audits of dealers who participate in the QAP.
- f) **QAP Overview:** An outline of the policies and procedures of the program.
- g) **Guideline Manuals:** Manuals that are produced as a result of crash testing for participants in the QAP.

## **2. Dealer's Accreditation and Obligations**

- a) Dealer is hereby granted membership participation in QAP based on dealer's QAP Confidential Questionnaire/Application, the current qualification requirements set forth in the NMEDA Guidelines, and the QAP Overview. Dealer may hold itself out to the public as "accredited" under QAP after notification from NMEDA that they have passed their accreditation inspection.
- b) Dealer's continued participation and accreditation will be contingent upon continued compliance with this Agreement, the NMEDA Guidelines, the QAP Overview, and/or the Guideline Manuals.
- c) Dealer agrees that its facility and personnel will be inspected and audited by a third party Administrator selected by NMEDA. The purpose of these inspections and audits is to provide independent validation that dealer is complying with NMEDA's Guidelines, the QAP Overview, and/or the Guideline Manuals. There will be two third party inspections/audits per year, per dealer, unless otherwise directed by NMEDA. These third party inspections/audits are **mandatory** for participation in QAP.
- d) Dealer agrees that all information provided to NMEDA, its agents, or the Administrator, for purposes of obtaining or maintaining QAP labels shall be complete and accurate representations.
- e) Dealer will not represent, directly, indirectly, or by implication in any trade or consumer advertising, publicity or other statements or written releases, that QAP participation or accreditation: 1) is exclusive to the dealer; 2) implies or constitutes a product endorsement by NMEDA; or, 3) indicates any connotation as to any characteristic of design or performance other than the factors for which the dealer's vehicle is actually certified.
- f) Dealer agrees that QAP labels obtained and authorized under QAP will be placed only on qualified vehicles (i.e.: those modified in accordance with the NMEDA Guidelines, and/or Guideline Manuals).
- g) Dealer agrees that if its facility is found to be in non-compliance with this Agreement, the NMEDA Guidelines, the QAP Overview, and/or the Guideline Manuals by the Administrator and NMEDA, NMEDA has the authority to direct the Administrator to re-inspect the dealer's facility at the dealer's expense within thirty (30) days. The cost of re-inspection will be based upon the Administrator's current published rate schedule, plus travel and expenses.
- h) Dealers who choose not to allow re-inspection of their facility, will lose their QAP accreditation.
- i) Dealers found to be in non-compliance with the NMEDA Guidelines, the QAP overview, and/or the Guideline Manuals after re-inspection will lose their QAP accreditation.
- j) Upon termination of its QAP accreditation, or upon termination of QAP, dealer agrees to immediately cease making any reference on modified vehicles, or in advertising, publicity, or other releases to QAP accreditation. Dealer will immediately return all labels and Guideline Manuals in its possession to NMEDA, at the direction of NMEDA.

## **3. NMEDA Obligations**

- a) For as long as this Agreement is in effect, NMEDA agrees to administer,

- either directly or through an Administrator, the QAP.
- b) NMEDA authorizes dealer to:
    - a. Advertise, publicize and otherwise indicate its participation in QAP; and
    - b. Use the QAP labels so long as dealer complies with all the requirements set forth in this Agreement and QAP Overview. Provided, however, that all use of NMEDA names, trademarks and logos is subject to the prior approval of NMEDA as to form and content.

4. **Names and Trademarks**

Dealer acknowledges the validity and ownership by NMEDA of NMEDA and QAP names, trademarks, and logos. Nothing in this Agreement gives dealer any right, title, or interest in any NMEDA or QAP name, trademark or logo except the right to use the licensed name, trademark or logo in accordance with the terms of this Agreement. Dealer agrees to avoid the detrimental use of the NMEDA and QAP names, trademarks and logos. Except as otherwise authorized by NMEDA in writing, dealer agrees to limit the use of the NMEDA and QAP names, trademarks and logos to this particular program. Dealer's authority to use the NMEDA and QAP names, trademarks and logos shall cease immediately upon termination of this Agreement.

5. **Maintenance and Inspection of Books and Records**

Dealer agrees to maintain books and records in conjunction with QAP as may be outlined in the QAP Overview. Dealer agrees to permit NMEDA, the administrator, or either's designated agent, to inspect the dealer's records pertinent to QAP during normal business hours. In order to verify that a dealer's "certified employees" are still employed, Administrator will seek positive identification via photo identification to confirm an employees identity, and/or review of the dealer's UCT-6 forms to confirm employment.

6. **Labels, Markings and Dealer Representations**

Dealer agrees to take all precautions necessary to protect the security of labels provided under QAP and to ensure that labels are placed only on qualified vehicles.

7. **Directory of Dealers**

Dealer authorizes NMEDA to use the dealer's name or trademark in a directory of dealers who qualify under QAP and to otherwise publicize the dealer's participation in QAP.

8. **Nonexclusive**

This Agreement is not exclusive, and NMEDA is free to enter into similar Agreements with other dealers.

9. **Indemnification and Release**

- a) Dealer shall indemnify and hold NMEDA, its officers, directors and employees harmless from any and all claims, judgments, fines, penalties, other liabilities and cost, including attorneys' fees, arising from or alleged to arise from any act or omission of NMEDA in connection with this Agreement, the NMEDA Guidelines, the QAP Overview, the Guideline Manuals, and/or the modification of a vehicle.
- b) Dealer shall indemnify and hold NMEDA, the officers, directors, and employees, (herein after "a NMEDA Person" ) harmless against:
  - a. Any claim against a NMEDA Person to the extent same is based upon or arises out of personal injury, wrongful death, or third party

property damage claim and Dealer's design, manufacture, assembly, preparation or sale of a vehicle, including but not limited to, any failure to manufacture in accordance with US, Canadian, state safety, or emission standards.

- b. Any claim against a NMEDA Person to the extent same is based upon or arises out of Dealer's use of QAP materials, Dealer's breach of warranty, negligence, improper service, or breach of contract with or misrepresentation to a third party;
  - c. Reasonable legal fees and expenses in connection with the above, provided, however, that if a Dealer agrees to assume the proper defense of a claim as set forth above, Dealer shall not be responsible of any such fees or expenses paid by a NMEDA Person after Dealer's assumption of the defense.
- c) In consideration of Dealer's participation in QAP, Dealer agrees to and does hereby release, discharge, and hold harmless individually and collectively NMEDA from any and all liability that may arise directly or indirectly, now or in the future, by reason of or in connection with any QAP material or any decision, action or omission of NMEDA relating to anything contained in the NMEDA Guidelines, QAP Overview, and/or Guideline Manuals.

**10. Voluntary Participation**

Dealer acknowledges that participation in QAP is voluntary and is open to both NMEDA and non-NMEDA dealers.

**11. Insurance**

Dealer, at its own expense, will carry insurance in an amount not less than \$1,000,000.00, or the maximum allowed by the state, to cover any and all liabilities incurred in connection with dealer's modification of vehicles labeled under QAP and dealer's obligations under this Agreement. Dealer shall provide NMEDA with evidence of such insurance annually no sooner than sixty (60) and no later than thirty (30) days prior to the anniversary date of execution of NMEDA's QAP renewal application. The coverage shall provide that it is not cancelable or modifiable without seven (7) days written notice to dealer and NMEDA.

**12. Effective Date and Duration**

This Agreement becomes effective upon its execution and remains in effect until terminated pursuant to Paragraph 13.

**13. Termination**

- a) Either party may terminate this Agreement at any time and for any reason provided that written notice is sent at least thirty (30) days prior to the effective date of termination.
- b) This agreement may be terminated upon the bankruptcy or assignment to creditor of either party.
- c) This Agreement may be terminated immediately by NMEDA upon the default or a breach of its terms by dealer, or failure by dealer to comply with its Agreements with the Administrator, including the program Guidelines.
- d) This Agreement is terminated immediately if dealer fails to maintain the insurance required and furnish proof of the same to NMEDA in accordance with paragraph 11 of this Agreement.
- e) Upon termination of this Agreement, dealer agrees to pay any outstanding amounts due to NMEDA or Administrator.

**14. Waiver of Breach**

The failure at any time to require performance of any obligation provided for in

this Agreement shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of any breach of any provision of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

**15. Arbitration**

The parties agree that disputes arising under this Agreement shall be settled through the appointment of an arbitrator selected by the parties. Should the parties not be able to agree on an arbitrator, each may select an arbitrator, and the two arbitrators will choose a third. Arbitration will be conducted under the Rules of the American Arbitration Association, and any appropriate statutes of limitation will also apply to claims for arbitration. The parties agree that arbitration will be the sole and exclusive remedy.

**16. NMEDA's and Administrator's Remedies**

Dealer acknowledges that any misuse or unauthorized use of QAP labels or of NMEDA's and/or Administrator's names, trademarks and logos will result in immediate and irreparable damage to NMEDA, Administrator and other participants in QAP. Dealer acknowledges and admits that there is no adequate remedy at law for the consequences of such misuse or unauthorized use and that monetary damages will be difficult to assess. Therefore, dealer agrees that in the event of any misuse or unauthorized use of QAP labels, or of NMEDA's and/or Administrator's names, trademarks and logos, NMEDA shall be entitled to equitable relief by way of temporary or permanent injunctions including, by way of example and not limitation, destruction of label inventory or such other further relief as any court with jurisdiction may deem just and proper. This is not an exclusive remedy and is in addition to any other relief to which Administrator or NMEDA may be entitled.

**17. Assignment**

Neither party has the right to assign or transfer this Agreement. Dealer may not assign or transfer any rights under this Agreement. The heirs, executors, or administrators of the parties are not assignees under this contract, and each party retains the right to terminate the Agreement immediately if a successor corporation assumes control or the other party.

**18. Entire Agreement and Amendments**

This Agreement supersedes and negates all other agreements and constitutes the entire agreement between the parties relating to its subject. Amendments to this Agreement must be in writing and signed by both parties; provided, however, that NMEDA and Administrator retain the exclusive right to modify the Guidelines.

**19. Severability**

If any provision or provisions of this Agreement or the application of them to either party is held illegal, unenforceable, or otherwise invalid by government promulgation or court decree, such holding shall not affect the other provisions or applications of this Agreement which can be given effect without the invalid provision, provided that the parties shall promptly negotiate in good faith to make adjustments in this Agreement as may be necessary to make it fair and equitable to both parties.

**20. Controlling Law**

This Agreement shall be governed by and construed in accordance with the

internal laws of the State of Florida without application of conflict of law principles.

**21. Form of Notice**

Unless specifically stated otherwise herein, any notice given pursuant to this Agreement shall be in writing and shall be sent by overnight courier or certified mail, return receipt requested. Any such notice sent to NMEDA shall be sent to:

QAP Committee  
C/O NMEDA  
3327 W. Bearss Ave.  
Tampa, FL 33618

Any such notice sent to dealer shall be sent to dealer's address as listed in the first non-numbered paragraph of this agreement. Either party, by written notice to the other, may change the person or people designated to receive notices on behalf of that party and/or the address or addresses to which any notice is to be sent.

**22. Relationship of Parties**

Nothing in this Agreement shall be construed to constitute a partnership or other joint venture between NMEDA and the dealer. The dealer is not authorized to act as an agent for or on behalf of NMEDA in any manner.

**23. Headings**

The heading of the paragraphs and subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed, to constitute a part thereof.

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties on the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Please print Dealer Name)

By: \_\_\_\_\_  
(Signature of Dealer Representative)

Date: \_\_\_\_\_

**National Mobility Equipment Dealers Association**

By: \_\_\_\_\_  
(Signature of Dave Hubbard, CEO)

Date: \_\_\_\_\_