

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 agrees 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 Membership Rules.

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 affix able 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. 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) **Audit Firm:** Refers to a company and/or individual contracted by NMEDA to

perform inspections/audits of dealers.

- f) **QAP Membership Rules:** An outline of the policies and procedures of the program.
- g) **Guideline Manuals:** Manuals that are produced as a result of crash testing.

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 Membership Rules. Dealer may hold itself out to the public as "accredited" under QAP after notification from NMEDA that they have passed their initial (accreditation) audit.
- b) Dealer's continued participation and accreditation will be contingent upon continued compliance with this Agreement, the NMEDA Guidelines, the QAP Membership Rules, and/or the Guideline Manuals.
- c) Dealer agrees that its facility and personnel will be inspected and audited by a third party Audit Firm selected by NMEDA at Dealer's sole expense and to the satisfaction of NMEDA. The purpose of these audits is to provide independent validation that dealer is complying with NMEDA's Guidelines, the QAP Membership Rules, and/or the Guideline Manuals. The audits are annual, unless otherwise directed by NMEDA. These third party audits are **mandatory** to retain accreditation and membership status in good standing.
- d) Dealer agrees that all information provided to NMEDA, its agents, or the Audit Firm, 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 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, Manufacturers Instructions, 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 Membership Rules, and/or the Guideline Manuals by the Audit Firm and NMEDA, NMEDA has the authority to direct the Audit Firm to re-audit the dealer's facility at the dealer's expense within thirty (30) days. The cost of re-audit will be based upon the Audit Firm's current published rate schedule, plus travel and expenses.
- h) Dealers, who choose not to allow re-audit of their facility, will lose their QAP accreditation.
- i) Dealers found to be in non-compliance with the NMEDA Guidelines, the QAP Membership Rules, and/or the Guideline Manuals after re-audit 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 Audit Firm, 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 Membership Rules. 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:

- a) Dealer acknowledges it is the recipient of a non-exclusive license to use the NMEDA QAP logo/label and any and all other NMEDA trademarks or service marks related to QAP during the term of this Agreement in connection with Dealers sale and marketing of its products or services, as more particularly described herein and in the QAP program. In order to protect the goodwill of NMEDA, NMEDA retains the right to review and approve all uses of said name and marks, but will not unreasonably withhold its approval.
- b) Dealer acknowledges that NMEDA is the lawful owner of the name and marks referred to in subparagraph (k), and agrees to take no action inconsistent with NMEDA's ownership, or that would subject NMEDA to claims by third parties or potential loss of its ownership.
- c) Dealer agrees to avoid the detrimental, deceptive, misleading or inappropriate 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.
- d) Upon termination of this Agreement and/or loss of QAP accreditation, the foregoing license shall immediately terminate and Dealer shall have no rights, immediate, residual or ongoing, and all uses of said intellectual property shall immediately cease.

5. Maintenance and Inspection of Books and Records:

Dealer agrees to maintain books and records in conjunction with QAP as outlined in the QAP membership Rules. Dealer agrees to permit NMEDA, the Audit Firm, 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, the Audit Firm and/or its auditors will seek positive identification via photo identification to confirm an employee's 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 and/or trademark in a directory of dealers 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 Membership Rules, the Guideline Manuals, any representation, act, error, omission by Dealer and/or the modification of a vehicle, Further, absent gross negligence on the part of NMEDA, Dealer waives any and all claims and or liabilities against NEMDA pursuant to this Agreement, the NMEDA Guidelines, the QAP membership Rules, the Guideline Manuals.
- 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 aggresses 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 Membership Rules, and/or Guideline Manuals.

10. **Mandatory Participation:**

Dealer acknowledges that participation in QAP is a mandatory part of dealer accreditation 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 or during the required compliance audit. 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 Audit Firm, 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 the Audit Firm.

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 Audit Firm names, trademarks and logos will result in immediate and irreparable damage to NMEDA, the Audit Firm 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 damage 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 the Audit Firm 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 the Audit Firm 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 the Audit Firm 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 and the parties agree to jurisdiction, subject matter and personal, in Florida.

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

DEALER PARTICIPATION AGREEMENT (CONT)

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: _____ Date: _____

(Signature of Dealer Representative)

National Mobility Equipment Dealers Association

By: _____ Date: _____

(Signature of Dave Hubbard, Executive Director)