

# Quality Assured Accreditation Program

## Contractor's Agreement



January 2014



## QA PROGRAM PARTICIPATION AGREEMENT

This QA Program Participation Agreement (“Agreement”), made this \_\_\_\_\_ day of, \_\_\_\_\_ 201\_\_\_\_, by and between the Air Conditioning Contractors of America (“ACCA” or “QA Administrator”), an Illinois not-for-profit corporation, having its principal office at 2800 Shirlington Road, Suite 300, Arlington, Virginia 22206, and \_\_\_\_\_, (“Participant”) a heating, ventilating, air-conditioning (HVAC) contractor having its principal office at \_\_\_\_\_.

WHEREAS, the QA Administrator has developed the Quality Assured Accreditation Programs (“QA Programs”) to assist HVAC contractors in identifying and understanding several core areas of quality HVAC contractor services, including business management and operational best practices; and

WHEREAS, the Participant desires to participate in (one or more of) the QA Program(s) and has submitted a QA Program Compliance Checklist and Affidavit attesting that the Participant has performed a self-assessment to determine compliance with the QA Elements; and

WHEREAS, the QA Administrator and Participant hereby agree to the conditions on which the Participant will participate in the QA Programs.

Now therefore, in consideration of the mutual promises and agreements contained in this Agreement, the receipt and sufficiency of which are acknowledged, the QA Administrator and Participant agree as follows:

### 1. QA Program Participant

- 1.1. **Overview.** This Agreement defines the Participant’s participation in one or more QA Programs, including (1) a license for use of certain QA Administrator intellectual property, and (2) the terms governing the Participant’s participation in the QA Program.

### 2. Grant of License

- 2.1. **QA Program Designation.** As a participant in a QA Program, Participant is hereby granted a non-exclusive license to use the applicable QA Program designations set forth in Exhibit A (hereinafter the “QA Program Mark(s)”), which shall solely be used with the qualifying designation “QA Program Participant” or “Recognized by the QA Program” for the term of this Agreement, as limited by the “**Participant Requirements**” set forth in Exhibit B.

#### 2.2. Use Parameters.

- 2.2.1. The QA Program Marks may be used in publications, advertising, and other communications issued by the Participant related to installation of HVAC systems covered by the QA Program and sold by the Participant.
- 2.2.2. Participant agrees that it will use the QA Program Marks only in connection with products and services that meet the program requirements and that are installed, provided, and sold by the Participant under its own name and/or “doing business name,” as identified in the Participant’s Application for Participation in the QA Program.
- 2.2.3. Participant agrees that it shall not use, or permit any person or entity to use, the Program



Marks without the prior written consent of the QA Administrator, except to the limited extent that such use is authorized under this Agreement. Further, Participant may not use any the QA Program Mark in any manner which implies that the QA Administrator, as opposed to the Participant, is the seller or provider of the Participant's products or services or warrants said products and services. Participant's use of the QA Program Marks does not confer upon the Participant any ownership rights in the licensed property.

- 2.3. **Termination.** Upon termination or expiration of this Agreement, the license to use the Program Marks shall immediately terminate.

### 3. Duties of Participant

- 3.1. The Participant shall abide by the rules and regulations set forth in the Participant Requirements.
- 3.2. The Participant shall abide by all policies and procedures attested to be implemented as indicated on the QA Program Compliance Checklist and Affidavit.
- 3.3. The Participant shall comply with all QA Contractor Elements.
- 3.4. The Participant shall assist the QA Administrator in any document requests or site visits for the purpose of conducting compliance reviews, and the Participant shall provide requested information in the designated time frame.
- 3.5. The Participant shall ensure the QA Program fees are paid and current, and acknowledges that the QA Administrator retains the discretion to set all fees.
- 3.6. The Participant shall notify the QA Administrator within ten (10) days of the date on which the Participant becomes aware of any potential noncompliance with the QA Elements, or any changes within the Participant's business that will cause the Participant to not be fully compliant with federal, state, city or municipality requirements.
- 3.7. The Participant agrees to conduct an annual reevaluation of compliance with the QA Elements, provide an updated attestation of compliance, and submit all required annual fees prior to expiration of the Participant's current QA Program recognition term.

### 4. Duties of the QA Administrator

- 4.1. The QA Administrator shall ensure the Participant's application for participation in the QA Program is processed in a timely manner.
- 4.2. Upon approval of the application and receipt of the Participant's fees for the applicable program(s), the QA Administrator shall ensure that the Participant is posted on the pertinent QA Directory(ies).
- 4.3. The QA Administrator shall evaluate potential instances of Participant non-compliance and take the applicable course of action as identified in the Participant Requirements.



## **5. Indemnification and Limitation of Liability**

- 5.1. The Participant agrees to defend, indemnify and hold harmless the QA Administrator, its members, directors, officers, employees, agents and representatives, against any and all liability, loss, costs, damages, attorneys' fees, and expenses of whatever kind or nature, which the QA Administrator may sustain or incur by reason of any claim arising in relation to the Participant's participation in the QA Program or from any acts or omissions of the Participant. The provisions of this Section shall survive the termination of this Agreement.
- 5.2. The Participant assumes total responsibility for use by any person or organization of the Participant's products or services. The QA Administrator does not make, and Participant shall not state that QA Administrator makes, any express or implied warranties, representations, endorsements, or conditions whatsoever with regard to the Participant's products and/or services.

## **6. Termination**

- 6.1. This Agreement may be terminated upon dismissal, delisting, or voluntary departure of the Participant from the QA Program pursuant to the provisions set forth in the Participant Requirements.
- 6.2. The Participant agrees that when this Agreement is terminated:
  - 6.2.1. The QA Administrator will remove the Participant's name from the applicable QA Directory, and
  - 6.2.2. The Participant will cease use of the QA Program Marks and will cease indicating that it is a participant in the QA Program.

## **7. No Restraint on Trade**

Notwithstanding any of the foregoing covenants and agreements, it is expressly understood between the parties that nothing in this Agreement or any other agreement by and between parties shall be construed as, or interpreted as, an agreement, promise or commitment to limit, eliminate or otherwise restrict the installation of HVAC systems.

## **8. Term**

Unless terminated sooner under Section 5 above, this Agreement shall commence on the date this Agreement is signed by ACCA and shall run for a 12-month term beginning with the satisfactory recognition of the Participant into the QA Program. Thereafter, annual renewals may be undertaken.

## **9. Confidentiality**

- 9.1. The Participant and ACCA shall each use all reasonable efforts to hold in confidence and maintain in a secure environment, subject to safeguards against improper disclosure, all data and other information that are supplied by the other party under this Agreement and that are reasonably identified as being confidential at the time of disclosure ("Confidential Information"). The provisions of this Section 9 shall survive for three (3) years after the termination of this



Agreement.

- 9.2. There shall be no restrictions under this Agreement with respect to any portion of the Confidential Information which:
- 9.2.1. is known to the receiving party at the time of its disclosure without breach of this Agreement;
  - 9.2.2. is or becomes publicly known through no wrongful act of the receiving party;
  - 9.2.3. is received from a third party without breach of the restrictions contained in this Agreement;
  - 9.2.4. is independently developed by the receiving party without breach of the restrictions contained in this Agreement;
  - 9.2.5. is furnished to any third party by the disclosing party without a similar restriction on the receiving party's rights; or
  - 9.2.6. is approved for release by the disclosing party.

## **10. Relationship of Parties**

This Agreement is not, is not intended to, and shall not be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship between the parties. Neither party may be held liable for acts or omissions of the other party, and neither party is authorized to or has the power to obligate or bind the other party by contract, agreement, warranty, representation, or otherwise in any manner whatsoever, except as may be expressly provided in this Agreement.

## **11. Arbitration/Dispute Resolution**

- 11.1. Disputes arising out of or related to this Agreement shall be resolved in accordance with this provision.
- 11.2. In the first instance the parties will attempt to resolve such disputes through the process identified in the applicable section of the Participant Requirements.
- 11.3. In the event the parties fail to resolve the dispute in the first instance, they agree that the dispute shall be referred to the American Arbitration Association in accordance with its Construction Rules of Arbitration. The arbitrator's decision shall be final and legally binding and judgment may be entered thereon.
- 11.4. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable rules of Arbitration. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's decision, or fails to comply with the arbitrator's decision, the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the decision.



**12. General Provisions**

- 12.1. This Agreement, and the rights, duties and obligations of the parties shall not be assignable without the prior written consent of the other party, and any purported assignment in the absence of such consent shall be void.
- 12.2. All notices which are required to be given or submitted pursuant to this Agreement shall be made in writing and shall be deemed given when (a) deposited with the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested; (b) deposited with a nationally recognized overnight mail delivery service; (c) sent by facsimile and then sent by mail as described in (a) or (b) above; (d) sent by email or other electronic means and then sent by mail as described in (a) or (b) above; or (e) delivered in person; all to the last address of record of each party being notified which is maintained by the other party in the ordinary course of business.

Any notice or demand required to be made under this Agreement to Participant shall be given to:

\_\_\_\_\_

*Participant Contact*

\_\_\_\_\_

*Company Name*

\_\_\_\_\_

*Title*

\_\_\_\_\_

*Address*

Any notice or demand required to be made under this Agreement to ACCA shall be given to:

Wesley R. Davis  
 Vice President, Quality Assured Program  
 ACCA  
 2800 Shirlington Road, Suite 300  
 Arlington, VA 22206

Either party may by written notice change the address or the identity of the person to whom any notice is to be sent.

- 12.3. If any provision of this Agreement, as applied to any party or to any circumstance, shall be found by a court of competent jurisdiction to be void, invalid or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances, or the validity or enforceability of this Agreement; provided, however, that nothing in this provision shall adversely affect the fundamental benefits received by the parties under this Agreement.
- 12.4. A waiver by any party of any of the terms and conditions of this Agreement in any one instance shall not be deemed or construed to waive any such term or condition for the future, or of any subsequent breach thereof, nor shall it be deemed a waiver of performance of any other obligation under this Agreement.
- 12.5. This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes all prior and collateral agreements, understandings, statements and negotiations of the parties.
- 12.6. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.



- 12.7. In the event of a change of name by ACCA, all terms, provisions, and conditions of this Agreement will apply to the new name of the ACCA exactly as they did to the old.
- 12.8. The titles of the sections of this Agreement are for convenience only and shall not in any way effect the interpretation of any provision or condition of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

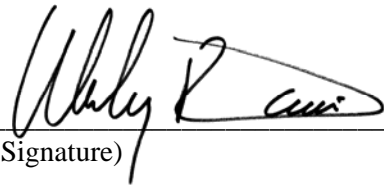
\_\_\_\_\_  
Participant:

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_  
Official Title:

AIR CONDITIONING  
CONTRACTORS of AMERICA

  
\_\_\_\_\_  
(Signature)

1 January 2014  
Date:

Vice President, Quality Assured Program  
Official Title:

Exhibits:

Exhibit A: QA Program Marks

Exhibit B: QA Program Mark Use Guidelines



EXHIBIT A  
QA PROGRAM MARKS











## EXHIBIT B

### QA PROGRAM MARK USE GUIDELINES

1. All QA Program Marks are the sole property of ACCA and may be used only in accordance with these Guidelines.
2. QA Program Marks may be used only by QA Program Participants under its own name and/or “doing business name,” as identified in the applicable QA Program directory.
3. QA Program Marks may not be preceded or followed by a qualifier that indicates a degree of certification or acceptability, such as “exceeds” “first,” or “only.”
4. No QA Program Mark, or aspect thereof, may be incorporated as part of a Participant’s name, or domain name.
5. QA Program Marks may be used on Participant stationary, cards, signage, advertisements or websites. Notwithstanding the foregoing, the QA Program Mark may not be used in any manner that, in the sole discretion of the QA Administrator: discredits ACCA’s Quality Assured Programs or tarnishes its reputation and goodwill; is false or misleading; violates the rights of others; violates any law, regulation or other public policy; or mischaracterizes the relationship between ACCA’s Quality Assured Programs and the Participant, including but not limited to any use of the logos that might be reasonably construed as an endorsement, approval, sponsorship, or certification by ACCA’s Quality Assured Programs of the Participant, the user’s business or organization, or the Participant’s products or services, or that might be reasonably construed as support or encouragement to purchase or utilize the Participant’s products or services.
6. The QA Program Mark shall only be used in advertisements that expire in 30 days or less or on a medium that can be modified in less than 30 days to remove the QA Program Mark or to have it removed.
7. Upon the loss of QA Program accreditation, the Participant shall remove or have removed all QA Program Marks from all stationary, cards, signage, advertisements or websites within 30 days.
8. Participants may not market any products or services under the QA Program name, including any reference to the “Quality Assured” program or to ACCA.
9. Participant may only assert or suggest that ACCA “assures” the quality or character of Participant’s products or services.
10. The QA Program Mark is made available in downloadable format, in color and/or black. The QA Program Mark may not be revised or altered in any way, and must be displayed in the same form as produced by ACCA. The QA Program Mark must be displayed in its official color, as displayed online, or in black.
11. QA Administrator actively monitors proper use of the QA Program Mark. The following explains the general course of action for addressing mark violations:
  - 11.1. Anyone who misuses the QA Program Mark will be contacted;
  - 11.2. A reasonable amount of time will be given to correct the error(s) per ACCA’s discretion. The time frame will be dependent upon the medium in which the violation appeared and the severity of the violation.
  - 11.3. Follow-up will be conducted to ensure that the error(s) has been corrected.
  - 11.4. Failure to make the required changes may result in termination of participation in the QA Program and/or legal action.



12. Use of the QA Program Marks shall create no rights for Participants in or to the QA Program Marks or their use beyond the terms and conditions of this non-exclusive license. The QA Program Marks shall remain at all times the sole and exclusive intellectual property of ACCA's Quality Assured Programs. ACCA's Quality Assured Programs shall have the right, from time to time, to request samples of use of the QA Program Marks from which it may determine compliance with these terms and conditions. Without further notice, ACCA's Quality Assured Programs reserve the right to prohibit use of the QA Program Marks if it determines, in its sole discretion, that a Participant's Mark usage, whether willful or negligent, is not in strict accordance with the terms and conditions of this license, otherwise could discredit ACCA's Quality Assured Programs or tarnish its reputation and goodwill, or the user is not an accredited Participant in good standing.