



## **2012 PERSONAL WATERCRAFT CERTIFICATION AGREEMENT**

This Personal Watercraft Certification Agreement (this "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between National Marine Manufacturers Association, Inc., a Delaware corporation ("NMMA"), and \_\_\_\_\_ (the "Manufacturer"), a manufacturer of personal watercraft ("PWC"). (Manufacturer' as used herein shall include manufacturers, distributors, and wholesalers of PWC.)

### **RECITALS**

- A. NMMA has established a PWC Certification Program to certify that certain new model PWC comply with specifications published in the applicable **SAE J1973, J2034, J2046, J2120, J2608** standards.
- B. The Manufacturer desires to have its PWC for the **2012** model year and model years thereafter during the effectiveness of this Agreement to be certified by NMMA.
- C. The Manufacturer and NMMA desire to set forth in this Agreement the terms and conditions pursuant to which NMMA will issue certifications for the Manufacturer's PWC.

In consideration of the mutual promises and covenants set forth herein and other consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

- I. NMMA agrees:
  - A. To undertake to inspect the Manufacturer's PWC models for the purpose of certifying that PWC produced by the Manufacturer with standard equipment for the model years governed by this Agreement are designed to comply with the applicable specifications as published in the applicable **SAE J1973, J2034, J2046, J2120 and J2608**. The inspection reports used in making such certifications are hereby made a part of this Agreement.
  - B. To arrange for inspection of the Manufacturer's PWC as provided for herein by an NMMA-appointed independent inspector or another authorized NMMA inspector within 20 days of the receipt by NMMA of an application for certification from the Manufacturer. This 20-day limitation may be extended with the approval and consent of the Manufacturer.
  - C. To keep the inspection reports and all information confidential and shall not disclose the inspection report or the information to any third party unless (1) the Manufacturer consents to any such disclosure in writing, (2) such disclosure is necessary or required in connection with such inspection or certification, or (3) such disclosure is required by subpoena or similar legal process. For purposes of this Section I. C., "Information" means all information that is not generally available to the public received by NMMA or its agents as part of the inspection of the Manufacturer's PWC as part of this Agreement or any other information designated as confidential by the Manufacturers. If NMMA has been requested to disclose any inspection report or Information by subpoena or similar legal process, NMMA shall notify the Manufacturer as soon as reasonably practical so that the Manufacturer can challenge the disclosure or seek a protective order.

II. The Manufacturer agrees:

- A. That all new model PWC constructed for the current model year governed by this Agreement will comply with **SAE J1973, J2034, J2046, J2120, J2608**. All models applicable to such model year will maintain, without exception, all specifications affecting this certification. The Manufacturer agrees that it will notify NMMA within thirty days after making any change in specifications that would require any change to be made in the NMMA inspection report for any PWC certified by NMMA.
- B. To provide accurate information for each PWC to be certified as required by NMMA or its inspectors, with the Manufacturer retaining sole responsibility for the accuracy of such information.
- C. That any NMMA Certification labeling affixed to or provided with the Manufacturer's PWC will be procured in accordance with NMMA established procedures.
- D. To refrain from representing, directly or indirectly or by implication, in any trade or consumer advertising, publicity or other statements or written releases that such certification: (1) is exclusive to the Manufacturer, (2) implies or constitutes any product endorsement by NMMA of the product so certified, or (3) has any connotation as to quality control inspection, durability or any other characteristic of design or performance other than the factors for which the PWC has been certified. The Manufacturer acknowledges and agrees that the breach of this covenant by the Manufacturer may result in substantial damage to NMMA which would be difficult, if not impossible, to ascertain and by reason of that fact, NMMA shall have the right to enforce this covenant by injunction.
- E. That if at any time NMMA determines in its reasonable discretion that a certification issued by NMMA with respect to any of the Manufacturer's PWC is no longer valid or correct because (1) such certification was obtained on the basis of specifications that were not utilized or inaccurately represented, (2) specifications set forth in a certification application were subsequently changed, (3) the certification is being utilized on a PWC not approved for certification, or (4) the certification is otherwise being misused or was otherwise obtained by misrepresentation, then the Manufacturer, upon notice from NMMA, shall at its own cost and expense (1) immediately cease utilizing such NMMA certification on such PWC so certified, (2) immediately cease making reference to such certification in all advertising, publicity or other informational releases and (3) use its best efforts to inform all owners of such PWC of the status of such certification. The Manufacturer further agrees that the breach by it of the provisions of this paragraph provides sufficient basis for NMMA or its affiliates to suspend or terminate the Manufacturer's membership benefits as a member of NMMA or its affiliates and, because the damages that NMMA may incur because of a breach of the provisions of this paragraph would be so difficult, if not impossible, to ascertain, NMMA shall have the right to enforce this covenant by injunction after having given written notice to the manufacturer.

III. Payments and Term:

- A. The charges for participation in the PWC Certification Program and related charges for inspections shall be as set forth on Schedule A attached hereto and any replacement Schedule A sent by NMMA to the Manufacturer from time to time. Any changes in the charges on Schedule A shall take effect with respect to the model year that begins after the revised Schedule A has been sent to the Manufacturer. For purposes of this Agreement a new model year shall be deemed to begin each August 1.
- B. The obligations of NMMA to certify the Manufacturer's PWC and the Manufacturer's obligation to submit its PWC for certification shall initially be for a period commencing on the date hereof and ending on **July 31, 2012**. Thereafter, such obligations shall be extended upon written notice by the Manufacturer and acceptance by NMMA. Notwithstanding anything herein to the contrary, nothing shall ever terminate the obligations of the parties hereunder other than the obligations to certify or submit PWC for certification.

IV. Reinspection of Models:

- A. Reinspection visits without charge may be scheduled by NMMA inspectors in their discretion on 10 days notice to the Manufacturer. If a reinspection determines that a discrepancy exists, the Manufacturer shall immediately take such action as NMMA deems necessary to correct the discrepancy including, if deemed necessary by NMMA, modification of all PWC which may have been produced with such discrepancy or remove certification of that model. In addition NMMA may on reasonable notice inspect the Manufacturer's PWC and facilities to audit the work of its inspectors.
- B. Reinspections by NMMA may be requested by the Manufacturer if it is believed that an error has been made by NMMA in its inspection of a PWC.
- C. If a reinspection is requested, the same procedure will be utilized as in selecting a new or previously uninspected model.
- D. The cost of a special reinspection (other than a discretionary inspection by NMMA described in Paragraph IV. A.) shall be as set forth on Schedule A hereto from time to time. The costs shall be borne by the Manufacturer.

V. Representations, Covenants, and Indemnifications:

- A. The Manufacturer represents, warrants and covenants to NMMA that all information and specifications provided to NMMA and/or its inspectors for purposes of obtaining or maintaining any certification shall be complete and accurate, and that no change in specifications shall be made without notifying NMMA.
- B. The Manufacturer shall indemnify and hold NMMA, its members, affiliates, officers, directors and agents (including, without limitation, NMMA's inspectors) harmless from any and all claims, judgments, fines, penalties, other liabilities and costs (including NMMA's reasonable attorneys fees) arising from the certification of any and all of the Manufacturer's PWC, including without limitation, those arising or alleged to arise from any breach of the warranty provided in Paragraph V. A. and any breach of a covenant or agreement of the Manufacturer set forth herein.

VI. NMMA Certification Procedures and Policies:

- A. NMMA PWC Certification procedures and policies, as amended with one year notice from time to time, are hereby made a part of this Agreement, and the Manufacturer shall have the right to appeal any action taken by NMMA or its inspectors to the NMMA PWC Certification Committee and the Personal Watercraft Industry Association (PWIA) Board of Directors as provided in such policy, and to appear before such Committee and present such evidence or contentions as shall be relevant to such appeal.
- B. The Manufacturer acknowledges that participation in the NMMA PWC Certification Program is voluntary and that the Manufacturer is under no obligation to NMMA to obtain certification or to employ the design criteria, specifications referred to herein, except and to the extent otherwise required by law.

VII. Miscellaneous:

- A. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and may only be amended or modified by a written instrument signed by both parties. Any waiver of any term hereof shall only be effective if set forth in a written instrument signed by the party granting the waiver.
- B. This Agreement shall be governed by the laws of the State of Illinois governing contracts made in and wholly to be performed within such state.

- C. In consideration for entering into this Agreement, the Manufacturer agrees that any state or federal court sitting in Chicago, Illinois shall have exclusive jurisdiction to hear and determine any claims or disputes pertaining to, arising out of, or relating to this Agreement and hereby agrees to submit to the jurisdiction of any such court.
- D. This Agreement shall be binding on and inure to the benefit of the respective successors of the parties hereto.
- E. Any notices required or permitted to be given hereunder shall be sent by registered mail to the address set forth as below and shall be deemed given three business days after being so mailed.
- F. In no circumstance shall NMMA's liability under this Agreement or for the provision of the certification services hereunder exceed the aggregate amount of payments received by NMMA hereunder.
- G. The Manufacturer hereby acknowledges that NMMA does not independently certify the components utilized by the Manufacturer but merely confirms that certain equipment which has otherwise been certified to the appropriate **SAE** standard is being utilized. NMMA expressly disclaims any responsibility certifying the quality of any such equipment.

This Agreement has been executed and delivered by duly authorized representatives of the parties hereto as of the date set forth above.

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

**NATIONAL MARINE MANUFACTURERS ASSOCIATION, INC.**

By: \_\_\_\_\_  
 Robert E. Newsome  
 Director, Engineering Standards

Address: NMMA  
 Engineering Standards  
 231 S. LaSalle  
 Suite 2050  
 Chicago, Illinois 60604

And: Manufacturer: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_



## **SCHEDULE A**

### NMMA PWC Certification Program Charges for Model Year 2012

#### **PWC Certification for NMMA Members**

Certification Program Inspection Fee	\$160.00 per hour (minimum 4 hours)  Plus inspector's travel costs *THIS IS BILLED AFTER THE INSPECTION VISIT.
PWC Agreement Processing Fee	\$300 Per Manufacturer *THIS IS BILLED UP FRONT.

#### **PWC Certification for Non-NMMA Members**

Certification Program Inspection Fee	\$320.00 per hour (minimum 4 hours)  Plus inspector's travel costs *THIS IS BILLED AFTER THE INSPECTION VISIT.
PWC Agreement Processing Fee	NMMA certification dues will be determined by the below chart and based on annual revenues. These rates will be billed up front.

#### **Certification Program Fee (per facility)**

**\$1,300.00**  
**\$1,600.00**  
**\$1,800.00**  
**\$2,800.00**  
**\$3,800.00**  
**\$5,300.00**  
**\$8,300.00**  
**\$12,300.00**  
**\$15,300.00**  
**\$21,300.00**

#### **Based on annual revenues of the company**

**Under \$2.5 million**  
**\$2.5 - \$5 million**  
**\$5-10 million**  
**\$10-15 million**  
**\$15-20 million**  
**\$20-30 million**  
**\$30-40 million**  
**\$40-50 million**  
**\$50-65 million**  
**\$65-100 million**