

## GIFT CARD SELLING LOCATION AGREEMENT

**THIS GIFT CARD SELLING LOCATION AGREEMENT** (the “Agreement”), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between \_\_\_\_\_, an authorized Harley-Davidson dealer (“Dealer”), with its principal office located at \_\_\_\_\_ and Harley-Davidson Canada LP (“HDC”), with its principal office located at 830 Edgeley Blvd., Concord, ON L4K4X1 Canada.

**WHEREAS**, HDC has designed the National Harley-Davidson Gift Card program (the “Gift Card Program”) whereby Gift Cards are distributed by HDC and sold and/or redeemed by Dealers;

**WHEREAS**, Dealer desires to sell Gift Cards to its Customers and HDC desires to have Dealer sell Gift Cards (“Gift Card Services”) to its Customers; and

**WHEREAS**, HDC will cause Service Provider/s, as defined below, to provide Dealer with the capability to deliver the Gift Card Services.

**THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

### **I. DEALER’S ROLES AND RESPONSIBILITIES**

A. Dealer agrees Dealer will be bound by and comply with all of HDC’s then-current, instructions, standard terms and conditions regarding such Gift Card Services, and be bound by and comply with the by-laws, operating regulations, and/or all other rules, policies, and procedures of any and all applicable networks and organizations relating to such Gift Card Services (collectively, “Operating Regulations”) as provided to Dealer from time to time.

B. Dealer acknowledges and agrees the Harley-Davidson National Gift Card Program Selling Dealer Terms and Conditions attached hereto as **Exhibit B** govern the participation of Dealer in the Harley-Davidson National Gift Card Program and apply to any sale of a Gift Card by Dealer and/or alter the Terms and Conditions unilaterally, at its sole discretion, but upon reasonable notice to Dealer. If Dealer continues to sell Gift Cards after receipt of a revised Terms and Conditions, Dealer is deemed to have accepted and agreed to the revised Terms and Conditions.

C. Dealer authorizes HDC and/or the service provider selected by HDC (“Service Provider”) to initiate Automated Clearing House (“ACH”) debit and/or credit entries from and to the bank account designated by Dealer in writing to HDC and Service Provider for use with the Gift Card Program (the “Deposit Account”) for all fees, costs, and amounts due to HDC or payable to Dealer under this Agreement. In the event that a credit or debit entry is erroneously initiated, Dealer authorizes HDC and/or Service Provider immediately to correct such error. This ACH authorization will remain in full force and effect until HDC has collected payment on all fees, costs, and amounts due or which may become due pursuant to this Agreement.

D. Dealer agrees Dealer will be bound by and comply with all equipment specifications required by HDC for delivery of the Gift Card Program. Such equipment

specifications may be amended from time to time upon notice to Dealer.

E. Dealer agrees personnel at Dealer's location will be trained on and comply with the Operating Regulations and any additional terms and conditions set forth by HDC. HDC may provide training manuals or reference guides for use by Dealer personnel when offering the Gift Card Services.

F. Dealer acknowledges and agrees HDC and/or the Service Provider will cause the funds ACH transferred from the Deposit Account into a pooled account used for the Gift Card Program (the "Pooled Account"). Dealer acknowledges and agrees funds in the Pooled Account are not the funds or property of Dealer and Dealer is not entitled to any interest or earnings on the funds in the Pooled Account.

G. Dealer agrees that the Deposit Account may not be changed or altered without at least thirty (30) days prior written notification to HDC and the execution of any forms or instruments deemed reasonably necessary by HDC.

H. Dealer agrees and represents and warrants to HDC that Dealer (a) will submit only Gift Card transactions for processing under this Agreement and in connection with the Gift Card Program and (b) will not submit or attempt to submit any credit card or debit card transactions for processing under this Agreement or in connection the Gift Card Program. Dealer further agrees to deposit the aggregate activated amount of the Gift Cards sold within one (1) business day in the Deposit Account.

I. Dealer agrees to maintain in its Deposit Account, in addition to any amounts required by HDC, the full amount of the Fee Amounts (as defined in Section I.R below) to be debited by HDC or Service Provider as contemplated in Section I.R. Dealer further agrees to deposit all card activation fees due within one (1) business day in the Deposit Account.

J. Dealer is responsible for the accuracy and security of all Gift Card transactions in which Dealer engages and of all information and Records regarding such transaction created by Dealer or submitted by Dealer. Dealer (and not HDC) will be solely liable for any and all losses arising out of or related to fraudulent Gift Card sales.

K. Dealer acknowledges and agrees that HDC may, at any time in its sole discretion and without prior notice to Dealer, impose a limit on the aggregate total dollar amount of Gift Card sales a Dealer may engage in per day and/or on the total dollar amount that may be sales by Dealer on any Gift Card per day.

L. Dealer is expressly prohibited from processing, factoring, laundering, offering and/or presenting any Gift Card transactions produced as a result of sales made by any person or entity other than Dealer.

M Dealer must review all reports and invoices prepared by HDC and made available to Dealer. Dealer's failure to reject any such report or invoice in writing within fifteen (15) business days from the date the report or invoice is made available to Dealer will constitute Dealer's acceptance of the same. Dealer agrees that it will review and/or confirm, within three (3) business days after a request from HDC to do so: (i) all settlement reporting, (ii) all requests for Deposit Account changes, and (iii) the initiation of all payments due to Dealer. HDC will bear no liability and have no obligations to correct any errors resulting from Dealer's failure to

comply with the preceding sentence.

N. Dealer will notify HDC immediately in writing upon becoming aware of any enforcement or attempted enforcement, or any assertion, by any creditor or other claimant of any interest or purported interest or claim in or to Dealer's Deposit Account or any amounts in the Deposit Account.

O. If Dealer utilizes a third party as Dealer's agent ("Agent") to perform some of Dealer's obligations under this Agreement, HDC will in no event be liable to Dealer or any third party for any actions or inactions of any Agent used by Dealer, and Dealer hereby expressly assumes all such liability.

P. Dealer agrees to provide HDC with prompt and reasonable notice of any change to Dealer's business form or entity in any manner (e.g., a change from a sole proprietorship to a corporation) and/or of the sale of Dealer or Dealer's stock or assets to another entity. In addition, should Dealer, at any time after the Effective Date, wish to change or add additional locations for the receipt of the Gift Card Program, Dealer will do so according to HDC's then-current standards, procedures and requirements.

Q. Dealer will maintain and retain records pertaining to each of Dealer's transactions under the Gift Card Program (the "Records") for the longer of (a) at least a period of three (3) years from the date of the transaction or (b) the period required by all applicable provincial, federal and local laws, rules and regulations (collectively, the "Laws"). HDC may examine and verify the Records at HDC's option. Dealer will be solely responsible for all liabilities arising from any failure to maintain, retain and provide Records as required herein.

R. Dealer agrees to pay HDC the fees and charges for the Gift Card Program that are set forth in the fee schedule in Exhibit A to this Agreement (the "Fee Schedule"). Dealer acknowledges and agrees that Service Provider will, on HDC's behalf, deduct fees from the Deposit Account within three business days after the sale of a gift card. HDC reserves the right to amend Exhibit A and/or alter the fee schedule unilaterally, at its sole discretion, but upon reasonable notice to Dealer. If Dealer continues to sell Gift Cards after receipt of a revised Fee Schedule, Dealer is deemed to have accepted and agreed to the terms of the revised Fee Schedule.

S. Dealer warrants that it has operated and agrees that it will continue to operate its business and perform under this Agreement in accordance with all applicable local, provincial and federal laws and regulations.

T. HDC shall have the right, as often as reasonably necessary, to inspect the books and records of Dealer that are relevant and pertinent to this agreement, Dealer's compliance with this agreement, and those books and records pertaining to HDC and/or its customers. HDC shall also have the right, as often as reasonably necessary, to review and/or inspect Dealer's processes, procedure, and facilities, to ensure compliance with this agreement and applicable law.

U. HDC, in its sole discretion, shall have the right, but not the obligation, to suspend the Dealer's ability to sell Gift Cards at any time upon notice to Dealer (the "Suspension"). The Suspension shall be effective upon the date stated in the notice. HDC, in

its sole discretion, may thereafter reinstate Dealer's ability to sell Gift Cards upon notice to Dealer. Such reinstatement shall be effective upon the date stated in the notice.

V. HDC shall have the right to use subcontractors to perform any activities necessary to administer the Gift Card Program. Dealer agrees to execute any documents necessary to support HDC's use of subcontractors in the administration of the Gift Card Program.

## **II. TERM AND TERMINATION.**

A. The initial term of this Agreement ("Initial Term") will commence on the Effective Date and continue for three years. After the expiration of the Initial Term, this Agreement will automatically be renewed for successive one year periods unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the expiration of the then-current term. Dealer is under no obligation to sell any or a minimum number of Gift Cards.

B. Either party may terminate this Agreement by giving written notice thereof to the other party. Such notice shall be effective upon receipt and participation in the Gift Card Program shall cease. If the Dealer terminates prior to completion of the Initial Term, Dealer agrees to return the readers or pay an early termination to \$295.00 fee.

## **III. AUTHORIZATION AND SET-OFF.**

A. HDC's and Service Provider's authority to debit or credit the Deposit Account will remain in effect for a period of (90) days following any expiration or termination of this Agreement.

B. All amounts due to HDC from Dealer under this Agreement will be paid without set-off or deduction. HDC will have the right, in its sole discretion, to set-off, against any amounts that may be payable or creditable to Dealer under this Agreement, all amounts due to HDC from Dealer under this Agreement.

## **IV. INDEMNIFICATION AND LIMITATION OF LIABILITY.**

A. Dealer will indemnify and hold harmless HDC from and against all losses, liabilities, damages and expenses (including attorneys' and collection fees and expenses) resulting or otherwise arising from (i) any breach of any term or condition of this Agreement, (ii) any misrepresentation by Dealer in this Agreement, (iii) Dealer's or Dealer's employees, agents, or contractors acts or omissions in connection with the Gift Card Program or otherwise in connection with this Agreement, (iv) Dealer's provision of goods and services to Gift Card holders, (v) any violation of the Rules or the Laws, (vi) any infiltration, hack, breach, or violation of Dealer's or any Agent's or third party's computer, computer system or network, (vii) Dealer's use of an Agent or any other third party processor or system in connection with the Gift Card Program or performance under this Agreement, or (viii) Dealer's connection to and use of, or ability or inability to connect to, the Internet or an external network. This indemnification obligation will survive the expiration or termination of the Agreement.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, EACH PARTY DISCLAIMS ALL WARRANTIES, INCLUDING,

WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Dealer acknowledges that there are risks associated with the sale and acceptance of Gift Cards, and Dealer assumes all such risks except as may be expressly set forth herein. HDC will not be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by HDC) suffered by Dealer, its customers or any third party in connection with the Gift Card Program or this Agreement. In no event will HDC be liable for any damages or losses to the extent that such damages or losses are caused by Dealer or Dealer's employees or agents. HDC's liability related to or arising out of this Agreement will in no event exceed the fees actually paid to HDC for the calendar month immediately preceding the date of the first occurrence of the act or omission of HDC for which Dealer alleges liability on the part of HDC. Dealer's exclusive remedy for any and all claims against HDC arising out of or in any way related to the transactions contemplated herein will be termination of this Agreement. HDC will not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any performance resulting, directly or indirectly, from errors in data provided by Dealer or others, or any event beyond HDC's reasonable control including but not limited to international, domestic, or economic terrorism.

C. Except for an action related to Dealer's failure to pay any amount due hereunder, no cause of action will be brought by either party more than two (2) years after the cause of action accrued.

D. Dealer represents and warrants to HDC that all information about Dealer in this Agreement and that all information Dealer provides to HDC is and will be true, accurate, correct, and complete. Dealer will immediately notify HDC in writing of any changes to Dealer's information in this Agreement. Dealer will provide updated information to HDC within a reasonable time upon request.

E. Confidentiality. Dealer acknowledges that HDC will be providing Dealer with certain confidential information, including but not limited to, this Agreement and information relating to the methods, techniques, programs, devices and operations of HDC (collectively "Confidential Information"). Dealer will not disclose Confidential Information to any person or entity (other than to those employees and agents of Dealer who participate directly in the performance of this Agreement and need access to such information). Without limiting the foregoing, Dealer agrees that it will fully comply with any and all confidentiality and security requirements of the Rules and the Laws and implement appropriate data security standards and procedures. Dealer agrees that HDC may share any information provided by Dealer with HDC's affiliates, with Service Providers and/or with other strategic business partners, provided that such business partners have agreed to hold such information confidential.

## **V. MISCELLANEOUS.**

A. All notices, requests, demands and other communications required or permitted in this Agreement shall be in writing and delivered by mail with postage prepaid or by hand delivery. If notice provided by hand delivery, it shall be deemed given and received on the date of delivery. If notice is provided by mail, it shall be deemed given and received on the date that is three days after the post mark. Notices shall be sent to the following addresses (or such other address provided by either party by written notice to the other party sent in accordance with this

paragraph):

If to HDC:               Harley-Davidson Canada LP  
830 Edgeley Blvd.  
Concord, ON L4K 4X1 Canada  
Attn: HDC Controller

With a copy to:       Harley-Davidson Inc.  
3700 W. Juneau Ave.  
Milwaukee, WI 53208  
Attn: General Counsel

If to Dealer:           \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B.       HDC may amend this Agreement in accordance with the notice provisions set forth above in this Section 12.B. to the extent necessary to comply with the Rules or Laws upon ninety (90) days notice. Dealer **will be deemed to have agreed to any such amendment if Dealer continues to present transactions after thirty (30) days following receipt (deemed or actual) of the notice.** Notwithstanding the previous sentence, changes to fees authorized by this Agreement with a shorter notice requirement to Dealer (deemed or actual) will be in accordance with such notification requirement.

C.       This Agreement may not be assigned by Dealer without the prior written consent of HDC, such consent not to be unreasonably conditioned, withheld, or delayed. HDC may assign this Agreement without any prior notice to or consent of Dealer. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted transferees and assignees.

D.       HDC and Dealer will be deemed independent contractors and none will be considered an agent, joint venturer or partner of the other.

E.       This Agreement is for the benefit of, and may be enforced only by, HDC and Dealer and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

F.       Dealer, and not HDC, is responsible for the acts or omissions of Authorized Dealer's employees and agents, including but not limited to such acts or omissions as related to the Gift Card Services.

G.       The failure of HDC to object to or take any affirmative action with respect to any conduct by Dealer which is in violation, breach or default of the terms hereof, will not be construed as a waiver thereof, nor of any future breach or subsequent violation, breach or default.

H. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be reasonably construed as if such provision is not contained in the Agreement.

I. This Agreement is entered into, governed by, and construed pursuant to the laws of the Province of Ontario and the laws of Canada applicable therein without regard to conflicts of law provisions. Dealer irrevocably agrees to all of the following: (i) that any legal suit, action or proceeding arising out of or in any way relating to this Agreement will be exclusively instituted in a state or federal court of appropriate subject matter jurisdiction; (ii) a waiver all rights to a trial by jury; and (iii) a waiver of any objection Dealer may have now or hereafter to the venue of any such suit, action or proceeding; and Dealer irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. Notwithstanding the foregoing, nothing contained herein will prevent HDC from bringing any action or exercising any rights under this Agreement within any other state or country.

J. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

K. Any and all provisions of this Agreement that impose or could be construed to impose a continuing obligation, duty, or requirement upon Dealer including but not limited to duties of indemnification and/or account maintenance will survive any expiration or termination of the Agreement.

IN WITNESS WHEREOF, each party has caused this Gift Card Selling Location Agreement to be executed by its authorized officer as of the date set forth below.

**DEALER:**

Dealer Name: \_\_\_\_\_

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

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

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

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

**HDC:**

**Harley-Davidson Canada LP, by its General Partner Harley-Davidson GP Inc.**

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

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

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

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

EXHIBIT    A  
FEE SCHEDULE

Standard Plastic Card Fee - \$0.36 CDN per card ordered \*

Standard Gift Card Sleeve - \$0.17 CDN per sleeve ordered \*

Card Activation/Load Fee - \$0.65 CDN per card activated

Other “optional” materials – as quoted

Shipping – as quoted

Tax – as applicable

\*Prices subject to change. See [h-dnet.com](http://h-dnet.com) for current applicable rates



## EXHIBIT B

### HARLEY-DAVIDSON NATIONAL GIFT CARD PROGRAM SELLING DEALER TERMS AND CONDITIONS

- At time of sale, Dealer shall not register the Gift Card or collect personally identifiable information on cardholders if such information is linked, attributable, or traceable to the Gift Card.
- The Gift Card is subject to terms and conditions provided to the purchaser at the time of sale. Dealer shall not alter the terms and conditions, represent different terms and conditions, or sell Cards under different terms and conditions.
- Gift Card sales must be made at Dealer's retail location. Sale of Gift Cards to a reseller is prohibited. Gift Cards shall be sold in accordance with applicable laws.
- Dealer is strictly prohibited from charging a customer any type of fee or reducing the value of the card purchased as it relates to the sale of the gift card.
- Sales presentations must accurately describe the Gift Card Program. If Dealer creates written materials to be distributed to Purchasers in connection with the sale of a Gift Card, such materials must be approved in writing prior to distribution.
- Internet sales of Gift Cards are prohibited.
- Unless stated otherwise in the Operating Regulations, at the time of sale, each Dealer shall issue a receipt and Card Agreement to Gift Card purchaser in the forms provided by HDC.
- At the time of sale, Dealer shall enter data for the sale into the computer system for the Gift Card Program. Dealer shall not sell a Gift Card unless it receives payment from the Card purchaser or otherwise holds funds in the amount of the Gift Card's activated value.
- Dealer may determine the methods (cash, credit, debit or check) by which a customer may pay for a Gift Card. Dealer's acceptance of payment is at its risk. Dealer will add funds to the Dealer Account in the full amount of the activated value of each Gift Card regardless of whether Dealer actually collects payment for purchase of the Card.
- Dealer has responsibility for chargebacks and adjustments resulting from misuse or unauthorized use of any payment method including but not limited to credit or debit cards to purchase a Gift Card. Dealer is also responsible for returned, dishonored or insufficiently funded checks.
- Dealer bears the cost of all credit and debit card fees charged to the Dealer for accepting a credit card, debit card or stored value card in payment for a Gift Card.
- If the Gift Card is issued by a Sponsor Bank, the Sponsor Bank is a third party beneficiary of this Agreement.