

## SUGGESTED PROVISIONS FOR A DEALER-MANUFACTURER AGREEMENT

### SECTION 1. TERM OF THE AGREEMENT

1.0. **Term.** The term of this Agreement is for a period of three (3) years from the date of the Agreement to \_\_\_\_\_, 20\_\_.

1.1. **New Agreement.** At the end of the first year of the Agreement, MANUFACTURER and DEALER shall evaluate DEALER's progress in meeting the performance standards set forth in Section 3.1. herein to determine whether to enter into a new three (3) year agreement. In the event the parties enter into a new agreement, this Agreement shall be null and void. In the event the parties decide not to enter into a new agreement, the parties shall continue to be bound by the terms and conditions of this Agreement.

### SECTION 2. TERRITORY AND MARKETING OF THE PRODUCTS

2.0. **Territory and Products.** Subject to the terms and conditions of this Agreement, MANUFACTURER appoints DEALER as the sole authorized dealer for the sale of MANUFACTURER's products defined by Exhibit \_\_ attached hereto (the "Products") within the territory defined by Exhibit \_\_ attached hereto (the "Territory"). MANUFACTURER shall not appoint another authorized dealer in the Territory during the term of this Agreement so long as DEALER remains in compliance with the terms and conditions of this Agreement.

2.1. **The Marketing of the Products.** Except for the purposes of advertising without any advertised price for the Products, DEALER shall not advertise or promote the sale of the Products outside of the Territory, including through the Internet. In addition, DEALER shall not use brokers located in another dealer's territory to sell the Products. Nothing herein shall be construed as prohibiting the DEALER from selling the Products to customers residing outside the Territory who, on their own, visit the dealership and seek to purchase Products from DEALER.

### SECTION 3. STANDARDS OF PERFORMANCE BY DEALER

3.0. DEALER understands and acknowledges the importance to MANUFACTURER of DEALER's commitment to operate the dealership in accordance with MANUFACTURER's standards of performance, in order to increase the demand for the Products and to protect and enhance the reputation and goodwill of MANUFACTURER.

3.1. DEALER agrees that DEALER's performance under the Agreement may be evaluated based several factors, including but not limited to the following standards of performance ("Performance Standards"):

3.1.0. **Market Share.** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall achieve a market share for all Products sold in the Territory as described more fully in the attached Exhibit \_\_.

3.1.1. **The Customer Satisfaction Index (“CSI”).** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall achieve a CSI score as described more fully in the attached Exhibit \_\_\_.

3.1.2. **The MANUFACTURER or Industry Certified Dealer Program.** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall achieve an acceptable level of performance on MANUFACTURER’s certified dealer program or, to the extent MANUFACTURER has no certified dealer program, on the industry certified dealer program (as applicable, “Certification Program”) as described more fully in the attached Exhibit \_\_\_.

3.1.3. **Dedicated line of credit.** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall maintain a dedicated line of credit as described more fully in the attached Exhibit \_\_\_.

3.1.4. **Trade-in line of credit.** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall maintain a trade-in line of credit as described more fully in the attached Exhibit \_\_\_.

3.1.5. **Participation in marketing and promotional activities.** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall participate in MANUFACTURER’s marketing and promotional activities as described more fully in the attached Exhibit \_\_\_.

3.1.6. **Continuous Improvement Plan (“CIP”).** As mutually agreed to by MANUFACTURER and DEALER, DEALER shall participate in a CIP, *i.e.*, a plan that addresses areas of needed improvement in DEALER’s performance, as described more fully in the attached Exhibit \_\_\_.

3.2. MANUFACTURER shall make reasonable efforts to provide DEALER with information regarding DEALER’s compliance with the Performance Standards.

3.3. The Performance Standards shall be evaluated on an annual basis and, as mutually agreed to by MANUFACTURER and DEALER, shall be adjusted as appropriate to promote the sale of the Products by DEALER. If the parties are unable to agree on revised Performance Standards, the existing Performance Standards shall remain in place until the expiration of the Agreement.

#### **SECTION 4. MANUFACTURER’S RESPONSIBILITIES**

4.0. **Reimbursement for Warranty Work.** If DEALER is meeting or exceeding the requirements of the Certification Program, then MANUFACTURER shall reimburse DEALER for warranty work at the same rates charged by the DEALER for non-warranty work of the same kind. Where applicable, MANUFACTURER shall reimburse DEALER for warranty work at an established flat rate.

4.1. DEALER shall provide to MANUFACTURER all requests for warranty reimbursement in writing. MANUFACTURER shall approve or disapprove, or at a minimum respond to DEALER, within two (2) business days of receipt of DEALER’s written request for reimbursement. All warranty claims shall be paid by MANUFACTURER within thirty (30) days

after receiving from DEALER a written invoice or written proof of completion of such warranty work.

**4.2. Warranty of Component Parts of MANUFACTURER's Products.**

Commencing no later than three (3) years from the date of this Agreement, MANUFACTURER shall act as a single source of contact for DEALER for all of the MANUFACTURER's component part product warranties. Notwithstanding the foregoing, the aforementioned shall not apply to any warranty for engine related products.

**4.3. Parts & Operations Manual and Components Manual.** Commencing no later than two (2) years from the date of this Agreement, MANUFACTURER shall provide an Owners & Operations Manual to DEALER. In addition, commencing no later than two (2) years from the date of this Agreement, MANUFACTURER shall provide to DEALER a Components Manual, which shall include sufficient information to permit DEALER to conduct a "walk-through" demonstration of the Products with customers.

**4.4. Shipment of Parts.** Upon signing this Agreement, MANUFACTURER shall provide to DEALER a written statement of the approximate amount of time it will take MANUFACTURER to ship each part to DEALER.

**4.5. Annual Training.** MANUFACTURER shall assist DEALER in providing the requisite training and support for DEALER to meet the requirements of the Certification Program.

## **SECTION 5. FINANCIAL INFORMATION**

**5.0.** MANUFACTURER shall respond promptly and provide adequate information in response to DEALER's reasonable inquiries concerning MANUFACTURER's financial condition.

**5.1.** Upon request, DEALER shall furnish to MANUFACTURER complete and accurate financial statements, and other financial information designated by MANUFACTURER, relating to DEALER and DEALER's principal(s).

## **SECTION 6. SUCCESSION**

**6.0. Succession Plan.** DEALER may submit in advance to MANUFACTURER a written plan (the "Succession Plan") designating DEALER's intended successor to the ownership of the dealership (the "Designated Successor") upon the death, disability, mental incapacity, or retirement of DEALER, or any partner, member, or shareholder of DEALER. The Succession Plan shall be presented in writing to the MANUFACTURER for prior approval, and shall include, in addition to the Succession Plan, all of the applicable information required in Section 6.2. herein, and any other information reasonably requested by MANUFACTURER.

**6.1. Succession of Dealership Absent a Succession Plan.** In the event of the death, disability, or mental incapacity of DEALER, or any partner, member, or shareholder of DEALER, at any time during the term of the Agreement and without a Succession Plan, the legal representative of DEALER, together with all surviving partners, members, or shareholders of

DEALER, if any, shall, within sixty (60) days of such death, disability, or mental incapacity, notify MANUFACTURER in writing of the Designated Successor's intention to succeed to the ownership of the dealership. In the event of the retirement of the DEALER, the DEALER shall notify MANUFACTURER no later than sixty (60) days prior to the impending date of retirement.

6.2. **Notice to MANUFACTURER.** DEALER, in the event of a Succession Plan, or the Designated Successor, in the event of the death, disability, or mental incapacity of the DEALER, shall provide written notice to MANUFACTURER of the Designated Successor's intention to succeed to the ownership of the dealership. The DEALER or Designated Successor shall provide in the notice to MANUFACTURER the following information:

- a. Name and address of Designated Successor;
- b. Ownership interest(s) that Designated Successor will assume in the dealership;
- c. Evidence demonstrating the right to be Designated Successor (*e.g.*, a certified copy of a court order establishing the heir or legal representative of the DEALER), if applicable;
- d. Such documents that MANUFACTURER deems relevant to establish Designated Successor's background and experience;
- e. Information on Designated Successor's business strategy, such as whether Designated Successor intends to expand or contract the number of brands the dealership is currently selling or whether Designated Successor intends to change the business from a full service operation to a brokerage operation;
- f. Financial information demonstrating that Designated Successor has the financial means to operate the dealership, as well as projected profit/loss statements, balance sheets, floor plans, and credit line; and
- g. Information on types of brand investment Designated Successor intends to make in the dealership.

6.3. **Approval by MANUFACTURER.** Taking into consideration the above-noted information, including but not limited to, other factors such as whether Designated Successor will cause a decline in Market Share and whether or not Designated Successor represents a competitive brand conflict, MANUFACTURER shall decide in its sole discretion whether to approve or disapprove of the succession or the Succession Plan. MANUFACTURER shall provide written notice of the approval or rejection of any proposed succession within thirty (30) days of DEALER's presentation of the Succession Plan or Designated Successor's notice intending to succeed to the ownership of the dealership. In the event MANUFACTURER approves the Succession Plan, MANUFACTURER shall be bound by that approval upon the triggering event (*e.g.*, the death, disability, or mental incapacity of DEALER), unless during the intervening period the Designated Successor identified in the Succession Plan has committed an act that would constitute a noncurable default of this Agreement, in which event

MANUFACTURER shall be free to disapprove of the Designated Successor. Any purported succession not having the prior written approval of the MANUFACTURER shall be null and void, and shall constitute a default hereunder.

## SECTION 7. TRANSFER OF THE AGREEMENT

7.0. DEALER understands and acknowledges that the rights and duties set forth in the Agreement are personal to DEALER and that MANUFACTURER has entered into the Agreement in reliance on the business skill and experience, financial capacity, and personal character of DEALER. Except as hereinafter provided, neither DEALER, nor any partner, if DEALER is a partnership, nor any member, if DEALER is a limited liability company (“LLC”), nor any shareholder, if DEALER is a corporation, without MANUFACTURER’s prior written approval, shall, by operation of law or otherwise, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber to any person, persons, partnership, association, LLC, or corporation, any interest in the Agreement. Any purported transfer not having the prior written approval of MANUFACTURER shall be null and void, and shall constitute a default hereunder.

7.1. **Notice to MANUFACTURER.** DEALER shall provide MANUFACTURER with a written notice before transferring the dealership to a proposed dealer (the “Transferee”). DEALER shall provide in the notice of transfer to MANUFACTURER the following information:

- a. Name and address of Transferee’s leadership (*i.e.*, principals) and other information that MANUFACTURER may deem necessary to assess Transferee’s background;
- b. Information on what percentage of the dealership Transferee is purchasing;
- c. Such documents that MANUFACTURER deems relevant to establish Transferee’s background and experience;
- d. Information relating to Transferee’s business strategy, such as whether Transferee intends to expand or contract the number of brands the dealership is currently selling or whether Transferee intends to change the business from a full service operation to a brokerage operation;
- e. Financial information demonstrating that Transferee has the financial means to operate the dealership, as well as projected profit/loss statements, balance sheets, floor plans, and credit line; and
- f. Information on types of brand investment Transferee intends to make in the dealership.

7.2. **Approval by MANUFACTURER.** MANUFACTURER may take into consideration the above-noted factors as well as the criteria set forth in Exhibit \_\_ hereto, in deciding whether to approve the transfer. MANUFACTURER shall not unreasonably withhold its approval to any transfer provided DEALER meets the notice requirements set forth in Section 7.1. herein and the criteria set forth in Exhibit \_\_ attached hereto. If Transferee fails to meet these requirements, then MANUFACTURER may decide in its sole discretion whether to

approve or disapprove of the transfer. MANUFACTURER shall provide written notice of the approval or rejection of any proposed transfer to the DEALER within thirty (30) days of written notice by DEALER of its intention to transfer the dealership. Any purported transfer not having the prior written approval of the MANUFACTURER shall be null and void, and shall constitute a default hereunder.

## **SECTION 8. DEFAULT UNDER THE AGREEMENT**

8.0. DEALER shall be in default under this Agreement, and shall be entitled to notice and the opportunity to cure such default, if any, as provided herein, under the following events or circumstances:

8.0.0. **Sold Out of Trust (“SOT”).** If DEALER, by diverting funds received, has sold portions of its inventory SOT.

8.0.1. **Inability to Meet Stocking Requirements.** If DEALER fails to meet MANUFACTURER’s stocking requirements.

8.0.2. **Financial Obligations.** If DEALER fails to pay or fails to make timely payment of any material obligation owed to MANUFACTURER.

8.0.3. **Failure to Obey All Laws.** If Dealer, or any of Dealer’s principals, fails to comply with all applicable laws, rules, regulations, ordinances, and orders of public authorities including, but not limited to, all governmental agencies, however designated. Without limiting the generality of the foregoing, but by way of example only, Dealer’s failure to promptly pay all taxes due to the taxing authorities would constitute a default under this provision.

8.0.4. **Failure to Meet Applicable Standards for Market Share, CSI, Certification Program, or CIP.** If DEALER fails to meet the established requirements for market share, CSI, Certification Program, or CIP for any one year or three consecutive quarters.

8.0.5. **Failure to Meet Applicable Standards for Dedicated Line of Credit, Trade-in Line of Credit, and Marketing and Promotional Participation.** If DEALER fails to meet the established requirements for dedicated line of credit or trade-in line of credit or fails to participate in MANUFACTURER’s marketing and promotional activities.

8.0.6. **Unauthorized succession or Transfer of the Agreement.** If DEALER fails to follow the requirements set forth herein regarding succession and transfer of the Agreement.

8.0.7. **Marketing of Products Outside of Defined Territory.** If, except for the purposes of advertising without any advertised price for the Products, DEALER advertises or promotes the sale of the Products outside of the Territory, including through the Internet or through brokers located in another dealer’s territory.

8.0.8. **Fraud.** If DEALER commits any act of fraud relating to the performance of the DEALER’s rights and obligations under the Agreement.

8.0.9. **Successive Notices of Defaults.** If DEALER receives three notices of default for the same or a substantially similar default (whether or not cured) within the preceding twelve (12) month period.

8.0.10. **Failure to Comply with the Agreement.** If DEALER fails to comply with any of DEALER's duties and obligations under the Agreement that are not otherwise identified in Sections 8.0 through 8.0.9. above.

8.1. **Cure Period.** If DEALER is in default of any the above-noted defaults, MANUFACTURER shall provide DEALER with written notice of the default and shall identify the cure period, if any, to which DEALER is entitled ("Notice to Cure"). Upon receiving any Notice to Cure, DEALER shall promptly provide MANUFACTURER with a written plan on how it intends to cure the default within the applicable cure period. DEALER shall have the right to cure the default under the Agreement within the following periods:

- a. **Thirty Day Cure Period.** Defaults for marketing or advertising the Products outside of the Territory, including through the Internet or through brokers located in another dealer's territory; the failure to meet MANUFACTURER's minimum stocking requirements; or any other default under the Agreement that is not otherwise discussed in Sections 8.1.b. through 8.1.e. herein, shall entitle DEALER to thirty (30) days upon receipt of the Notice to Cure to cure such defaults.
- b. **Sixty Day Cure Period.** If DEALER fails to meet applicable standards for dedicated line of credit or trade-in line of credit or fails to participate in MANUFACTURER's marketing and promotional activities, the DEALER shall have sixty (60) days upon receipt of the Notice to Cure to cure such defaults.
- c. **Ninety Day Cure Period.** If DEALER fails to meet CSI levels, then DEALER shall have ninety (90) days upon receipt of the Notice to Cure to cure such a default.
- d. **One Hundred Eighty Day Cure Period.** If Dealer fails to meet applicable Market Share levels, then DEALER shall have one hundred and eighty (180) days upon receipt of the Notice to Cure to cure such a default.
- e. **No Cure Period.** No cure period shall be available if DEALER is in default of SOT, fraud, failure to obey all laws, and unauthorized succession or transfer of the Agreement. In addition, no cure period shall be available for any default if DEALER has received successive notices of defaults for the same or a substantially similar default (whether or not the DEALER has cured the same) within the immediately preceding twelve (12) month period. MANUFACTURER may immediately terminate the Agreement without any opportunity to cure for these defaults.
- f. **Statutory Cure Period.** If a statute in the state in which the DEALER is located requires a cure period for the applicable default that is longer than any cure period specified herein, then the statutory cure period shall apply.

## SECTION 9. TERMINATION OF THE AGREEMENT

9.0. **Termination of the Agreement by MANUFACTURER.** If DEALER fails to cure any default within the applicable cure period, if any, following notice from MANUFACTURER, MANUFACTURER may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. MANUFACTURER shall provide DEALER with a written notice of termination.

9.1. **Termination of the Agreement by DEALER.** For any reason, upon providing MANUFACTURER with sixty (60) days written notice of termination or providing notice of termination before the commencement of the MANUFACTURER's next model year, whichever is sooner, DEALER may terminate the Agreement. Such termination shall become effective immediately upon MANUFACTURER's receipt of the written notice of termination.

9.2. **Effect of Termination.** In the event that MANUFACTURER terminates the Agreement, then MANUFACTURER shall repurchase DEALER's inventory of MANUFACTURER's Products that are new or untitled and less than twelve (12) months old. MANUFACTURER shall purchase from DEALER any other Products, which are the unencumbered property of and in the possession of DEALER, at the rates and conditions set forth in Exhibit \_\_ attached hereto. In the event that DEALER terminates the Agreement, then MANUFACTURER shall not be obligated to purchase any of DEALER's inventory of MANUFACTURER's Products.

9.2.0. For twelve (12) months after termination of the Agreement, DEALER may purchase, and MANUFACTURER shall sell, at the standard dealer rate, parts and accessories to DEALER to service customers of MANUFACTURER's Products; provided such sales shall be on a purchase order basis, according to MANUFACTURER's standard terms and conditions. After the expiration of the twelve (12) month period, DEALER may purchase, and MANUFACTURER shall sell, at the standard retail rate, parts and accessories to DEALER to service customers of MANUFACTURER's products; provided such sales shall be on a purchase order basis, according to MANUFACTURER's standard terms and conditions. No such parts or accessory sale shall be construed to be a continuation of this Agreement or the commencement of a new agreement. In the event of termination by either party, MANUFACTURER is relieved from any obligation to make any further boat shipments under the Agreement, and may cancel all of DEALER's unshipped orders for boats, irrespective of previous acceptance by DEALER, except those which are proved to MANUFACTURER's satisfaction to have been the subject of a binding customer order to the DEALER prior to the receipt of any notice of termination. The acceptance of orders from the DEALER or the continuous sale of boats to the DEALER or any other act after termination of the Agreement shall not be construed as a continuation of the Agreement, the commencement of a new agreement, or a waiver of the termination.

9.2.1. For twelve (12) months after termination of the Agreement, DEALER shall continue to perform warranty work for customers of the Products and be reimbursed by MANUFACTURER for such work unless otherwise specified by MANUFACTURER in the termination notice. The performance of such warranty work shall not be construed as a continuation of the Agreement, the commencement of a new agreement, or a waiver of the termination.



9.2.2. Upon the termination of the Agreement, all obligations owed by DEALER to MANUFACTURER shall become immediately due and payable on the effective date of the termination, whether otherwise then due or not (without presentment, demand, protest or notice of any kind, all of which are waived by DEALER); and MANUFACTURER may offset or deduct from any or all sums owed to DEALER any or all sums owed by DEALER, returning to DEALER the excess, if any.

9.2.3. Upon MANUFACTURER's purchase of DEALER's inventory of the Products, DEALER shall immediately discontinue the use of all trademarks, trade names, signs, and logotypes of MANUFACTURER (the "Proprietary Marks"). DEALER agrees that any unauthorized use or continued use of the Proprietary Marks thereafter shall constitute irreparable harm entitling MANUFACTURER to injunctive relief.

#### **SECTION 10. MISCELLANEOUS PROVISIONS**

10.0. **Non-Waiver.** MANUFACTURER's or DEALER's failure to exercise any power reserved to it under the Agreement, or the failure by either party to insist upon the strict compliance by the other party with any term, covenant, or condition of the Agreement, shall not be deemed to be a waiver of any such term, covenant, or condition.