

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS CARE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

COGS Agreement to Retain Equity

(“CARE”)

THIS CERTIFIES THAT in exchange for payment by the investors as set forth on Schedule 1 hereto (whether individually or collectively, the “**Investor**”) of up to \$XXX,000 (the “**Purchase Amount**”), COMPANY NAME., TYPE AND STATE (the “**Company**”), grants to Investor the right to receive the payments described herein, subject to the terms described below.

The “**COGS Payment Cap**” is 0.0x the Purchase Amount, *provided* that if COGS Payments totaling 0.0x have not been made by DATE, then the COGS Payment Cap automatically shall increase to 0.0x the Purchase Amount.

See Section 2 for certain additional defined terms.

1. **Events.**

1.1. **COGS Payments.** Beginning in the month after the first full calendar quarter after the date set forth on the Company’s signature page hereto (the “**Effective Date**”), on the last day of each month after a calendar quarter in which this CARE is outstanding, the Company shall pay to the Investor the COGS Payment with respect to the immediately preceding quarter (allocated pursuant to Schedule 1 hereto). At such time as the Company has made COGS Payments equal to the COGS Payment Cap, no further COGS Payments shall be made.

1.1.1. **Reconciliation.** In connection with the COGS Payment on account of the first quarter of each calendar year, the Company will perform a final reconciliation for the prior year and if the COGS Payments actually made in the prior year were lower than required based on the financial reconciliation, then the Company shall make an additional payment equal to the difference between the COGS Payments actually made and the COGS Payments that should have been made based on the financial reconciliation.

1.1.2. **Prepayments.** Company may prepay amounts owed up to the applicable COGS Payment Cap at the time of such prepayment, *provided* that Company’s cash on hand exceeds the greater of (a) \$1,000,000, or (b) Company’s budgeted operating expenses projected for the next twelve (12) months.

1.2. **Liquidity Event.** If there is a Liquidity Event before the termination of this CARE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1.4 below) to receive a portion of Proceeds, due and payable to the Investor (allocated pursuant to Schedule 1 hereto) immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the COGS Payment Cap less any COGS Payments made to date.

1.3. **Dissolution Event.** If there is a Dissolution Event before the termination of this CARE, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1.4 below) to receive a portion of Proceeds equal to the to the COGS Payment Cap less the COGS Payments to date, due and payable to the Investor (allocated pursuant to Schedule 1 hereto) immediately prior to the consummation of the Dissolution Event.

1.4. **Liquidation Priority.** In a Liquidity Event or Dissolution Event, this CARE is intended to operate such that Investor is an unsecured general creditor, with right of payment junior to senior debt and senior to any equity payments, as follows:

1.4.1. Junior to payment of outstanding senior indebtedness;

1.4.2. Pari passu with other outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into capital stock of the Company); and

1.4.3. Senior to payments for SAFEs and capital stock of the Company.

1.5. **Termination.** This CARE will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this CARE) immediately following the payment to Investor of the COGS Payment Cap.'

2. ***Definitions.***

2.1. **“Change of Control”** means (i) a transaction or series of related transactions in which any “person” or “group” (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company’s board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

2.2. “**COGS Payment**” means the payment set forth on **Exhibit A**, pursuant to the payment terms and other terms and conditions set forth on **Exhibit A**. The parties may amend or modify the payment amount or other terms or conditions set forth on **Exhibit A** only by mutual written agreement.

2.3. “**Direct Listing**” means the Company’s initial listing of its common stock (other than shares of common stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the Securities and Exchange Commission that registers shares of existing capital stock of the Company for resale, as approved by the Company’s board of directors. For the avoidance of doubt, a Direct Listing shall not be deemed to be an underwritten offering and shall not involve any underwriting services.

2.4. “**Dissolution Event**” means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company’s creditors or (iii) any other liquidation, dissolution, or winding up of the Company (excluding a Liquidity Event), whether voluntary or involuntary.

2.5. “**Initial Public Offering**” means the closing of the Company’s first firm commitment underwritten initial public offering of common stock pursuant to a registration statement filed under the Securities Act.

2.6. “**Liquidity Event**” means a Change of Control, a Direct Listing, or an Initial Public Offering.

2.7. “**Proceeds**” means cash and other assets, including stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

3. ***Company Representations.***

3.1. The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease, and operate its properties and carry on its business as now conducted.

3.2. The execution, delivery, and performance by the Company of this CARE is within the power of the Company and has been duly authorized by all necessary actions on the part of the Company. Subject to the accuracy of the Investor’s representations set forth in Section 4, this CARE constitutes a legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency, or other laws of general application relating to or affecting the enforcement of creditors’ rights generally and general principles of equity. To its knowledge, the Company is not in violation of (i) its current certificate of incorporation or bylaws; (ii) any material statute, rule, or regulation applicable to the Company; or (iii) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, such violation or

default, individually, or together with all such violations or defaults, would reasonably be expected to have a material adverse effect on the Company.

3.3. The performance and consummation of the transactions contemplated by this CARE do not and will not: (i) violate any material judgment, statute, rule, or regulation applicable to the Company; (ii) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien on any property, asset, or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license, or authorization applicable to the Company, its business, or operations.

3.4. No consents or approvals are required in connection with the performance of this CARE, other than: (i) the Company's corporate approvals; and (ii) any qualifications or filings under applicable securities laws.

3.5. To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes, and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with or infringement of the rights of others.

4. *Investor Representations.*

4.1. The Investor has full legal capacity, power, and authority to execute and deliver this CARE and to perform its obligations hereunder. This CARE constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

4.2. The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act. The Investor has been advised that this CARE and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this CARE hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. **Warrant.**

5.1. Contemporaneous with the execution of this CARE, the Company shall issue to the Investor a warrant to purchase common stock of the Company at an exercise price equal to the agreed upon fair market value of the Company (the “**FMV**”) and for a number of shares equal to X Percent (X%) of the portion of the Purchase Amount contributed by such Investor divided by the FMV. The form of warrant is attached hereto as **Exhibit B**.

6. **Miscellaneous**

6.1. While this CARE is outstanding, the Company may not, without the written consent of the Investor, accrue aggregate liabilities senior or *pari passu* in right of payment to this CARE in excess of ten times the Purchase Amount. A breach by the Company of this Section 6.1 will result in an amount immediately due and payable equal to the COGS Payment Cap.

6.2. Any provision of this CARE may be amended, waived, or modified by written consent of the Company and Investor.

6.3. Any notice required or permitted by this CARE will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified mail with postage prepaid, addressed to the party to be notified at such party’s address listed on the signature page, as subsequently modified by written notice delivered in accordance with this Section 6.3.

6.4. The Investor is not entitled, as a holder of this CARE, to vote or be deemed a holder of capital stock of the Company for any purpose.

6.5. Neither this CARE nor the rights in this CARE are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other party; *provided, however*, that this CARE and its rights may be assigned without the Company’s consent by the Investor (i) to the Investor’s estate, heirs, executors, administrators, guardians, or successors in the event of Investor’s death or disability, or (ii) to any other person who directly or indirectly controls, is controlled by, or is under common control with the Investor, including any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this CARE in whole, without the consent of the Investor, in connection with a reincorporation to change the Company’s domicile or type of entity.

6.6. In the event any one or more of the provisions of this CARE is for any reason held to be invalid, illegal, or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this CARE operate or would prospectively operate to invalidate this CARE, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this CARE and the remaining

provisions of this CARE will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

6.7. All rights and obligations hereunder will be governed by the laws of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

6.8. The preamble and all recitals to this CARE as well as the terms defined therein, if any, are incorporated by reference into the body of this CARE.

6.9. The words “either,” “or,” “neither,” “nor,” and “any” are not exclusive. The word “including” (in its various forms) means, “including, without limitation.”

6.10. All references to “\$” and dollars refer to United States of America currency, unless otherwise specifically provided.

6.11. Words, terms, and titles (including terms defined herein) in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires.

6.12. This CARE shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

6.13. This CARE may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this CARE delivered by email, or other means of electronic transmission, including DocuSign, shall be deemed to have the same legal effect as delivery of an original signed copy of this CARE.

(Signature page follows)

IN WITNESS WHEREOF, the undersigned has caused this COGS Agreement to Retain Equity to be duly executed and delivered as of the Effective Date.

COMPANY:

By: _____

Name:

Title:

Address:

Email:

IN WITNESS WHEREOF, the undersigned has caused this COGS Agreement to Retain Equity to be duly executed and delivered as of _____, 20__.

INVESTOR:

By: _____

Name: _____

Title: _____

Address: _____

Email: _____

EXHIBIT A COGS Payment

In consideration of the rights granted to Company hereunder, Company shall pay to Investor the following payment with respect to each calendar quarter:

Payment Amount:

X percent (X.0%) of the aggregate COGS for the prior quarter; *provided* that such amount may not be lower than one percent (X.0%) of the Purchase Amount.

“COGS” means cost of goods sold, including inbound freight and logistics, and is calculated by taking the value of the Company’s finished goods inventory at the beginning of the quarter, adding the cost of any new finished goods inventory purchased or manufactured over the quarter, and subtracting the value of finished goods inventory held at the end of the period, in each case calculated in accordance with GAAP.

Payment Terms:

Company shall pay Investor the COGS Payment in U.S. dollars on the last day of each month following a calendar quarter. Concurrently with each quarterly payment, Company shall deliver to Investor a statement in reasonable detail setting forth the calculation of the COGS Payment. Upon reasonable advance notice and during normal business hours, Investor shall have a right to inspect the books and records of the Company as reasonably necessary to ensure accurate calculation.

EXHIBIT B
Form of Warrant

(attached)

SCHEDULE 1
Investors and Allocations

Investor Name	Percentage Investment and Allocation

Any action required by the “Investor” may be taken by those investors constituting a majority of the allocations.