

CONSIGNMENT AND PLACEMENT AGREEMENT

This Consignment and Placement Agreement (this “Agreement”) is entered into as of the date of acceptance recorded under Section 22 (the “Effective Date”) by and between Riding and Driving Club LLC a Delaware limited liability company with its principal place of business at 2545 Route 44, Salt Point NY 12578 (“Counterpart”), and the entity identified at acceptance (the “Consignor”).

RECITALS

- (A) The Consignor manufactures or owns consumer packaged goods and wishes to obtain retail placement for those goods and data as to their rate of sale.
- (B) Counterpart places consigned goods on Counterpart-owned fixtures in independent retail premises under agreements with those retailers, counts units at intervals, and reports rate of sale to consignors.
- (C) The Parties intend this Agreement to constitute a true consignment. Title to the Goods remains with the Consignor until sale to an end consumer and Counterpart does not purchase the Goods at any time.

NOW, THEREFORE, in consideration of the mutual covenants below, the parties agree as follows:

1. DEFINITIONS

“**Count**” means a physical count of Goods on a Fixture conducted by Counterpart, or, where a Retailer’s point-of-sale system or other retail technology system is integrated with Counterpart’s systems, the sales and inventory data derived from that system for the applicable period.

“**Fee**” means the placement fee payable by the Consignor under Section 8.

“**Fixture**” means a display unit owned by Counterpart or a Retailer and placed at a Retailer’s premises.

“**Goods**” means the units of the SKUs listed in Schedule 1 that are delivered by the Consignor to Counterpart under this Agreement.

“**Par Level**” means the target number of units of a SKU to be held on a Fixture at a given Retailer, as agreed under Section 5.

“**Placement Period**” means the minimum period of twelve (12) weeks from the date the Goods are first placed on a Fixture.

“**Retailer**” means a retail establishment at which Counterpart has placed a Fixture.

“**Shortfall**” means units recorded at a Count as neither present on a Fixture nor sold.

“**SKU**” means a distinct stock keeping unit of the Consignor listed in Schedule 1.

“**Wholesale Price**” means the per-unit price for a SKU set out in Schedule 1.

2. APPOINTMENT AND SCOPE

- 2.1 The Consignor appoints Counterpart, on a non-exclusive basis, to place and offer the Goods for sale at Retailers in the State of New York and surrounding states during the Term.
- 2.2 Counterpart shall place the Goods at not fewer than ten (10) Retailers at the commencement of the Placement Period, shall use commercially reasonable efforts to maintain placement at not fewer than ten (10) Retailers throughout the Placement Period, substituting Retailers as necessary, and shall count and report in accordance with Section 7.

- 2.3 Counterpart is not a distributor, wholesaler or purchaser of the Goods, and does not resell the Goods on its own account. Counterpart acts as consignee and as agent of the Consignor for the limited purpose of effecting sales to end consumers.
- 2.4 Nothing in this Agreement restricts the Consignor from selling the Goods through any other channel or to any other customer.
- 2.5 During the Term and for twelve (12) months following termination, the Consignor shall not, and shall procure that its affiliates do not, supply the Goods to any Retailer first identified to the Consignor under this Agreement otherwise than through Counterpart, save where the Consignor was already supplying that Retailer before it was so identified.

3. CONSIGNMENT, TITLE AND RISK

- 3.1 All Goods delivered under this Agreement are delivered on consignment. Title to each unit remains with the Consignor and passes directly from the Consignor to the end consumer upon purchase at a Retailer.
- 3.2 Counterpart shall at all times hold the Goods as consignee, shall identify them in its records as the property of the Consignor, and shall not pledge, encumber or grant any security interest over them.
- 3.3 Counterpart shall procure that each Retailer agreement provides that the Retailer acquires no title to the Goods and shall not permit any lien to attach to them.
- 3.4 Risk of loss in the Goods passes to Counterpart on delivery to Counterpart's nominated address and remains with Counterpart while the Goods are in transit to, or on, a Fixture, save in respect of loss arising from Section 10.3 (expiry and spoilage) which remains with the Consignor.
- 3.5 The Consignor may inspect the Goods and Counterpart's records relating to them on reasonable notice during business hours.

4. UNIFORM COMMERCIAL CODE MATTERS

- 4.1 The Parties intend this Agreement to be a "consignment" within the meaning of Article 9 of the Uniform Commercial Code as enacted in New York.
- 4.2 The Consignor may, and is advised to, file a financing statement identifying Counterpart as debtor and the Goods as collateral, and to give notice to any secured party holding a conflicting security interest in inventory of Counterpart, in each case at the Consignor's cost.
- 4.3 Counterpart shall provide the information reasonably required for such filing and shall execute such further documents as the Consignor reasonably requests to evidence the consignment.
- 4.4 To the extent this Agreement is at any time determined not to constitute a true consignment, the Consignor is deemed to have retained, and Counterpart hereby grants, a purchase money security interest in the Goods and their proceeds, and Counterpart consents to the filing of a financing statement to that effect.
- 4.5 The Consignor represents that the Goods are not subject to any security interest, lien or encumbrance other than as disclosed in writing to Counterpart before delivery.

5. DELIVERY, PAR LEVELS AND FREIGHT

- 5.1 The Parties shall agree Par Levels for each SKU at each Retailer. Counterpart shall notify the Consignor of the quantity required for initial placement and thereafter of replenishment requirements.
- 5.2 The Consignor shall deliver the Goods to the address nominated by Counterpart, at the Consignor's cost and risk in transit, by the dates notified.

- 5.3 Counterpart shall bear the cost of moving the Goods from its nominated address to Retailers.
- 5.4 The Consignor shall deliver Goods with not less than **sixty (60)** days remaining before the date marking at the time of delivery.
- 5.5 If the Consignor fails to supply Goods sufficient to maintain agreed Par Levels, Counterpart may suspend or reduce placement / remove the affected SKU on notice.

6. PLACEMENT, MERCHANDISING AND PRICING

- 6.1 Counterpart shall determine which Retailers receive which SKUs, the position of the Goods on each Fixture, and the planogram.
- 6.2 The Consignor authorises Counterpart to set and to mark the retail price at which the Goods are offered for sale to end consumers, and to vary it on notice to the Consignor. Counterpart shall notify the Consignor of the initial retail price for each SKU before first placement.
- 6.3 Counterpart may remove any SKU from any Fixture where its rate of sale does not, in Counterpart's reasonable opinion, justify the facing, and shall notify the Consignor when it does so.
- 6.4 Counterpart shall refresh the assortment on each Fixture not less than quarterly.

7. COUNTS AND REPORTING

- 7.1 Counterpart shall conduct a Count at each Retailer at intervals of not more than fourteen (14) days, provided that where reliable POS Data is available through an active integration, Counterpart may use such POS Data as the primary record of sales for the applicable period.
- 7.2 Counterpart shall make available to the Consignor, through a portal, dashboard or written report, the units of each SKU sold at each Retailer in each period, identifying each Retailer by name, and may include retail price, sales velocity, period-over-period trends, inventory status and other performance metrics derived from sales of the Consignor's Goods.
- 7.3 Counterpart may provide category, channel and network benchmark information on an anonymised and aggregated basis. Counterpart shall not disclose to the Consignor the identity or non-public SKU-level performance of any other consignor except with that consignor's consent.
- 7.4 If the Consignor disputes a Count or POS-derived sales record, Counterpart shall on reasonable request review the underlying records and, where appropriate, conduct a further physical count.

8. FEES

- 8.1 The Consignor shall pay Counterpart **forty dollars (\$40)** per SKU, per Retailer, per calendar month, or such other amount as is set out in Schedule 1.
- 8.2 The minimum engagement is ten (10) Retailers, two (2) SKUs (or the Consignor's entire range where it comprises fewer than two SKUs) and the Placement Period.
- 8.3 Fees are invoiced monthly in advance. The first invoice is issued on the date the Goods are first placed on a Fixture and not on execution of this Agreement.
- 8.4 Fees are payable within **fifteen (15)** days of invoice. Counterpart may set off any Fee outstanding against amounts payable to the Consignor under Section 9.
- 8.5 No commission, distribution fee, listing fee, slotting fee or other charge is payable by the Consignor in respect of any sale of the Goods.

9. PAYMENT FOR GOODS SOLD

- 9.1 Counterpart shall pay the Consignor the Wholesale Price of each unit recorded as sold at a Count, less the deduction at Section 9.2.
- 9.2 Counterpart shall deduct from each payment the amount actually charged to Counterpart by its payment processor and the card networks in respect of collecting the corresponding amount from the Retailer. Counterpart shall retain no part of that deduction. Counterpart shall state the amount deducted on each remittance.
- 9.3 Payment is due forty-five (45) days from the date of the Count at which the sale was recorded.
- 9.4 Where Counterpart fails to conduct a Count within the fourteen (14) day interval required by Section 7.1, units sold in that period shall be treated as recorded on the date the interval expired, and payment shall be due accordingly.
- 9.5 Each remittance shall be accompanied by a statement identifying units, SKU, Retailer and Count date.
- 9.6 Counterpart's obligation to pay under this Section is not conditional upon Counterpart having collected the corresponding amount from the Retailer.

10. SHORTFALL, EXPIRY AND DAMAGE

- 10.1 Counterpart shall pay the Consignor for Shortfall not exceeding three percent (3%) of the units removed from a Fixture in the applicable period as though those units had been sold.
- 10.2 Where Shortfall exceeds three percent (3%), Counterpart shall investigate and shall report the outcome to the Consignor before settlement of the affected period. No amount is payable to the Consignor in respect of Shortfall exceeding three percent (3%), save to the extent the investigation shows the loss to be attributable to Counterpart.
- 10.3 The Consignor bears the loss of Goods that pass their date marking or spoil on a Fixture. No amount is payable to the Consignor in respect of such units.
- 10.4 Counterpart shall remove Goods that have passed or are approaching their date marking, shall record the removal with a photograph and a written record of SKU, quantity, Retailer and date, and shall, at the Consignor's election recorded in Schedule 1:
 - (a) return those Goods to the Consignor at the Consignor's cost; or
 - (b) destroy them and provide the record of destruction.
- 10.5 Goods damaged by Counterpart or by a Retailer otherwise than through defect or the passage of time shall be paid for by Counterpart as though sold.

11. REPRESENTATIONS AND WARRANTIES OF THE CONSIGNOR

- 11.1 The Consignor is duly organised and has full power and authority to enter into this Agreement, and the person accepting it is authorised to bind the Consignor.
- 11.2 The Consignor owns the Goods free of encumbrance save as disclosed under Section 4.5, and owns or is licensed to use all trademarks, trade dress and imagery supplied to Counterpart.
- 11.3 The Goods are safe, fit for human consumption, and lawful to sell in **the State of New York and surrounding states**.

- 11.4 The Goods and their labelling comply with all applicable laws and regulations, including the Federal Food, Drug, and Cosmetic Act, the Food Allergen Labeling and Consumer Protection Act, and applicable New York State and New York City requirements as to ingredients, allergens, nutrition, net weight and country of origin.
- 11.5 The Consignor holds all licences, registrations and certifications required to manufacture and supply the Goods, and shall notify Counterpart within **one (1) business day** of any change to, or loss of, any of them.
- 11.6 The Goods do not infringe the intellectual property rights of any third party.

12. RECALL AND WITHDRAWAL

- 12.1 The Consignor shall notify Counterpart immediately upon becoming aware of any defect, contamination, mislabelling or other circumstance that may require the withdrawal or recall of any Goods.
- 12.2 Counterpart shall, on notice from the Consignor or a competent authority, remove the affected Goods from all Fixtures as soon as reasonably practicable and shall provide the Consignor with a record of units removed by Retailer.
- 12.3 The Consignor shall bear all costs of any recall or withdrawal, including Counterpart's reasonable costs of removal, communication with Retailers, and disposal, save where the circumstance giving rise to it was caused by Counterpart's negligence.
- 12.4 The Consignor shall be responsible for all regulatory notifications and consumer communications in respect of a recall, and shall keep Counterpart informed.

13. INSURANCE

- 13.1 The Consignor shall maintain product liability insurance of not less than **\$1,000,000** per occurrence and **\$2,000,000** in the aggregate, and commercial general liability insurance of not less than **\$1,000,000** per occurrence, with insurers of recognised standing.
- 13.2 The Consignor shall name Counterpart as an additional insured on its product liability policy, shall procure that the policy includes a blanket additional insured endorsement in favour of retailers at which the Goods are placed, and shall procure that the policy contains a waiver of subrogation in favour of Counterpart.
- 13.3 The Consignor shall provide a certificate of insurance evidencing the above before the first delivery of Goods, and shall give Counterpart not less than **thirty (30)** days' notice of cancellation or material change.
- 13.4 Counterpart shall maintain property or bailee cover in respect of the Goods while in its care, custody or control of not less than \$100,000 per occurrence, and shall provide a certificate on request.

14. INDEMNIFICATION

- 14.1 The Consignor shall indemnify, defend and hold harmless Counterpart, each Retailer, and their respective officers, employees and agents from and against any third-party claim, and any resulting loss, liability, damage, cost and reasonable attorneys' fees, arising out of (a) any defect in or contamination of the Goods, (b) any failure of the Goods or their labelling to comply with applicable law, (c) any recall or withdrawal, or (d) any allegation that the Goods or the marks licensed under Section 15 infringe the rights of a third party.
- 14.2 Counterpart shall indemnify, defend and hold harmless the Consignor from and against any third-party claim arising out of Counterpart's negligence, wilful misconduct, or breach of this Agreement in the handling, storage or placement of the Goods.
- 14.3 An indemnified Party shall:

- (a) give the indemnifying Party prompt written notice of the claim;
- (b) grant the indemnifying Party control of the defence and settlement, provided no settlement imposing a non-monetary obligation on the indemnified Party is made without its consent; and
- (c) provide reasonable cooperation at the indemnifying Party's expense.

14.4 Each Retailer is an intended third-party beneficiary of Section 14.1 to the extent of claims made against it.

14.5 Where a claim within Section 14.1 is made against a Retailer, Counterpart may tender the defence of that claim to the Consignor, and the Consignor shall accept the tender and conduct the defence in accordance with Section 14.3. Notice given by a Retailer to Counterpart, and passed on by Counterpart promptly, satisfies Section 14.3(a).

15. INTELLECTUAL PROPERTY AND PUBLICITY

15.1 The Consignor grants Counterpart a non-exclusive, royalty-free, worldwide licence to use the Consignor's name, trademarks, logos and product imagery for the purpose of marketing and describing the Counterpart service, including on Counterpart's website, in presentations, in electronic communications and on social media.

15.2 The licence at Section 15.1 continues for the Term and for **twelve (12)** months following termination in respect of materials already published.

15.3 Counterpart shall observe the Consignor's written brand guidelines where supplied, and shall remove or amend any specific use on the Consignor's reasonable written request.

15.4 The Consignor may state publicly that its Goods are stocked through Counterpart. The Consignor shall not identify any individual Retailer by name in any public marketing material without the prior written consent of that Retailer, which Counterpart shall seek on request, reflecting undertakings Counterpart has given to those Retailers.

15.5 Save as set out in this Section, neither Party acquires any right in the other's intellectual property.

16. DATA AND CONFIDENTIALITY

16.1 "POS Data" means data obtained by Counterpart from or through a Retailer's point-of-sale, inventory, commerce or related technology systems in connection with the Goods, including product or SKU identifiers, units sold, retail price, transaction date and time, refunds, voids and inventory information, but excluding payment-card information and customer personally identifiable information unless separately and expressly authorised.

16.2 The Consignor may use without restriction the SKU-level rate-of-sale and performance data relating to its own Goods that Counterpart makes available to it, subject to confidentiality obligations applicable to non-public information concerning a Retailer. For the removal of doubt, the Consignor is obliged not to identify a Retailer by name in public marketing material except in accordance with Section 15.4, and not to disclose Retailer-identifiable data to any third party other than its professional advisers and service providers bound by equivalent obligations.

16.3 Counterpart may collect, receive, host, process, analyse and use POS Data and other data derived from sales and placement of the Goods for operating the service; inventory management and replenishment; reconciliation and invoicing; merchandising and assortment decisions; reporting to the Consignor; analytics; benchmarking; and developing, maintaining and improving Counterpart's products and services.

16.4 Counterpart may obtain POS Data directly from Retailers and through POS providers, APIs, integration middleware, cloud providers and other service providers, and may disclose data to such providers to the extent reasonably necessary to establish and operate those integrations.

16.5 As between Counterpart and the Consignor, the Consignor retains its rights in its underlying SKU-level sales data. Counterpart retains all right, title and interest in the Counterpart platform, dashboards, report formats, methodologies, derived metrics, analyses, benchmark datasets and aggregated or de-identified data, provided that Counterpart shall not disclose the Consignor's identifiable non-public performance data to another consignor without the Consignor's consent.

16.6 Counterpart may retain historical data after termination for recordkeeping, reconciliation, legal compliance, analytics and the continued use of aggregated or de-identified datasets. The Consignor may retain and use reports and data concerning its own Goods that were made available before termination.

16.7 Each Party shall keep confidential the terms of this Agreement and any non-public information of the other, subject to customary exceptions for information that is public, independently known, lawfully received from a third party without restriction, or required to be disclosed by law.

16.8 Counterpart may disclose data and reports under this Section to its affiliates, to any person engaged by Counterpart to operate or administer the Counterpart service, and to any person on whose behalf Counterpart operates the Counterpart service and that person's affiliates, in each case for the purposes set out in Section 16.3 and subject to obligations of confidentiality and use no less protective than those in this Agreement. "Affiliate" means an entity that controls, is controlled by, or is under common control with, the relevant person.

17. TERM AND TERMINATION

17.1 This Agreement commences on the Effective Date and continues until terminated in accordance with this Section. The Consignor may not terminate before the end of the Placement Period save under Section 17.3.

17.2 After the Placement Period, either Party may terminate on thirty (30) days' written notice.

17.3 Either Party may terminate immediately on written notice if the other:

- (a) commits a material breach that is not remedied within fifteen (15) days of notice; or
- (b) becomes insolvent, has a receiver appointed, or makes an assignment for the benefit of creditors.

17.4 On termination Counterpart shall remove the Goods from all Fixtures within ten (10) business days and shall deal with them in accordance with the Consignor's election under Section 10.4.

17.5 Units sold before removal shall be paid in accordance with Section 9 notwithstanding termination.

18. LIMITATION OF LIABILITY

18.1 NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF PROFITS, REVENUE OR BUSINESS, HOWEVER ARISING.

18.2 EXCEPT IN RESPECT OF THE INDEMNITIES AT SECTION 14, THE CONSIGNOR'S OBLIGATIONS UNDER SECTIONS 12 AND 13, AND AMOUNTS PAYABLE UNDER SECTIONS 8 AND 9, EACH PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE IN THE TWELVE MONTHS PRECEDING THE CLAIM.

18.3 Nothing in this Agreement excludes liability for fraud, wilful misconduct, or any liability that cannot be excluded by applicable law.

19. NOTICES

19.1 Notices shall be in writing and sent to the email address recorded at acceptance or, in the case of Counterpart, to michael@counterpartfoods.com with a copy to **6 Juniper Ledge Lane, Lakeville CT 06039**.

- 19.2 A notice sent by email is deemed received on the next business day after transmission, provided no delivery failure is received.

20. FORCE MAJEURE

- 20.1 Neither Party is liable for failure or delay caused by an event beyond its reasonable control, provided it notifies the other and resumes performance as soon as practicable. Payment obligations already accrued are not excused.
- 20.2 If such an event continues for more than **thirty (30)** days, either Party may terminate on written notice.

21. GOVERNING LAW AND DISPUTE RESOLUTION

- 21.1 This Agreement is governed by the laws of the State of New York, without regard to its conflict of laws principles.
- 21.2 The Parties submit to the exclusive jurisdiction of the state and federal courts located in New York County, New York.
- 21.3 EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF THIS AGREEMENT.

22. ACCEPTANCE AND ELECTRONIC CONTRACTING

- 22.1 The Consignor accepts this Agreement by completing the acceptance process notified by Counterpart, which records the Consignor's legal entity name, the name and role of the person accepting, the date and time of acceptance, and the version of this Agreement accepted.
- 22.2 The Parties consent to the formation of this Agreement by electronic means and agree that such a record constitutes a signature for the purposes of the federal Electronic Signatures in Global and National Commerce Act and the New York Electronic Signatures and Records Act.
- 22.3 Counterpart shall provide the Consignor with a copy of the accepted terms and the record of acceptance.

23. GENERAL

- 23.1 This Agreement and its Schedules constitute the entire agreement between the Parties in respect of its subject matter and supersede all prior discussions and representations. Neither Party has relied on any statement not set out in this Agreement.
- 23.2 Counterpart may amend this Agreement on thirty (30) days' written notice. Notwithstanding Section 17.1, if the Consignor does not accept the amendment it may terminate on notice given within that period, and the existing terms shall govern until removal of the Goods.
- 23.3 Neither Party may assign without the other's written consent, save that either may assign to a successor in connection with a merger, reorganisation or sale of substantially all of its assets, and Counterpart may assign to an affiliate on notice to the Consignor.
- 23.4 Nothing in this Agreement creates a partnership, joint venture, franchise or employment relationship. Counterpart is the Consignor's agent solely for the limited purpose stated in Section 2.3.
- 23.5 No failure or delay in exercising a right operates as a waiver.
- 23.6 If any provision is held unenforceable it shall be modified to the minimum extent necessary and the remainder shall continue in full force.
- 23.7 Sections 3, 4, 9, 11, 12, 13, 14, 15, 16, 18 and 21, and any accrued payment obligation, survive termination.

23.8 This Agreement may be executed in counterparts, including electronically.

EXECUTION

The Consignor accepts this Agreement electronically in accordance with Section 22. The signature block below is provided for use where a countersigned instrument is required.

Riding and Driving Club, LLC

[CONSIGNOR]

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

SCHEDULE 1 — SKUS, PRICES AND COMMERCIAL PARTICULARS

For each SKU: name, Counterpart SKU code, unit size, Wholesale Price, initial retail price, and date-marking shelf life.

Par Level per SKU per Retailer.

Fee per SKU per Retailer per month, if other than \$40.

Number of Retailers and cohort commencement window.

Consignor election under Section 10.4: return of expired Goods at Consignor's cost, or destruction with record.

Consignor delivery address for returns, and Counterpart's nominated delivery address.

Remittance details for payments under Section 9.

Certificate of insurance reference and expiry date.