

These Terms and Conditions and the Service Order together constitute the “Agreement”. CupClub Limited (the “CupClub”, “Supplier”, ‘We’, or ‘Us’) will supply and deliver the Services to the Client in accordance with the Agreement. In the event of any conflict between the Service Order and the Terms and Conditions, the Service Order will have priority.

1 Definitions

Unless otherwise defined in the Service Order, the following definitions will apply to the interpretation of these Terms and Conditions.

Business Day	any working day other than Saturday, Sunday or UK public holidays.
Client	the entity named in the Service Order
Cup(s)	a CupClub cup and lid
CupClub Data	any data that CupClub or the Client collects in the delivery of its Services or otherwise in relation to any CupClub Goods
CupClub Goods	the Cups and the Drop Point and any other goods or materials used in the delivery of the Services.
CupClub Material	the CupClub Goods and/or the CupClub Technology which will vary according to the CupClub Product Package selected in the Service Order
CupClub Technology	the point of sale technology that is proprietary to the Supplier which will include the Hardware and the Software.
Deployment Date	the date at which point CupClub shall begin provision of the live services deployed at the Client’s Service Locations
Drop Point	CupClub’s identified location where physical cases are placed for returning Cups
Effective Date	as set out in the Service Order.
Force Majeure Event	any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under this Agreement including act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strike, lockouts and industrial action (excluding strikes of the affected party’s own employees).
Hardware	the devices and equipment to be supplied by the Supplier

Intellectual Property	all and any rights and interests in registered or unregistered trademarks, patents, designs, or applications for any of the foregoing, copyright, rights in confidential information, rights in get up, source code, object code, unregistered designs, business names, inventions, applications, data, trade secrets, know-how, goodwill, formulae, processes, software programmes or other intellectual property rights (in whatsoever form including written or electronic form wherever they are in the world and whether registered or not) which subsist or will subsist now or in the future in any part of the world.
'In writing' or 'written'	any written communications including but not limited to email.
Price	as set out in the Service Order.
Services	all services provided by the Supplier under a Service Order, including but not limited to: collection, delivery and cleaning of Cups; operation and maintenance of data services and POS devices; training; account management; marketing; support.
Service Order	the service order form setting out the proposed Services and to be provided by the Supplier to the Client.
Software	the software program proprietary to the Supplier and provided to the Client by the Supplier
Term	the minimum Contracted Term of this Agreement as stated in the Service Order.

2 Supplier obligations:

2.1 The Supplier will:

- 2.1.1 use all reasonable commercial endeavours to deliver no less than the Service Volume to the Service Location(s) from the Commencement Date;
- 2.1.2 carry out the Services with reasonable skill and care.

2.2 In performing the Services, Supplier will use all reasonable endeavours to meet the Delivery Times.

2.3 Supplier will not be liable for any delay in delivery of the Cupclub Goods that is caused by a Force Majeure Event.

3 Client obligations:

3.1 Client shall use reasonable care as may be necessary to ensure that the Cupclub Goods are stored in a suitable environment (in accordance with the Supplier's reasonable written instructions regarding the storage, use and maintenance contained in the Cupclub Guide (as defined in clause 3.1 below)) and that the risk of loss or damage is reduced where reasonable.

3.2 The Client recognises the importance of maintaining the quality and reputation of the Cupclub brand and the Services. Supplier will provide to the Client a digital training manual outlining the Cupclub process and system, care instructions and additional

information regarding the Cupclub Goods (“**CupClub Guide**”). The Client undertakes to use reasonable endeavours to comply with the Cupclub Guide (as may be amended or varied from time to time).

4 Warranties

- 4.1 Each party warrants that it has full capacity to enter into and perform its obligations under this Agreement.
- 4.2 All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are, to the extent permitted by law, excluded.

5 Quality and Fitness for Purpose

- 5.1 The Supplier warrants that during the Term the Services and the CupClub Material will:
 - 5.1.1 conform in all material respects with their description;
 - 5.1.2 be free from material defects in design, material and workmanship;
 - 5.1.3 be of satisfactory quality (within the meaning of the Sales of Goods Act 1979); and,
 - 5.1.4 be fit for purpose for the intended use.
- 5.2 Without prejudice to the Client’s rights under or in connection with this Agreement, the Supplier shall replace the Cupclub Goods in the instance that the Cupclub Goods do not comply with any of the warranties set out in Clause 5.1. For the avoidance of doubt Supplier shall not be liable for misuse, mishandling, fair wear and tear, willful damage, damage or alteration not performed by the Supplier, negligence or abnormal storage or working conditions
- 5.3 Except as provided in this clause the Supplier will have no liability in respect of the CupClub Materials’ failure to comply with the warranty set out in clause 4.1.
- 5.4 Each party shall report any faults in the Cupclub Goods in a timely manner of which it is, or ought reasonably to be, aware. The Client shall be liable for breakages and/or defect arising due to failure to follow the Supplier’s instructions regarding the storage, use and maintenance of the CupClub Goods. The Supplier will not be liable for its failure to comply with the warranty in clause 5.1 if the defect arises because the Client fails to follow the Supplier’s reasonable written instructions or otherwise fails to report any defect to the Supplier within a reasonable time period.
- 5.5 The Supplier has given commitments as to compliance of the CupClub Materials and Services with the relevant descriptions and specifications in clause 5.1. In view of these commitments, the terms implied by sections 13-15 of the Sale of Goods Act 1979 and the terms implied by section 3-5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

6 Drop Points

- 6.1 The Supplier will together with Client identify the locations within the Site at which a Drop Point will be placed.
- 6.2 The Supplier will supply and fit the Drop Points at the locations set out in the Service Order at its own cost by no later than the Deployment Date.
- 6.3 The Supplier acknowledges and agrees that the Client will not be responsible for the maintenance of the Drop Point and neither the Supplier nor the Client will be held liable for any damage to the Drop Point unless caused by that party’s negligent act or

omission.

7 CupClub Technology

- 7.1 The Supplier will deliver and install the CupClub Technology at the Client's Service Locations.
- 7.2 The Supplier will supply to the Client, within a reasonable time before the agreed delivery date of the CupClub Technology, such information and assistance as may be necessary to enable the Client to prepare the Service Location.
- 7.3 Where any systems integration and acceptance testing needs to be carried out, each party will use all reasonable endeavours to co-operate and provide all such reasonable assistance as may be required in order to ensure that the CupClub Technology is live and implemented as soon as is reasonably practicable.

8 Term and termination

- 8.1 These Terms and Conditions will take effect from the Effective Date and continue for the Term.
- 8.2 Upon expiry of the Term, the parties will have an option to extend the terms of this agreement for a further period or to agree a further contract upon mutual agreement. The parties will use reasonable commercial endeavours to agree on the material terms regarding any longer term supply contract, including (but not limited to) price, term of supply, the quantity of Cups to be supplied, the services to be offered, and the sharing of data and will endeavour to enter into a new service contract within 30 days following the expiry of the Term.
- 8.3 In the event that the Clients wish to terminate or suspend provision of the Services prior to the expiry of Term they shall notify Supplier no less than 30 business days in advance and Supplier shall subject to the Client's request, either terminate or suspend such provision in accordance with such notice. Client acknowledges that Supplier's provision of Services includes a distribution of Supplier's costs over the Term and, unless otherwise mutually agreed in writing, Supplier shall continue to invoice and Client shall continue to pay, until the expiry of Term.
- 8.4 Notwithstanding clause 8.3 above, the Client may terminate this agreement on the first anniversary of the Deployment Date subject to three (3) months' prior written notice having been served on the Supplier, such notice to expire on the first anniversary of the Deployment Date ("Break Notice"). Where the Break Notice is not served in accordance with this clause, such notice will be invalid and the provisions of clause 8.3 will apply in all other circumstances. Where the Break Notice is validly served, the charge for each Cups will increase to GBP 0.25 (25 pence) per Cup and any difference in the Price (due or payable) will be aggregated and invoiced to the Customer at the expiry date. Client acknowledges that Supplier's provision of Services includes a distribution of Supplier's costs over the Term and, unless otherwise mutually agreed in writing, the parties agree that this additional charge has been calculated as, and are, a genuine pre-estimate of any loss that the Supplier is likely to suffer as a result of such early termination.
- 8.5 At any time after the anniversary of the first Deployment Date, the Supplier will be entitled to terminate or suspend provision of the Services for convenience prior to the expiry of the Term and shall notify Client no less than 60 days in advance. Supplier will reimburse Client for any payments already paid and received by Supplier for any period following the effective date of termination on a pro rata basis.
- 8.6 Any innocent party may terminate the Agreement at any time by giving a written notice to the other parties if a party commits a material breach of the Agreement and, in the case of a material breach capable of remedy, fails to remedy the breach within 21 calendar

days of being required to do so in writing.

- 8.7 Either party may terminate the Agreement immediately upon the provision of written notice if the other party ceases to trade, becomes insolvent or goes into liquidation (except for purposes of reconstruction while solvent) or becomes unable to pay its debts or has a receiver appointed over any of its business or any comparable action is taken in relation to that party in any jurisdiction.
- 8.8 Upon termination (for whatever reason) Client will: (i) hand over to the Supplier all data and documents (including data already prepared or in the course of preparation) in its possession relating to this Agreement, including the Services and all other documents and data received by it in relation to the Services and the CupClub Material; and (ii) provide reasonable assistance to the Supplier, including granting access during normal business hours, for the Supplier to collect and take possession of all CupClub Goods, Drop Points and the CupClub Technology remaining in their possession. If the Client fails to do so, then the Supplier may, following the provision of a reasonable period of prior written notice to the Client, enter the Client's premises and take possession of them. Until the CupClub Material has been delivered, collected or returned, Client will be solely responsible for their safekeeping and will not use them for any purpose not connected with this Agreement; (iii) permit the Supplier to collect and take possession of the Drop Points; and (iv) immediately pay to the Supplier all of the Supplier's charges, invoice and interest to the extent due and/or outstanding. Termination will be without prejudice to the other rights and remedies of the parties.
- 8.9 Any provision of these Terms and Conditions that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9 Ownership of CupClub Goods

The Cupclub Material will at all times remain the property of the Supplier and Client will not have any right, title, interest in or to the Cupclub Material(save as provided for under this Agreement).

10 Sales information and CupClub Data

Throughout the Term, Supplier will record certain data relating to the Services including but not limited to: (i) an inventory of Cups delivered to Client; (ii) the number of Cups issued to Cupclub members per day; (iii) the number of Cups that are damaged and which cannot be used and a description of such damage (and a reason if practicable); (iv) the number of Cups that remain in stock with at the Client's location at the end of each day (if any); and (v) the number of beverages sold to customers, (together referred to as the "Cupclub Data"). All such Cupclub Data will be exclusively owned by the Supplier.

11 Intellectual Property Rights

- 11.1 All Intellectual Property in or arising out of or in connection with the CupClub Material, the Services or otherwise in relation to this Agreement (other than any Intellectual Property in any materials provided by the Client), shall be exclusively and solely owned by the Supplier.
- 11.2 Throughout the Term, Client grants the Supplier a royalty free, non-exclusive, non-transferable licence to:
- 11.2.1 use Client's name or logos on the Cup or in any marketing or promotional material relating to the Client's use of the Cups as required for the purposes of this Agreement;
- 11.2.2 use Client's Intellectual Property in any marketing or promotional material relating to the Cups or otherwise as required for the purposes of this

Agreement.

- 11.3 All Intellectual Property in the CupClub Guide will at all times be owned by the Supplier. The Client will be granted a licence to use and access the CupClub Guide for the purposes of receiving the Services and meeting its obligations under this Agreement.
- 11.4 Client warrants and undertakes that it will not, and it will not authorise any other third party to, copy, adapt, modify, edit, alter, disassemble, or otherwise reverse engineer any part of the Cupclub platform or system, or any other product or material in which Supplier's Intellectual Property exists or otherwise arises.
- 11.5 The Supplier warrants and undertakes that it has taken reasonable steps to ensure that any Intellectual Property in the Cupclub Material, or otherwise used or created in the performance of the Services shall not infringe any Intellectual Property belonging to any third party.

12 Payment

- 12.1 Unless otherwise agreed in writing, the Supplier will submit invoices on a bi-annually in-advance basis. The Client will make full payment of any invoice within 30 days of receiving a properly rendered invoice or, if separately agreed in writing, no later than the due date stated in that invoice. On the Effective Date, the Supplier will issue its first invoice to the Client to account for all initial set-up costs to be incurred by the Supplier prior to the Deployment Date. The Supplier may refuse to perform its obligations under this Agreement until payment for such initial invoice has been paid in full and clear amounts.
- 12.2 The Supplier will be entitled to recover any additional costs from the Client in respect of any recorded damaged or lost Cups as defined in the Service Order other than in respect of ordinary wear and tear or a fault in the Cups or the Cupclub Goods. Such charges will be shown in a separate invoice then due to be issued under this Agreement.
- 12.3 Client will have five (5) business days within which to raise a reasonable and adequately supported query in respect of any charge included in the invoice. The Client will be deemed to have accepted the invoice if it fails to raise any query within the time limits specified in this clause.
- 12.4 The Client will, in addition, pay to the Supplier the amount of any applicable sales tax, duty or any other sales applicable tax, levy or charge which the Supplier is obliged to pay and/or collect from the Client in connection with this Agreement.
- 12.5 Where Client fails to make any undisputed payment due to the Supplier by the due date, and without limiting any other remedy available to the Supplier, the Client will pay interest on any overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount.
- 12.6 Supplier may increase the Price for the Services on an annual basis at its sole discretion, save that such increase shall be subject to an annual limit equal 110% of inflation as recorded by the current Consumer Prices Index as published by the UK Office for National Statistics from time to time ("CPI"). Supplier will provide the Client at least three months' prior notice before effecting any change.
- 12.7 Notwithstanding clause 12.6 above, the Prices will be reviewed every two (2) months prior to the Deployment Date. The Supplier may make reasonable increases to the Prices in the event that any external fees or costs which are outside of the control of the Supplier have been increased. By way of example only, and without limitation, it will be reasonable for the Supplier to increase the Price if the market price for materials, equipment, labour, third party supplier costs or other production costs increase or if any taxes, duties, laws, rules, or other governmental or administrative imposed charges or

tariffs become payable on the Services. To the extent that it is financially and economically feasible, the Supplier will use reasonable endeavours to limit any increase to 1% above the then current CPI.

13 Limitation of Liability

- 13.1 Nothing in this Agreement will operate to exclude or limit either party's liability for death or personal injury caused by its negligence, for fraud or for any other liability which cannot be excluded or limited under applicable law.
- 13.2 Neither party to this agreement will be liable to the other in any circumstances for any loss or damage which may be suffered by either of the Supplier or the Client (as the case may be), whether suffered directly or indirectly, whether immediate or consequential and whether arising in contract, tort (including negligence) or otherwise, which falls within any of the following categories:
 - 13.2.1 special or indirect or consequential damage even if the offending party was aware of the circumstances in which such damage could arise;
 - 13.2.2 loss of profits (whether considered a direct or indirect loss);
 - 13.2.3 loss of anticipated savings;
 - 13.2.4 loss of business opportunity;
 - 13.2.5 loss or corruption of data or information; or
 - 13.2.6 damage to software.
- 13.3 Subject to clauses 13.1 and 13.2 and any wilful misconduct of the Supplier, Supplier's aggregate liability in respect of claims arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, will not exceed £500 (five hundred pounds) .

14 Indemnity

- 14.1 Each Party indemnifies, (Indemnifying Party)the other (Indemnified Party) against all, claims, damages, losses, and expenses (including reasonable legal expenses) arising as a result of any action or claim for infringement of the Intellectual Property rights of a third party by the Indemnifying Party.
- 14.2 The indemnity in clause 14.1 is subject to the following conditions:
 - 14.2.1 the Indemnified Party promptly notifying the Indemnifying Party in writing of the claim;
 - 14.2.2 the Indemnified Party making no admissions or settlements without the Indemnifying Party's prior written consent;
 - 14.2.3 the Indemnified Party giving the Indemnifying Party all information and assistance that the Indemnifying Party may reasonably require; and
 - 14.2.4 subject to the rights of its insurers, the Indemnified Party allowing the Indemnifying Party complete control over the litigation and settlement of any action or claim.

15 Confidentiality

- 15.1 The parties must ensure that all documents, data and information prepared in connection with the Agreement are kept confidential and not communicated or released to any third

party without the other party's prior written consent.

15.2 All documents, data and information made available to Client by the Supplier will be used by Client only for the purposes of performing the Services. All documents, data and information made available to the Supplier by the Client will be used by the Supplier solely for the purpose of providing the Services or as otherwise provided for under the Agreement

16 Notices

16.1 Any notice under the Agreement will be delivered by mail, by hand, or by email.

16.2 A notice delivered by mail will be treated as delivered two working days after posting. A notice delivered by hand or by email, will be treated as delivered on the day of delivery (in the case of email, in a legible form and without the receipt by the sender of an error message) unless this is after the normal working hours (9am- 5:30pm) of the recipient in which case delivery will be treated as occurring on the next working day.

17 Force majeure

Neither party will be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event. If the period of delay or non-performance continues for more than 30 days, the party not affected may terminate this Agreement by giving five (5) Business Days' written notice to the affected parties.

18 Data protection

18.1 For the purposes of this clause the following definitions will apply:

18.1.1 **"Data Protection Legislation"**: up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998 or all applicable data protection and privacy legislation in force from time to time in the UK and as otherwise amended;

18.1.2 **"GDPR"** means the General Data Protection Regulation ((EU) 2016/679);

18.1.2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation;

18.1.2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, and to the extent only that any personal data is collected by the Supplier, the Supplier is the data controller and the data processor (as defined under the Data Protection Legislation);

18.1.2.2.1 The parties undertake to each other that they will comply, and will cause their employees, agents and subcontractors to comply, with all applicable provisions of the Data Protection Legislation in connection with the performance of their obligations under this Agreement.

19 General

19.1 No variation of this Agreement will be valid unless it is in writing and signed by each of the parties.

19.2 A waiver of any right under this Agreement is only effective if it is in writing. No failure or

delay by a party in exercising any right or remedy under this Agreement or by law will constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

- 19.3 If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement, or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 19.4 This Agreement (and any and all documents referred to in this Agreement) constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, misrepresentation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause 16.4 will limit or exclude any liability for fraud.
- 19.5 Nothing in this Agreement is intended to, or will be deemed to, constitute a partnership or joint venture of any kind between the parties, or constitute either party the agent of the other party for any purpose. Neither party will have authority to act as agent for, or to bind, the other party in any way.
- 19.6 No person who is not a party to this Agreement will have any right to enforce it pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 19.7 Any clauses intended to survive termination or expiry of this agreement will survive and continue to apply after such termination or expiry.

20 Governing law and jurisdiction

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. The courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

Terms & Conditions — Cupclub Limited. Company Registered in England & Wales (09693923)