

CUP4U Café Lounge Franchise Agreement

THIS AGREEMENT CUP4U Café Lounge is made on [Insert Date] by and between Overland Investment & Holding Group L.L.C (the CUP4U Café Lounge “Franchisor”) of s and [Insert Franchisee Name] (the CUP4U Café Lounges “Franchisee”) of [Insert Franchisee Address] on the basis of the following understandings and agreements:

1. Basis for Agreement

The Franchisor has developed methods for establishing, operating, and promoting businesses engaged in the business of [Insert Franchise Type] using the service mark and related trade names and trademarks CUP4U and the Franchisor’s proprietary methods of doing business (the “Licensed Methods”). The Franchisor grants the right to others to develop and operate a CUP4U Café Lounge franchise, under the Marks and pursuant to the Licensed Methods.

The Franchisee desires to establish a CUP4U Café Lounge franchise at a location identified herein or to be later identified, and the Franchisor desires to grant the Franchisee the right to operate a CUP4U Café Lounge franchise at such location under the terms and conditions which are contained in this Agreement.

2. Grant of Franchise

The Franchisor grants to the Franchisee and the Franchisee accepts from the Franchisor, the right to use the Marks and Licensed Methods in connection with the establishment and operation of a CUP4U Café Lounge franchise, at the location described in this Agreement. The Franchisee agrees to use the Marks and Licensed Methods, as they may be changed, improved, and further developed by the Franchisor from time to time, only in accordance with the terms and conditions of this Agreement.

The Franchisee agrees at all times to faithfully, honestly, and diligently perform the Franchisee’s obligations hereunder, and to continuously exert best efforts to promote the CUP4U Café Lounge franchise. The Franchisee agrees to utilize the Marks and Licensed Methods to operate all aspects of the business franchised hereunder in accordance with the methods and systems developed and prescribed from time to time by the Franchisor, all of which are a part of the Licensed Methods. The Franchisee shall offer such products and services as the Franchisor shall designate and shall be restricted from manufacturing, offering, or selling any products or services not previously approved by the Franchisor in writing. The Franchisee’s CUP4U Café Lounge must feature CUP4U Café Lounge brand items manufactured by the Franchisor or its designated suppliers and related non-primary items as per decided Menu approved by the Franchisor in writing.

3. Franchise Fee

The Franchisee agrees to pay the Franchisor an amount of \$[Insert Amount] as Franchise Fee. The payment of the franchise fee enables the Franchisee to enjoy the use of the Franchisor’s system and name, as well as assistance for a limited time.

4. Franchised Location and Designated Area

The Franchisee is granted the right and franchise to own and operate one CUP4U Café Lounge franchise at [Insert Franchise Address] (“Franchised Location”).

The rights that are granted to the Franchisee under this Agreement are for the specific Franchised Location and cannot be transferred to any other location without the prior written approval of the Franchisor. If the Franchisee has operated a CUP4U Café Lounge franchise for not less than 12 months and desires to relocate it to an alternative site, the Franchisee must set forth its reasons for requesting the relocation in writing to the Franchisor, along with a proposed new location. The Franchisor will have 30 days from receipt of the Franchisee’s written request to respond. If the Franchisor approves the relation and the proposed new location, and if the ownership of the Franchisee does not change in any respect from the ownership of the Franchisee before the relocation, then the Franchisee may move its franchise to the new approved location, provided that the Franchisee signs the Franchisor’s then-current form of Franchise Agreement and opens the franchise at the new location within 12 months after the franchise closes at its former Franchised Location. In, addition, the Franchisee will be required to pay a nonrefundable design fee of \$[Insert amount] as a fee for the preparation of a design for Franchisee’s new Franchised Location. A similar design fee will also apply if the Franchisee requests design assistance in remodeling its franchise at any time during the term of this Agreement.

5. Initial Franchise Fee

In consideration for the right to develop and operate one CUP4U Café Lounge franchise, the Franchisee agrees to pay to the Franchisor an initial franchise fee, which is due and payable as of the date of execution of this Agreement. The initial franchise fee represents payment for the initial grant of the rights to use the Marks and Licensed Methods, that the Franchisor has earned the initial franchise fee upon receipt thereof, and that the fee is non-refundable except as otherwise specifically set forth in this Agreement.

6. Training

After the Franchisee executes a lease for the Franchised Location, the Franchisee or, if the Franchisee is not an individual, the person designated by the Franchisee to assume primary responsibility for the management of the CUP4U Café Lounge franchise ("General Manager") is required to attend and successfully complete the initial training program which is offered by the Franchisor at one of the Franchisor's designated training facilities.

The Franchisor's initial training program shall consist of [Insert Number] days of instruction at a location designated by the Franchisor; provided, however, that the Franchisor reserves the right to waive a portion of the Franchisor's training program or alter the training schedule if, in the Franchisor's sole discretion, the Franchisee or General Manager has sufficient prior experience or training.

From time to time, the Franchisor may present seminars, conventions, or continuing development programs or conduct meetings for the benefit of the Franchisee.

7. Development Assistance

In addition to the Franchisor's initial training, equipment list, design services, Operations Manual, and other pre-opening services described elsewhere in this Agreement, Franchisor will provide the Franchisee prior to opening with a list of approved and designated suppliers and an advertising plan and advertising copy for Franchisee's grand opening.

In addition to the other operational assistance and advice provided by the Franchisor pursuant to other provisions of this Agreement, at the opening of the Franchisee's location and for a period of 0 days thereafter, the Franchisor shall provide the on-site services of a representative to assist the Franchisee and provide further on-site training in connection with the operation of the Franchisee's location.

8. Operations Manual

The Franchisor agrees to loan to the Franchisee one or more manuals, technical bulletins, and other written materials (collectively referred to as the "Operations Manual") covering ordering of supplies, manufacturing, processing, and stocking and other operating and in-store marketing techniques.

The Franchisee agrees to use the Marks and Licensed Methods only as specified in the Operations Manual. The Operations Manual is the sole property of the Franchisor and shall be used by the Franchisee only during the term of this Agreement and in strict accordance with the terms and conditions hereof. The Franchisee shall not duplicate the Operations Manual or disclose its contents to persons other than its employees or officers who have signed the form of Confidentiality and Non-Disclosure Agreement. The Franchisee shall return the Operations Manual to the Franchisor upon the expiration, termination, or transfer of this Agreement. The Franchisor reserves the right to revise the Operations Manual from time to time as it deems necessary to update or change operating and marketing techniques, standards, and specifications for all components of the Licensed Methods. Promptly after receiving any update from the Franchisor, the Franchisee shall update his or her copy of the Operations Manual as instructed by the Franchisor and shall conform operations with the updated provisions within a reasonable time after receipt of such updated information.

The Franchisee shall at all times during the term of this Agreement own and control the CUP4U Café Lounge franchise authorized hereunder. The Franchisee shall not operate any other business or profession from or through the franchise location. If the Franchisee is an entity, the entity shall only operate the CUP4U Café Lounge franchise governed by this Agreement and no other business, unless the Franchisee receives the Franchisor's prior written approval. Upon request of the Franchisor, the Franchisee shall promptly provide to the Franchisor proof, reasonably acceptable to the Franchisor, of such ownership.

9. Royalties

Throughout the term of this Agreement, the Franchisee agrees to pay to the Franchisor a continuing monthly royalty ("Royalty") equal to 0 percent of its Gross Retail Sales generated from or through the CUP4U Café Lounge franchise.

"Gross Retail Sales" shall be defined as receipts and income of any kind from all products or services sold from or through the CUP4U Café Lounge franchise, including any such sale of products or services made for cash or upon credit, or partly for cash and partly for credit, regardless of collection of charges for which credit is given, fewer returns for which refunds are made, provided that the refund shall not exceed the sales price and exclusive of discounts, sales taxes, and other taxes, amounts received in settlement of a loss of merchandise, shipping expenses paid by the customer and discount sales to corporations or to charities for fund-raising purposes. "Gross Retail Sales" shall also include the fair market value of any services or products received by the Franchisee in barter or in exchange for his services and products.

The Franchisee agrees that Royalty payments shall be paid monthly and sent to the Franchisor, post-marked on the [Insert Day] of each month based on Gross Retail Sales for the immediately preceding month. Royalty payments shall be accompanied by monthly reports and standard

transmittal forms containing information regarding the Franchisee's Gross Retail Sales and such additional information as may be requested by the Franchisor.

10. Advertising

The Franchisee shall obtain the Franchisor's prior written approval of all advertising or other marketing or promotional programs published by any method, including print, broadcast and electronic media, regarding the CUP4U Café Lounge franchise, including, without limitation, "Yellow Pages" advertising, newspaper ads, flyers, brochures, coupons, direct mail pieces, specialty and novelty items, radio, television, and Internet advertising. The Franchisee acknowledges and agrees that the Franchisor may disapprove of any advertising, marketing, or promotional programs submitted to the Franchisor for any reason in the Franchisor's sole discretion. The Franchisee shall also obtain the Franchisor's prior written approval of all promotional materials provided by vendors. The proposed written advertising or a description of the marketing or promotional program shall be submitted to the Franchisor before publication, broadcast, or use.

11. Quality Control

The Franchisee agrees to maintain and operate his CUP4U Café Lounge franchise strictly in compliance with this Agreement and the standards and specifications contained in the Operations Manual, as the same may be modified from time to time by the Franchisor in accordance with this Agreement. The Franchisee is prohibited from offering or selling any products or services not authorized by Franchisor.

If the Franchisee proposes to offer, conduct or utilize any products, services, materials, forms, items or supplies for use in connection with or sale through CUP4U Café Lounge which are not previously approved by the Franchisor as meeting its specifications, the Franchisee shall first notify the Franchisor in writing requesting approval. The Franchisor may, in its sole discretion, for any reason whatsoever, elect to withhold such approval. In order to make such determination, the Franchisor may require submission of specifications, information, or samples of such products, services, materials, forms, items, or supplies. The Franchisor will advise the Franchisee within a reasonable time whether such products, services, materials, forms, items, or supplies meet its specifications.

12. Term

The term of this Agreement begins on the date this Agreement is fully executed and ends [Insert period of time] later, unless sooner terminated as provided herein. Either party may terminate this Agreement upon 30 days' written notice or as required by law.

13. Default and Termination

The Franchisor shall have the right, at its option, to terminate this Agreement and all rights granted the Franchisee hereunder, without affording the Franchisee any opportunity to cure any default (subject to any state laws to the contrary, where state law shall prevail), effective upon receipt of notice by the Franchisee, upon the occurrence of any of the following events:

- a. Abandonment. If the Franchisee ceases to operate the CUP4U Café Lounge franchise or otherwise abandons the CUP4U Café Lounge franchise for a period of 0 consecutive days, or any shorter period that indicates an intent by the Franchisee to discontinue operation of the CUP4U Café Lounge franchise, unless and only to the extent that full operation of the CUP4U Café Lounge franchise is suspended or terminated due to fire, flood, earthquake or other similar causes beyond the Franchisee's control and not related to the availability of funds to the Franchisee;
- b. Insolvency; Assignments. If the Franchisee becomes insolvent or is adjudicated bankrupt; or any action is taken by the Franchisee, or by others against the Franchisee under any insolvency, bankruptcy or reorganization act, (this provision may not be enforceable under federal bankruptcy law), or if the Franchisee makes an assignment for the benefit of creditors, or a receiver is appointed by the Franchisee;
- c. Criminal Conviction. If the Franchisee is convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in the sole opinion of the Franchisor, to materially and unfavorably affect the Licensed Methods, Marks, goodwill or reputation thereof;
- d. Failure to Make Payments. If the Franchisee fails to pay any amounts due the Franchisor or affiliates, including any amounts which may be due as a result of any subleases or lease assignments between the Franchisee and the Franchisor, within 10 days after receiving notice that such fees or amounts are overdue;
- e. Misuse of Marks. If the Franchisee misuses or fails to follow the Franchisor's directions and guidelines concerning use of the Franchisor's Marks and fails to correct the misuse or failure within ten days after notification from the Franchisor;
- f. Unauthorized Disclosure. If the Franchisee intentionally or negligently discloses to any unauthorized person the contents of or any part of the Franchisor's Operations Manual or any other trade secrets or confidential information of the Franchisor;
- g. Repeated Non-Compliance. If the Franchisee has received two previous notices of default from the Franchisor and is again in default of this Agreement at any time during the term of this Agreement, regardless of whether the previous defaults were cured by the Franchisee.

h. Other. Any other covenant that the parties feel is sufficient cause to terminate this Agreement.

14. Restrictive Covenants

The Franchisee acknowledges that, in addition to the license of the Marks hereunder, the Franchisor has also licensed commercially valuable information which comprises and is a part of the Licensed Methods, including without limitation, operations, marketing, advertising, and related information and materials and that the value of this information derives not only from the time, effort and money which went into its compilation, but from the usage of the same by all the franchisees of the Franchisor using the Marks and Licensed Methods. The Franchisee, therefore, agrees that other than the **CUP4U** Café Lounge franchise licensed herein, neither the Franchisee nor any of the Franchisee's officers, directors, shareholders or partners, nor any member of his or their immediate families, shall during the term of this Agreement have any direct or indirect controlling interest as a disclosed or beneficial owner in a "Competitive Business."

The Franchisee shall treat all information it receives which comprises or is a part of the Licensed Methods licensed hereunder as proprietary and confidential and will not use such information in an unauthorized manner or disclose the same to any unauthorized person without first obtaining the Franchisor's written consent. The Franchisee acknowledges that the Marks and the Licensed Methods have valuable goodwill attached to them, that the protection and maintenance thereof is essential to the Franchisor, and that any unauthorized use or disclosure of the Marks and Licensed Methods will result in irreparable harm to the Franchisor.

15. Insurance

The Franchisee shall procure, maintain, and provide evidence of:

- (i) Comprehensive general liability insurance for the Franchised Location and its operations;
- (ii) Automobile liability insurance covering all employees of the **CUP4U** Café Lounge franchise with authority to operate a motor vehicle in an amount not less than any statutorily imposed minimum coverage;
- (iii) Unemployment and worker's compensation insurance with broad form all-states endorsement coverage sufficient to meet the requirements of the law.

All of the required policies of insurance shall name the Franchisor as an additional named insured and shall provide for a 30-day advance written notice to the Franchisor of cancellation.

The Franchisee will provide proof of insurance to the Franchisor prior to commencement of operations at the **CUP4U** Café Lounge franchise. This proof will show that the insurer has been authorized to inform the Franchisor in the event any policies lapse or are canceled. The Franchisor has the right to change the minimum amount of insurance the Franchisee is required to maintain by giving the Franchisee prior reasonable notice, giving due consideration to what is reasonable and customary in the similar business. The Franchisee's failure to comply with the insurance provisions set forth herein shall be deemed a material breach of this Agreement. In the event of any lapse in insurance coverage, in addition to all other remedies, the Franchisor shall have the right to demand that the Franchisee cease operations of the **CUP4U** Café Lounge franchise until coverage is reinstated, or, in the alternative, pay any delinquencies in premium payments and charge the same back to the Franchisee.

16. Governing Law

This Agreement shall be interpreted under the laws of the State of [insert state] and any disputes between the parties shall be governed by and determined in accordance with the substantive laws of the State of [Insert date], which laws shall prevail in the event of any conflict of laws.

17. Modification.

The Franchisor and/or the Franchisee may modify this Agreement only upon execution of a written agreement between the two parties. The Franchisee acknowledges that the Franchisor may modify its standards and specifications and operate and marketing techniques set forth in the Operations Manual unilaterally under any conditions and to the extent in which the Franchisor, in its sole discretion, deems necessary to protect, promote, or improve the Marks and the quality of the Licensed Methods, but under no circumstances will such modifications be made arbitrarily without such determination.

18. Entire Agreement.

This Agreement contains the entire agreement between the parties and supersedes any and all prior agreements concerning the subject matter hereof. The Franchisee agrees and understands that the Franchisor shall not be liable or obligated for any oral representations or commitments made prior to the execution hereof or for claims of negligent or fraudulent misrepresentation based on any such oral representations or commitments and that no modifications of this Agreement shall be effective except those in writing and signed by both parties. The Franchisor does not authorize and will not be bound by any representation of any nature other than those expressed in this Agreement. The Franchisee further acknowledges and agrees that no representations have been made to it by the Franchisor regarding projected sales volumes, market

potential, revenues, profits of the Franchisee's CUP4U Café Lounge franchise, or operational assistance other than as stated in this Agreement or in any disclosure document provided by the Franchisor or its representatives.

19. Effective Date.

This Agreement shall not be effective until accepted by the Franchisor as evidenced by dating and signing by an officer of the Franchisor.

20. Attorneys' Fees.

In the event of any dispute between the parties to this Agreement, including any dispute involving an officer, director, employee, or managing agent of a party to this Agreement, in addition to all other remedies, the non-prevailing party will pay the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in any legal action, arbitration or other proceedings as a result of such dispute.

21. Injunctive Relief.

Nothing herein shall prevent the Franchisor or the Franchisee from seeking injunctive relief to prevent irreparable harm, in addition to all other remedies. If the Franchisor seeks an injunction, the Franchisor will not be required to post a bond.

22. No Waiver.

No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by the Franchisor or the Franchisee shall be considered to imply or constitute a further waiver by the Franchisor or the Franchisee of the same or any other condition, covenant, right, or remedy.

23. No Right to Set Off.

The Franchisee shall not be allowed to set off amounts owed to the Franchisor for Royalties, fees, or other amounts due hereunder, against any monies owed to Franchisee, nor shall the Franchisee, in any event, withhold such amounts due to any alleged nonperformance by the Franchisor hereunder, which right of set-off is hereby expressly waived by the Franchisee.

24. Invalidity.

If any provision of this Agreement is held invalid by any tribunal in a final decision from which no appeal is or can be taken, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision shall be deemed a part of this Agreement as though originally included. The remaining provisions of this Agreement shall not be affected by such modification.

25. Notices.

All notices required to be given under this Agreement shall be given in writing, by certified mail, return receipt requested, or by an overnight delivery service providing documentation of receipt, at the address set forth in the first paragraph of this Agreement or at such other addresses as the Franchisor or the Franchisee may designate from time to time, and shall be effectively given when deposited in the United States mail, postage prepaid, or when received via overnight delivery, as may be applicable.

26. Payment of Taxes.

The Franchisee shall reimburse the Franchisor, or its affiliates and designees, promptly and when due, the amount of all sales taxes, use taxes, personal property taxes, and similar taxes imposed upon, required to be collected or paid by the Franchisor, or its affiliates or designees, on account of services or goods furnished by the Franchisor, its affiliates or designees, to the Franchisee through sale, lease or otherwise, or on account of collection by the Franchisor, its affiliates or designees, of the initial franchise fee, Royalties, Marketing and Promotion Fees or any other payments made by the Franchisee to the Franchisor required under the terms of this Agreement.

27. Signatures.

This Agreement shall be signed on behalf of [Insert Franchisor Name] by [Insert Franchisor Representative] and on behalf of [Insert Franchisee Name] by [Insert Franchisee Name].

BEFORE SIGNING THIS AGREEMENT, THE FRANCHISEE SHOULD READ IT CAREFULLY WITH THE ASSISTANCE OF LEGAL COUNSEL. THE FRANCHISEE ACKNOWLEDGES THAT (a) THE SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED HEREIN INVOLVES SUBSTANTIAL RISKS AND DEPENDS UPON THE FRANCHISEE'S ABILITY AS AN INDEPENDENT BUSINESS PERSON AND ITS ACTIVE PARTICIPATION IN THE DAILY AFFAIRS OF THE BUSINESS, AND (b) NO ASSURANCE OR WARRANTY, EXPRESS OR IMPLIED, HAS BEEN GIVEN AS TO THE POTENTIAL SUCCESS OF SUCH BUSINESS VENTURE OR THE EARNINGS LIKELY TO BE ACHIEVED, AND (c) NO STATEMENT, REPRESENTATION OR OTHER ACT, EVENT OR COMMUNICATION, EXCEPT AS SET FORTH IN THIS DOCUMENT, AND IN ANY OFFERING CIRCULAR SUPPLIED TO THE FRANCHISEE, IS BINDING ON THE FRANCHISOR IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

INTENDING TO BE BOUND, the parties have executed this Agreement as of the date first above set forth.

FRANCHISOR:

By: _____
By **Overland Investment & Holding Group L.L.C (CUP4U Café Lounge)**

Date: _____

FRANCHISEE: s

By: _____
By [Insert Franchisee Name]

Date: _____