

837 CLUB TERMS AND CONDITIONS

Mailng Address and Email Address Effective as of September 7, 2018

1. **The Club.** The 837 Club (the “Club”) is offered by the Palm Management Corporation, 1730 Rhode Island Avenue, N.W., Suite 900, Washington, D.C. 20036, also known as Palm Restaurant Group (“Palm”, “we”, “our” or “us”) and allows you to earn points (“Points”) in connection with your visits to participating Palm Restaurants and to redeem your cumulative Points for rewards (“Rewards”), as provided in these Terms and Conditions (“Terms”). Please review these Terms carefully as they provide the terms and conditions that govern your participation in the Club. By enrolling in the Club, you agree to these Terms, as they may be modified from time-to-time by us as permitted herein. You should check the Club website located at <http://www.thepalm.com/837-Club-Rules> (the “Website”) from time-to-time for changes to these Terms. This Club is void where prohibited by law.
2. **Club Eligibility.** You must be 18 years of age or older to participate in the Club. Palm employees and family members (defined as spouses, children, parents, or grandparents) or people living in the same household as a Palm employee are not eligible to participate in the Club. The Club is intended for individual use only. You are not allowed to share your account or combine Points with others, including your spouse or other family members. Points may not be accumulated for a business entity or organization.
3. **Enrollment.** You may enroll in the Club by completing an application in any one of our participating restaurants and giving it to your server or by visiting our Website and following the enrollment instructions. You are solely responsible for safeguarding your account and for ensuring your account information is up to date. We will mail you a membership card after enrollment. You should immediately notify us if you find out about or suspect there is unauthorized use of your account.
4. **Club Changes and Termination.** The Club is offered at our sole discretion. We reserve the right, in our sole discretion, to cancel the Club at any time or to add, delete, modify or otherwise change any of the Terms, including, but not limited to, making changes to fees and charges, or changes that may adversely affect the value of Points or Rewards already accumulated and the right to certain Rewards. We will notify you of any such changes on the Website and/or on your Web member portal. By continuing to participate in the Club following any change to these Terms, you are accepting the changes to the Terms.
5. **Membership Termination/Account Expiration.** We reserve the right to terminate your Club membership and to invalidate all or any portion of your Points and/or Rewards for any reason, in our sole discretion upon sixty (60) days’ written notice to you, except in the event of fraud behavior the Palm deems unacceptable, or violations of these Terms in which case we can terminate immediately. These rights are in addition to any other legal or equitable remedy that may be available to us under applicable law. Your Club membership will terminate after eighteen (18) months of zero activity, at which time all unused Points will be forfeited.
6. **Earning Points.**
 - a. Points are earned by members at the rate of one point for every \$1.00 U.S. Dollar (i) spent on food and beverages (except where prohibited by law), excluding tax and gratuity and (ii) purchases made on the Website, excluding tax, gift baskets and promotional offers (each, an “Eligible Transaction”). State laws may prohibit accumulation of Points for alcohol purchases. Points earned are credited to your account when presenting your Club card to your server at a participating Palm restaurant or when entering your club membership number online at the time of check out. If additional time is needed to allocate Points to your account, for any reason, we reserve the right in our sole discretion to award Points at a later date. Only the Club member paying the bill may accumulate Points. If a bill is paid by credit card, the name on the card must match the name on the Club card. You cannot obtain Points for purchases made prior to your Club enrollment and restaurants are not permitted to add Points to your account for visits prior to enrollment.
 - b. Points are not your property and may be revoked, cancelled, limited, or modified at any time, even though such action may affect your right to use previously accumulated Points. Points have no cash value and may not be redeemed for cash. Points are non-transferable and non-divisible, and may not be combined with their members’ accounts.
 - c. You may check your account status on the Website, by calling Member Services at 866-333-7256 or emailing 837club@thepalm.com. If you believe that Points were not properly applied to your account, there is an error with your Reward redemption or any other problem with your account, please call Member Services at 866-333-7256 or email 837club@thepalm.com. You must contact us within thirty (30) days after any such problem arises. We have no obligation to correct any errors after such thirty (30) day period. We will not be liable for any failure to credit Points to your account in a timely manner. We are not liable for Points or Rewards lost due to fraudulent or unauthorized use. We cannot replace Reward certificates if they are lost or stolen.
 - d. If you forget to present your membership card at the time of your Eligible Transaction, you will need to mail in your original receipt to our Member Services department at the address set forth in Section 16 below, or email it to 837club@thepalm.com, in order to receive Points for your Eligible Transaction. You may request Points for an Eligible Transaction up to six (6) months after the transaction date. Points may be earned for Eligible Transactions at Palm Restaurants that do not participate in the Club (if any) by mailing or emailing the original receipt to our Member Services department or 837club@thepalm.com. We recommend making a photocopy of all documents before sending and sending via a form of traceable mail.
 - e. We reserve the right to request validation of Point-earning activities and Point redemptions. Points and/or redemption requests are void if (i) not obtained or submitted in accordance with these Terms; or (ii) Points are obtained or redeemed as the result of or in connection with a sale, transfer, or other method which we determine, in our sole discretion, is in violation of these Terms. We reserve the right to audit accounts at any time and have the right to request proof of your Point-earning activity. You should save your original Point-earning receipt for at least ninety (90) days after the date of your Point-earning transaction as it may be necessary to submit it later for verification. We reserve the right to reverse Points previously credited to your account, if, upon our request, you cannot properly verify your Point-earning activity.
7. **Redeeming Points.** You can redeem your Points for a Reward by calling Member Services at 866-333-7256 or emailing 837club@thepalm.com. You can redeem Points for a Reward only if you have the required number of Points for that Reward. When you redeem Points for a Reward, we will subtract the Points from your total Point balance. Please allow 14 days for Reward delivery. Restaurants cannot redeem Points or issue Reward certificates. Reward certificates may not be used with other promotions, offers, discounts, or prix fixe meals. Reward certificates are not valid for tax or gratuity and are void if transferred, copied or sold. Rewards may vary by restaurant. Club benefits and Rewards are available at participating Palm Restaurant locations only. You are solely responsible for any Federal, state or local taxes resulting from the earning of Points or redeeming Points for Rewards.
8. **Rewards Disclaimer.** We do not warrant the quality, merchantability, or fitness for a particular purpose of any Reward. Additional terms and conditions for Rewards may apply. Such terms and conditions may be separately listed on the Club Website, and/or on the Reward itself. Use of the Reward is subject to compliance with the Reward terms and conditions, and with these Club Terms. We are not liable or responsible for any loss, damage or injury to person or property arising out of or resulting from participation in the Club or using a Reward or any other cause, condition or event beyond our control. Rewards are subject to availability. We may alter, substitute, change, withdraw, discontinue or terminate any Reward at any time. We are not responsible for errors, omissions, or delays in the handling of Rewards.
9. **Birthday Benefit.** You are eligible to earn a Birthday Benefit for a free entrée (“Birthday Benefit”) if you earn at least 1,000 Points at any participating Palm Restaurant within the 365 days prior to your birthday. Birthday Benefits are valid for 60 days from the date of the birthday for which you earned the Birthday Benefits. Birthday Benefits are not valid with any other offer and are void if transferred, copied or sold. **LIMIT: One Birthday Certificate per person per calendar year.**
10. **Release of Liability.** By using the Website, becoming a Club member or redeeming Points for a Reward, you hereby agree to release, discharge, and hold harmless Palm, its affiliates, and their respective officers, directors, shareholders, employees, and agents (collectively, the “Released Parties”) from any and all liability for claims resulting from any acts or omissions of the Released Parties in providing or failing to provide services in connection with the Club, and from any cause, condition or event beyond our reasonable control. You also agree to release, discharge, and hold harmless the Released Parties from all liability for any accident, injury, claims, damages, loss, expense, inconvenience or damages, arising out of: (a) your participation in, or failure to participate in, the Club, or (b) the use of or defect in any Reward. **IN NO EVENT WILL RELEASED PARTIES BE RESPONSIBLE OR LIABLE FOR ANY DAMAGES OR LOSSES OF ANY KIND, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF YOUR ACCESS TO AND USE OF THE WEBSITE AND PARTICIPATION IN THE CLUB, OR OUR ACTS OR OMISSIONS OR OUR NEGLIGENCE OPERATION OF THE PROGRAM AND THE MEMBER AGREES NOT TO SUE THE RELEASED PARTIES UNDER SUCH CIRCUMSTANCES. WITHOUT LIMITING THE FOREGOING, EVERYTHING ON THE WEBSITE IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SOME JURISDICTIONS MAY NOT ALLOW LIMITATIONS OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. CHECK YOUR LOCAL LAWS FOR ANY RESTRICTIONS OR LIMITATIONS REGARDING THESE LIMITATIONS OR EXCLUSIONS.** The sole extent of Released Parties’ liability, if at all, shall not exceed the lesser of the actual retail value of the Reward in dispute or your membership fee. You agree that any claim under these Terms must be brought within six (6) months after the cause of action arises, or such claim or cause of action shall be barred.
11. **Privacy Policy.** Information collected from you relating to your participation in the Club is subject to our Privacy Policy, located at <http://www.thepalm.com/privacy-policy>. By applying for enrollment in, and participating in the Club, you are agreeing that we may use your information as described in these Terms and our Privacy Policy.
12. **Indemnification.** You agree to defend and/or handle at your own cost and expense any third party claim, action and/or proceedings against the Released Parties based upon or arising out of any breach by you of these Terms (“Claim”) and you further agree to indemnify and hold harmless the Released Parties from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys’ fees and expenses) associated with any such Claim. The Released Parties reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you agree to cooperate as fully as reasonably required in our defense of any claim. You shall not in any event settle any matter without our written consent.
13. **Disputes/Class Action Waiver/Arbitration.**
 - a. You agree that whenever you have a disagreement with us arising out of, connected to, or in any way related to the Terms and/or Club, you will send a written notice to us (“Demand”). You agree that the requirements of this Section 13 will apply even to disagreements that may have arisen before you accepted these Terms. You must send this Demand to the following address (the “Notice Address”): Palm Management Corporation, Attn: 837 Club, 1730 Rhode Island Ave., NW, Suite 900, Washington, D.C. 20036.
 - b. You agree that you will not take any legal action, including filing a lawsuit or demanding arbitration, until thirty (30) business days after you send this Demand. If we do not resolve this disagreement to your satisfaction within thirty (30) business days, and you intend on taking legal action, you agree that you will file a demand for binding individual (non-class) arbitration with the American Arbitration Association (the “AAA”) and you will not file any lawsuit against us in any state or Federal court. YOU AND WE HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THE PROGRAM, THE GRANTING OF REWARDS AND THESE TERMS WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.
 - c. You agree that you may only sue us as an individual. You agree that you will not file a class action, participate in a class action brought against us in connection with the Club or join your claims to those of any other person. Notwithstanding any of the foregoing, if this class action waiver is invalidated, then the agreement to arbitrate is null and void. Any dispute at that time in arbitration will be dismissed without prejudice and refiled in a court. Under no circumstances do you or we agree to class or collective procedures in arbitration or the joinder of claims in arbitration.
 - d. Please note that for any filing of a demand for arbitration, you must affect proper service under the rules of the AAA, and that notice to the Notice Address may not suffice. You agree that the arbitrator will have sole and exclusive jurisdiction over any dispute you have with us. You understand that the Federal Arbitration Act allows for the enforcement of arbitration agreements, and you agree that it applies.
 - e. You agree that if you sue us in state or federal court, and we bring a successful motion to compel arbitration, you must pay all fees and costs incurred by us in court, including reasonable attorneys’ fees.
 - f. This provision will survive even after termination of your Club membership.
14. **Choice of Law.** All issues and questions concerning the construction, validity, interpretation and enforceability of these Terms, or your or our rights and obligations in connection with the Club and these Terms, shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules (whether of the State of New York or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of New York.
15. **General Terms.** If at any time any provision of these Terms is determined by a court of competent jurisdiction as being illegal, invalid or unenforceable in any respect, such provision will be deemed to be removed from these Terms and replaced with a lawful provision most closely approximating the intent of the stricken provision (except as noted in Section 13); and, the illegality, invalidity, or unenforceability of any stricken provision shall not affect the legality or validity or enforceability of any other provision of these Terms (except as noted in Section 13). No delay by us in enforcing the provisions of these Terms in any given instance will in any way prejudice or restrict our rights nor will any waiver of rights by us in any given instance operate as a waiver of any subsequent breach by any person of any provision of these Terms. These Terms, any terms associated with a Reward and our Privacy Policy constitute the sole and entire agreement between you and us with respect to the Club and your participation in it, and any and all prior agreements with respect to any other rewards program are superseded by these Terms.
16. **Contact Us.** This Club is sponsored by the Palm. For Point credits, Reward redemptions or other questions or concerns relating to your account, please call Membership Services at 866-333-7256 or email 837club@thepalm.com, visit the Website, or mail your request to 837 Club Member Services, 1730 Rhode Island Avenue, NW, Suite 900, Washington, DC 20036. Please make a copy of all written correspondence for your records.