

# Restaurant365

## Master Subscription Agreement

This Master Subscription Agreement (this “Agreement”) is entered into pursuant to and hereby incorporates the Terms & Conditions and current Restaurant365 Scope of Work (if applicable), and sets forth the software components and services of Restaurant365 that Customer may use during the Agreement Period. Any terms incorporated by written reference (including written reference to information contained in a referenced policy) form a part of this Agreement as if set forth herein.

Customer agrees to the terms and conditions of this Agreement and has caused this Agreement to be signed and delivered by signature of their Restaurant365 order form. This Agreement was last updated on November 20, 2024, and is subject to updates from time to time. It is accessible via [www.restaurant365.com/msa/](http://www.restaurant365.com/msa/)

Any ambiguity, conflict or inconsistency between this Agreement, a Scope of Work and/or an Order Form shall be resolved according to the following order of precedence: a) an Order Form; b) the R365 Payroll Service Agreement; c) the R365 Payroll Services Terms Addendum; d) a Scope of Work (including the AP Payments SOW); and e) this Agreement.

## Terms & Conditions

- 1. Contracting Parties.** This Agreement is binding between the client specified on its signed Restaurant365 Order Form (the “Order Form”), referred to hereinafter as (“Customer”), and R365, Inc. (“Restaurant365” or “R365”).
- 2. Products & Services.** Customer is entitled to use the components and integrations purchased by the Customer as specified in the “Software Pricing” section of its Order Form. The Customer may add additional features, functions or integrations at any time. The Customer will then begin to pay the price for the new ‘package’ (a package is a grouping of functions and integrations) they elect to purchase. All components and integrations subscribed to subsequent to the signed date of this Agreement are subject to the terms and conditions of this Agreement unless otherwise specified.
- 3. System.** The use of the “System” herein, shall mean the Restaurant365 software system, the ExpandShare software system (“ExpandShare”), and all associated training materials, including any courses, checklists, videos, information, documents, software, products, and services provided by Restaurant365 to Customer in the course of using the Services (as defined in Section 17(a)). The Customer is aware that the System may be updated and/or enhanced during the Agreement Period, and as such the look, feel, usability and features may change during the course of the Agreement Period. Use of the System and any of the services contemplated under this Agreement is also governed by Restaurant365’s privacy policy, the current version of which can be found at [www.restaurant365.com/privacy-policy](http://www.restaurant365.com/privacy-policy), which is incorporated herein by reference (the “Privacy Policy”). Restaurant365 understands it may receive data and personal information from Customer regarding Customer’s use of the System. Restaurant365 will process or maintain that data pursuant to the terms of the Privacy Policy.
- 4. Service Term.** The term of this Agreement shall begin on the day of execution of this Agreement and shall continue for the period specified in the “Terms & Payment Information” section of the Customer’s signed Order Form (the “Initial Period”), subject to successive automatic annual renewal or multi-year renewal, as specified on the Order Form (each a “Renewal Period”, together with the Initial Period, the “Agreement Period”) unless either party provides written notice to the other party of its intent not to renew the Agreement at least sixty (60) days prior to the end of the Initial Period or the then-current Renewal Period. If Customer elects to not renew this Agreement in accordance with this provision, it must notify R365 by email to [renewals@restaurant365.com](mailto:renewals@restaurant365.com) or the Agreement shall renew.
- 5. Termination.** This Agreement may not be terminated or cancelled, nor may Services be downgraded by the Customer prior to the end of the Initial Term or an applicable Renewal Period. R365 may terminate this Agreement, effective immediately upon written notice to Customer, if Customer: (a) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (b) files or has filed against it, a petition for voluntary or involuntary bankruptcy

or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (c) makes or seeks to make a general assignment for the benefit of its creditors; (d) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (e) if Customer is in breach of any of its obligations hereunder, including, but not limited to its payment obligations.

Upon any termination hereunder, all rights to use the System and any services contemplated hereunder terminate immediately. The Customer will be responsible for exporting data out of the System prior to the effective date of termination. Restaurant365 shall delete all of the Customer's information, with the exception of any Aggregated Data, from the System the day after the effective date of termination.

- 6. Subscription.** Certain aspects of the System and/or the services contemplated under this Agreement may be offered on a subscription basis ("Subscription"). For such Subscriptions, Customer will be automatically billed on a monthly or other time period basis as set forth in the Order Form. Subscriptions are not cancellable or downgradable and Customer will be held responsible for full payment of the entire Subscription term. These fees will be due in their regular schedule until the end of the Subscription term.

Certain Services are provided and invoiced per each Customer location, as described in the Order Form. For any such Services, R365 shall monitor Customer's use, and if it reveals usage by Customer locations that have not been billed, Customer agrees to pay the corresponding Fees within 10 days of R365's invoice for such usage. Such additional Services used shall be added to the Subscription and shall not terminate until the end of the Subscription term.

- 7. Billing Commencement.** The obligation to pay the Fees (as described in the Order Form or any subsequent ASR or renewal) commences on the day of execution of this Agreement (or the applicable ASR) and billing will begin on the date outlined on the pricing page of the Order Form. For the purposes of clarity, the Customer's go-live date is independent of and may not be the same as the date billing begins.
- 8. Fees Generally.** Except with respect to ExpandShare, each new location or integration that is added by the Customer, regardless of when it is added, requires an associated one-time Point of Sale ("POS") setup fee and monthly subscription fee. During each 12-month period from the date of execution of this Agreement, R365 shall have the right to increase the price for any component or integration that the Customer is subscribed for; provided, that such price may not increase by more than 8% in any 12-month period.'
- 9. Payment.** Customer will pay all fees, plus appropriate taxes charged by the city, county or state in which it resides or any federal tax imposed on the sale of the license and services provided by Restaurant365, to Restaurant365 on the same date every month based on the date of original purchase (i.e. if original purchase was made on the 14<sup>th</sup>, all subsequent payments are due on the 14<sup>th</sup> of each month). Payments that are more than fifteen (15) days after the billing date are considered past due. Amounts not paid when due will be subject to finance charges equal to ten percent (10%) per year, determined from the date due until the date paid. If Customer fails to pay any fee in a timely manner, Restaurant365 may, without limitation to any of its other rights and remedies available to Restaurant365, suspend performance of any services by shutting off access to the System (after providing fifteen (15) days' written notice) until it receives all amounts due. Customer may not withhold any payments owed to Restaurant365 for any reason. If any action is instituted by Restaurant365 to collect or otherwise enforce the provisions of this Agreement, Customer shall pay all costs and expenses, including attorneys' fees, incurred by any Restaurant365 in connection with such action. Customer's shipping address listed in the Order Form will be used to determine the appropriate taxing jurisdiction of the products and services purchased, unless other location data is provided. Fees due under this Agreement are net of any applicable taxes that are required by law.
- 10. Refunds.** Customers shall not be eligible for refunds for its non-usage, cancellations, downgrades or location closures of the Services or Subscriptions, or its failure to implement in accordance with Section 13(c), unless it's legally required.
- 11. Indemnification.**
- a. R365 shall indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the authorized and proper

use of the System hereunder infringes or misappropriates the valid intellectual property rights of a third party (a "Claim Against Customer"); provided that Customer (a) promptly gives R365 written notice of the Claim Against Customer; (b) gives R365 sole control of the defense and settlement of the Claim Against Customer (provided that R365 may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to R365 all reasonable assistance, at R365's expense. In the event of a Claim Against Customer, or if R365 reasonably believes the System may infringe or misappropriate the rights of a third party, R365 may in R365's sole discretion and at no cost to Customer (i) modify the System so that it is no longer infringing or misappropriating, without breaching R365's warranties hereunder, (ii) obtain a license for Customer's continued use of the System in accordance with this Agreement, or (iii) terminate Customer's subscriptions for the System and refund to Customer any prepaid fees covering the remainder of the Agreement Period after the effective date of termination.

- b. R365 shall indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party in connection with any failure of R365 to process or maintain Customer data pursuant to the terms of the Privacy Policy.
- c. Customer shall indemnify, defend and hold R365 harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against R365 by a third party in connection with (i) Customer's breach of this Agreement; (ii) any materials or information provided by or on behalf of Customer, including R365's compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by R365; or (iii) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer or any third party on behalf of Customer, in connection with this Agreement.

**12. Technology Support.** Support services shall be provided Mon. – Fri. from 8:00 am CST to 5:00 pm CST. The Customer is entitled to unlimited product support with their normal monthly fee via email or support web portal. This includes fixing and troubleshooting any defect or bug in the System itself – not assistance in making or reconciling accounting entries and records. Additional consulting services may be provided for an additional fee on a time and materials basis. Customer will assign one designated internal 'power user' (and a secondary named person in the event the 'power user' is out of the office) to submit all support cases to Restaurant365 the support web portal. Restaurant365 does not extend this support to the maintenance of or troubleshooting issues with the Customer's point of sale system or other hardware and software products not provided by Restaurant365. It is the responsibility of the Customer to maintain its own hardware or other non-Restaurant365 software systems with its other vendors or internal IT staff.

**13. Setup and Setup Fees.** Setup of the System on behalf of Customer shall be performed by R365 or a third party who selected by Customer from a group of approved providers (the "Designated Service Partner").

- a. In cases where the setup of the System is performed by R365 (as opposed to by a Designated Service Partner), the provisions of this Section 13.a shall apply. Each new R365 instance requires an associated setup fee, which shall be detailed on an Additional Service Request ("ASR"). The ASR must be signed by Customer and payment of such setup fee shall be due to R365 upon signature of the ASR. The minimum required setup fee is called the 'Standard' Implementation service fee and is based on activities that are defined in the R365 Scope of Work Document.
- b. In cases where the setup is performed by a Designated Service Partner (as opposed to by R365), the provisions of this Section 13.b shall apply. Customer shall execute a service agreement with the applicable DSP within 7 days of the Effective Date. The setup of the System by a Designated Service Partner shall be subject to the terms of such DSP's service agreement, including pricing terms, whereby Customer shall pay DSP directly for such services. Customer acknowledges and agrees that the Designated Service Partner, and not R365, shall be solely responsible for setup of the System and that R365 shall not have any liability or responsibility to Customer or any other party in connection with the setup of the System, and Customer hereby expressly irrevocably and unconditionally releases and discharges R365 from any and all claims, liabilities, obligations, promises, causes of actions, actions, suits, or demands, of whatsoever kind or character, arising in

connection with the setup of the System, as Customer's sole recourse for such matters shall be between Customer and the Designated Service Partner.

**c. Implementation.** Customer shall cooperate and actively engage with R365 Services team or with the DSP (as applicable) within 60 days of signing, assign sufficient personnel and complete assigned items in a timely manner that would allow for the service to be completed within 180 days. If the Customer fails to complete tasks assigned to them within a reasonable period of time of their previously agreed upon due date, the cost of the implementation may be subject to additional fees and the project go-live date may be re-scheduled.

**14. Training.** Customer shall receive unlimited access to the online training videos for each component and feature of the System. Also, additional live training via web-conferencing will be scheduled for select components/features after the Customer has completed viewing all applicable online training videos. If the Customer has additional questions or clarifications regarding the System after watching the training videos and/or attending live training, it may purchase additional remote (i.e. online) training services. The 'Standard' Implementation includes online training services for the designated Customer 'power user(s)'. It will be the responsibility of the Customer's 'power user(s)' to train and inform all other Customer internal personnel beyond the training videos. In other words, the fees associated with the 'Standard' Implementation only include training for the designated 'power user(s)' and do not include individual live or online training for all store managers or other Customer users of the System. It is not the responsibility of Restaurant365 to train all new users of the System when they are added to the System or to respond to all training requests.

**15. Customer Responsibilities.**

- a.** The Customer is responsible for determining whether the System will achieve the results the Customer desires. The following are the sole and exclusive responsibilities of the Customer: procuring, installing and operating the user computers, hardware, printers, communications lines and operating systems required for its use of the System; providing a proper environment and proper utilities for the Customer's computers on which the System operates; adopting procedures to ensure the accuracy of input data; examining and confirming results prior to use; Customer shall abide by all applicable local, state, national, and foreign, laws, treaties and regulations in connection with Customer's use of the Services and the System, including without limitation those related to data privacy, international communications, and the transmission of technical or personal data, and providing an authorized primary 'power user' and project manager who will coordinate communication and activities, making or facilitating the making of decisions during the implementation process and post- implementation. It is imperative that the Customer deliver the information requested, as part of the implementation, in a timely manner. If Restaurant365 does not receive the Customer's documents and desired System configurations on or before the agreed upon schedule, the Customer will be charged additional setup and configuration fees to complete the work. The Customer is responsible for ensuring that the operating software on each workstation is on a currently supported version from the maker. No support will be given to troubleshoot errors on workstations that are not on a currently supported version of software. The Restaurant365 platform and system is enabled to connect with many other systems and vendors. Restaurant365 is not responsible for any third-party fees for data access, APIs or any other connections. Customer is solely responsible for these fees.
- b.** Customer represents and warrants to R365 that: (i) it has the necessary power and authority to enter into this Agreement; (ii) the execution and performance of this Agreement have been authorized by all necessary corporate or institutional action; (iii) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, bylaws or comparable organizational documents of such party or conflict with any contract or agreement to which it is a party or by which it is bound; (iv) it complies and will comply with all applicable laws and regulations pertaining to its use of the Services; and (v) it is the owner of the Customer Data provided to R365 and that Customer Data does not infringe on a third party's intellectual property rights.

**16. Grant of License, Authorized Use and Restrictions.**

- a.** Restaurant365 hereby grants, and the Customer accepts on behalf of itself and its employees, a non-exclusive, non-transferable, revocable and limited right and license to use the System and any services contemplated hereunder and in any Order Form (the "Services") for the limited purpose of its internal business purposes

during the Agreement Period. Customer shall cause all persons (“Users”) obtaining access to the System to access the System solely in accordance with the terms hereof.

- b. Customer may use the System and the Services only for Customer’s internal business purposes and shall not:
- i. license, sublicense, sell, rent, resell, transfer, assign, distribute, publish or otherwise make available to any third party the System in any way;
  - ii. copy, modify, or make derivative works or improvements of the System;
  - iii. create internet “links” to the System or “frame” or “mirror” any part of the System on any other server or wireless or Internet-based device;
  - iv. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the System, in whole or in part;
  - v. bypass or breach any security device or protection used by the System or access or use the System or the Services other than by the use of Customer’s authorized means;
  - vi. input, upload, transmit, or otherwise provide to or through the System, any information or materials that are unlawful or injurious, or contain, transmit, or activate any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data processed thereby (“Harmful Code”);
  - vii. damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the System or the Services, or R365’s provision of services to any third party, in whole or in part;
  - viii. remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights from any System;
  - ix. access or use the System or the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law;
  - x. access or use the System for purposes of competitive analysis of the System, the development, provision, or use of a competing software service or product, or any other purpose that is to R365’s detriment or commercial disadvantage; or
  - xi. otherwise access or use the System or the Services beyond the scope of the authorization contemplated by R365.

## 17. Customer Data.

- a. Certain Definitions. As used herein:

- i. “Customer Data” shall mean any specific files, videos, documents, images, user records, reports, information, or materials provided or submitted by Customer to Restaurant365 or the System in the course of using the Services.
- ii. “Customer Systems” shall mean Customer’s information technology infrastructure, including computers, software, hardware, devices, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

- b. Customer has and will retain sole responsibility for:

- i. all Customer Data, including its content and use;
- ii. all information, instructions, and materials provided by or on behalf of Customer and its users in connection with the System or the Services;
- iii. Customer Systems;
- iv. the security and use of Customer’s and its users’ access credentials; and
- v. all access to and use of the System and the Services directly or indirectly by or through the

Customer Systems or its or its users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

- c. As between Customer and R365, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights relating thereto, subject to the rights and permissions granted in Section 17(d) and the provisions of Section 19.
  - d. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data:
    - i. to R365 as are necessary or useful to perform or provide the Services;
    - ii. to R365 as are necessary or useful to enforce this Agreement and exercise its rights and perform its hereunder; and
    - iii. to R365 as are necessary to track and analyze Customer's use of the System and the Services, including but not limited to software performance analysis and compiling statistical information.
  - e. R365 HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA, WITH THE EXCEPTION THAT ANY SUCH LOSS, ALTERATION, DESTRUCTION, DAMAGE, OR CORRUPTION IS DIRECTLY AND SOLELY CAUSED BY R365'S GROSS NEGLIGENCE.
- 18. Confidentiality.** Confidential Information means non-public information that the disclosing party designates as being confidential or which under the circumstances surrounding disclosure should be treated as confidential ("Confidential Information"). Confidential Information includes, without limitation: information relating to the disclosing party's software or hardware products which may include source code, API data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified by the disclosing party as confidential. Confidential Information disclosed by a subsidiary of the disclosing party and/or its agents is covered by this Agreement. Confidential Information includes all tangible materials which contain Confidential Information whether written or printed documents, computer disks or tapes whether user or machine-readable.
- a. Confidential Information shall not include any information that: (1) is already known to the receiving party, (2) is or becomes publicly known through no wrongful act of the receiving party (3) is received by the receiving party from a third party without any restriction on confidentiality; (4) is approved for release by prior written authorization of the disclosing party.
  - b. The parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Without limiting the generality of the foregoing, neither party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the disclosing party and the receiving party shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. Either party may only use Confidential Information in order to fulfill its obligations under this Agreement.
  - c. In the event a recipient of Confidential is required by law or a valid and effective subpoena or order issued by either a court of competent jurisdiction or a governmental body to disclose any of the discloser's Confidential Information, the recipient shall be permitted to comply with such subpoena or order but furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that such Confidential Information will be treated confidentially to the extent possible.
  - d. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the services agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-

disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure.

The parties agree that the disclosure of Confidential Information may cause irreparable harm to the party whose information is disclosed.

e. The terms and provisions of this Section 18 shall survive any termination of the services agreement for any reason.

- 19. Aggregated Data.** “Aggregated Data” means Customer Data and usage information from which all direct and known indirect identifiers have been removed, and on which technical, organizational and legal controls prevent employees, researchers or other third parties from re-identifying individuals. Aggregated Data therefore meets the standard of “protected de-identified,” and therefore no longer constitutes Customer Data and, as provided in Section 21, shall not be subject to any restrictions on R365’s ability to use, sell, distribute incorporate into products (including competitive benchmarking) or disclose such Aggregated Data.
- 20. Data Sources.** All data sources that are generally available to all Restaurant365 clients (“Data Sources”) will be, subject to the following sentence, available to Customer. Restaurant365 does not guarantee access to or quality of any particular Data Source, as Restaurant365 does not guaranty connectivity between Customer and any third party Data Source. In the event that Restaurant365 is required to pay any fees to any Data Source provider for Customer data, then Customer may elect to include such Data Source for an additional fee. Restaurant365 will be entitled to remove any Data Source from the services for any reason in its reasonable discretion, including but not limited to the following: (a) Restaurant365 determines that retrieval of Customer data from such Data Source violates any law, rule, regulation or court order; (b) Restaurant365 receives notice or demand from the Data Source provider responsible for such Data Source that threatens legal action based on retrieval of Customer data from such Data Source; or (c) the Data Source becomes technically unavailable or inaccessible.
- 21. Intellectual Property Rights.** As between Restaurant365 and Customer, the System (including any services provided hereunder, including ExpandShare) and all of its components and contents (including without limitation any computer code, pre-populated content, concepts, artwork, photographs, audio-visual effects, text contained within, improvements or modifications thereto and patent, copyright, trademark, trade secret and any other intellectual property rights therein) are owned by Restaurant365. The System and such services are protected by copyright, trademark and other laws of both the United States and foreign countries and may not be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any unauthorized commercial purpose, or used in any manner other than as permitted under this Agreement, without Restaurant365’s express prior written consent in each instance. Customer agrees not to engage in any reverse engineering, de-compiling or other activities designed to view the source code for the System or any of such services and is prohibited from reverse engineering, de-compiling or otherwise engaging in activities designed to view the source code for the System. Restaurant365 shall own all intellectual property developed or created during the Agreement Period, including but not limited to all code developed for the Customer. Notwithstanding anything to the contrary in the Agreement, and in accordance with Section 19 of this Agreement, Customer authorizes and agrees that Restaurant365 may collect Aggregated Data and such Aggregated Data shall be the property of Restaurant365. Restaurant365 shall have the right to retain, distribute, sell, incorporate into products and otherwise use such Aggregated Data. Customer shall own all Customer-Designed Content. As used herein “Customer-Designed Content” shall mean any custom coursework on the ExpandShare system created by R365 specifically for Customer in connection with the Services and explicitly identified by R365 as Customer-Designed Content, which does not include: (i) software made or obtained by R365; (ii) trademarks, tradenames, and other designations and insignia of R365 that are displayed on any of the materials provided or created by R365; or (iii) a limited amount of general-purpose or reusable images, graphics, formats, or other component created or obtained by R365 for purposes not unique to Customer.
- 22. Feedback.** In the event Customer provides Restaurant365 with any feedback about the System or any services contemplated hereunder or under any Order Form, including, without limitation, any errors, flaws, issues, suggestions or otherwise (collectively, “**Feedback**”), Customer hereby assigns to Restaurant365 any and all rights, title and interest in and to the Feedback, including, but not limited to, the right to use such Feedback in any manner Restaurant365 deems appropriate. To the extent any Feedback may not be assigned to Restaurant365, whether under any applicable law or otherwise, Customer agrees to provide Restaurant365 with an exclusive, royalty- free, fully paid-up, irrevocable, perpetual, transferable, worldwide license to use such Feedback in any manner Restaurant365 deems appropriate.
- 23. General Warranty Disclaimer.** Restaurant365 makes and the Customer receives no warranties, express, implied or

statutory, except as expressly set forth herein. The System and all services contemplated hereunder are provided “as is,” without warranty of any kind, either express or implied, including without limitation, any warranties concerning the availability, accuracy, usefulness or content of information, products or services or any warranties of merchantability or fitness for a particular purpose. Customer acknowledges that data transmission and storage is subject to the likelihood of human and machine errors, omissions, delays and losses, including inadvertent loss of data or damage to media, that may give rise to loss or damage. In addition, Customer agrees that Restaurant365 does not represent that the System or any such services will be uninterrupted, without omissions or error free.

- 24. Limitation of Liability.** Neither Restaurant365 nor any of its employees, agents, successors, assigns, affiliates, consultants or service providers shall be liable to the Customer or any third party for any indirect, incidental, special or consequential damages arising out of: use of the System, the performance of any services contemplated hereunder, the inability to gain access to or use the System or any breach of any warranty. The limitation of liability shall include, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss arising out of this Agreement or the performance or failure to perform support or other services, even if Restaurant365 or Customer has been advised of the possibility of such damages. The cumulative liability of Restaurant365 to the Customer for any claims relating to the System or the services contemplated hereunder, whether arising in contract, tort or otherwise, shall not in any event exceed the amount of fifty percent (50%) of the per period services fees paid hereunder, in the aggregate, in the six (6) periods preceding the event giving rise to the claim. The foregoing allocation of risk and limitation of liability has been negotiated and agreed by the parties and forms the basis of their willingness to enter into this transaction.
- 25. Independent Contractor.** Restaurant365 and Customer are independent contractors. Neither Restaurant365 nor Customer are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.
- 26. Governing Law; Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Customer and Restaurant365 consent to the jurisdiction of the state and federal courts located in Delaware. Each party acknowledges that it has read this Agreement and agrees that this Agreement is the complete and exclusive statement of the parties and supersedes and merges all prior proposals understandings and agreements, oral or written, between the parties relating to the subject matter hereof, including without limitation, the terms of any Customer request for proposal or the standard printed terms on any Customer purchase order. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by both parties.
- 27. Marketing Press Release.** Upon R365’s request, Customer agrees to issue a mutually agreed upon press release announcing each integrated service within two (2) months after the launch date. Additionally, Customer agrees to be listed as a customer in a quarterly Restaurant365 press release (quarter-end after the launch date) announcing new service launches during the previous quarter and internal or external marketing collateral.
- 28. Severability.** In the event any one or more of the provisions of this Agreement is held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired.
- 29. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns. Restaurant365 may assign any of its rights or delegate any of its obligations under this Agreement, in whole or in part, to any person or entity at any time without Customer’s consent. Customer shall not assign this Agreement or any of its rights and obligations hereunder without the prior written consent of Restaurant365, and any purported assignment in violation of this Section 29 is null and void. This Agreement is not cancellable in the event of a Customer’s sale of its assets or merger with another restaurant.
- 30. Survival.** The obligations of confidentiality imposed herein shall survive termination of this Agreement for a period of four (4) years. Any other provisions of this Agreement that by their nature extend beyond the expiration or earlier termination of this Agreement shall survive such expiration or termination of this Agreement and shall remain in effect until all such obligations are satisfied.
- 31. Required Virtual Mediation prior to Virtual Arbitration.** Any unresolved dispute or controversy arising from or relating to this Agreement shall be mediated by both parties prior to any party pursuing any other legal or equitable



remedy in any other forum whatsoever (the "Mediation"). All such Mediations shall be conducted through the platform provided by New Era ADR, Inc. (<https://app.neweraadr.com/>) (the "New Era Platform") in accordance with its rules and procedures by a professional neutral(s) with substantial experience in mediating and resolving commercial disputes (the "Neutral"). The Neutral shall be chosen in accordance with the rules and procedures of the New Era Platform. If and only if any such unresolved dispute or controversy arising from or relating to this Agreement is not finally settled through Mediation, such unresolved dispute or controversy shall be finally resolved by binding arbitration through the New Era Platform in accordance with its rules and procedures for Virtual Expedited Arbitrations. The Neutral shall be chosen in accordance with the rules and procedures of the New Era Platform. Each party shall bear their own costs of arbitration. The prevailing party may be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees and all other expenses) incurred in connection therewith, at the Neutral's discretion.

- 32. Force Majeure.** Restaurant365 shall not be responsible for failure to perform in a timely manner under this Agreement when its failure results from causes outside its reasonable control, including, without limitation, acts of God or public enemies, war, terrorism, insurrection or riots, embargoes, acts of civil or military authorities, fire, floods, explosions, earthquakes, serious accidents, strikes, labor trouble or work interruptions or any other cause beyond its reasonable control.