Restaurant365

Master Subscription Agreement

This Agreement is entered into pursuant to and hereby incorporates the Terms & Conditions and current Scope of Work (if applicable) and sets forth the software components and services that Customer may use of Restaurant365 during the Subscription Term. Any terms incorporated by written reference (including written reference to information contained in a URL or 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.

Terms & Conditions

1. **Contracting Parties**. This Agreement is binding between the client specified on their signed Restaurant365 Order form, referred to hereinafter as ("Customer"), and DYN365 Inc. ("Restaurant365").

2. **Products & Services.** Customer is entitled to use the components and integrations purchased by the Customer as specified in the Software Pricing section of their 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 signed date of this agreement are subject to the terms and conditions of this Agreement unless otherwise specified. During each 12-month period from the initial agreement date, the price for any component or integration that the customer is subscribed for, may not increase by more than 6%.

3. **System.** The use of the "System" herein, shall mean the Restaurant365 software system and all associated training materials provided by Restaurant365. 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.

4. **Service Term & Termination**. 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 (the "Agreement Period") of the customer signed order form, subject to successive automatic renewals (each "Renewal Period") unless either party provides sixty (60) days prior written notice to the other of its intent not to renew the agreement at the end of the initial Agreement Period or the current Renewal Period. Upon any termination, hereunder all rights to use Restaurant365 terminate immediately. The Customer will be responsible for exporting data out of Restaurant365 prior to the day of termination. Restaurant365 shall delete all of the Customer's information from the System the day after the day of termination.

5. **Cancellation of Components or Integrations during the Agreement Period.** Respective of the customers agreement period (month to month, annual, 3-year or other) the software subscription may be cancelled with (60) days' notice in writing without fee for the cancellation. Customers will be held responsible for full payment of their remaining agreement period if they have elected to sign an annual or longer agreement. These fees will be due in their regular schedule until the end of the agreement period.

6. **Technology Support**. Shall be provided Mon. – Fri. from 8:00 am CST to 7:00 pm CST and Sun. 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 application itself – not assistance in making or reconciling accounting entries and records. Additional consulting services may be provided for an additional fee on a time & 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 via email or support web portal. The intention is to allow customers to control the support requests that are being created and for the customer's internal staff to be the first responders to any training requests. Restaurant365 does not extend this support to the maintenance of or troubleshooting issues with the customers Point of Sale system or other hardware and software products. It is the responsibility of the customer to maintain their own hardware or other non-Restaurant365 software systems with their other vendors or internal IT staff.

7. **Setup Fees, First Month Deposit, Implementation**. Each time a new location or integration is added, regardless of when it is added, it increases the monthly fee and requires an associated setup fee. This required setup fee is called the 'Standard' Implementation service and is calculated as a multiple of the incremental monthly fee. The scope of work included with the 'Standard' Implementation is defined in the Restaurant365 Scope of Work Document, provided at purchase and available at: https://www.restaurant365.com/msa. The first subscription monthly fee is also due at the time of adding new components or integrations. If a component or integration is cancelled and then subsequently added, the 'Standard' Implementation services are also due at the time of reactivation. It is necessary that the Customer provide the required source files where requested and complete tasks assigned to them during the implementation. If the Customer fails to complete tasks assigned to them within a reasonable time period 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. Monthly billing will begin on the date outlined on the pricing page of the customer order form. The client's go-live date is not when the billing begins.

8. **Training**. Customer shall receive unlimited access to the on-line training videos for each component and feature of Restaurant365. Also, additional live training via web-conferencing will be scheduled for select components/features after the Customer has completed viewing all applicable on-line training videos. If the Customer has additional questions or clarifications regarding Restaurant365 after watching the training videos, and attending live training, they 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 Restaurant365. It is not the responsibility of Restaurant365 to train all new users of the system when they are added to the system nor to respond to all training requests.

9. **Customer Responsibilities**. The Customer is responsible for determining whether the System will achieve the results the Customer desires. 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 Software operates; adopting procedures to ensure the accuracy of input data; examining and confirming results prior to use; providing an authorized primary 'power user' and project manager who will coordinate communication and activities, make or facilitate making decisions during the implementation process, and post-implementation, are the sole and exclusive responsibilities of the Customer. 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.

10. **Payment**. Customer will pay all fees, plus appropriate taxes charged by the city, county, state in which they reside 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 14th, all subsequent payments are due on the 14th of each month). Payments that are more than 15 days after the billing date are considered past due. Amounts not paid when due will be subject to finance charges equal to 10% per year, determined and compounded daily 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, suspend performance of the Services by shutting off access to the System (after providing written 15 days' notice) until it receives all amounts due.

11. **Grant of License and Authorized Use.** Restaurant365 hereby grants, and the Customer accepts on behalf of itself and its employees, a nonexclusive, license to use the Restaurant365 Software and System for the limited purpose of its internal business purposes during the term of the Agreement. Customer shall cause all persons ("Users") obtaining access to the System to access the System solely in accordance with the terms hereof.

12. **Confidentiality.** Confidential Information means nonpublic 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. This agreement does not limit Restaurant365 from using anonymous data in aggregate form. The

customer releases access to Restaurant365 to utilize aggregate customer data for any and all purposes it sees fit. This usage will still be bound by all customer specific confidentially aspects of this agreement.

   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. 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.

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

13. **Intellectual Property Rights**. In the course of this Agreement, Restaurant365 may create or use enhancements, discoveries, processes, methods, designs, software code and know-how, whether or not copyrightable or patentable, which Restaurant365 conceived while working with you during the course of its ongoing business activities. In addition, Restaurant365 may independently develop enhancements, processes, methods, designs or know-how during the term of this Agreement. The parties mutually acknowledge that Restaurant365 shall own all right, title and interest in and to such enhancements, processes, methods, designs, and know-how including without limitation the intellectual property rights relating thereto, and may use such enhancements, processes, methods, designs and know-how in their business operations with other customers, without limitation. Restaurant365 shall own all intellectual property developed or created during this Agreement, including but not limited to all code developed for the Customer.

14. **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 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 Services will be uninterrupted, without omissions, or error free.

15. **Limitation of Liability.** Neither Restaurant365 nor any of its employees, agents, successors, assigns, affiliates, or 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 the Services, or inability to gain access to or use the System, or out of 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 services agreement or the performance or failure to perform support or 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, whether arising in contract, tort, or otherwise, shall not in any event exceed the amount of 50% of the per period services fees paid hereunder 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.

16. **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.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Customer and Restaurant365 consent to the jurisdiction of the state courts of the State of California located in Orange County and the U.S. District Court for the Central District of California. 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.

18. **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.

19. **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; No party shall assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other parties; provided, however, that either party may assign this Agreement and all of its rights and obligations hereunder to a purchaser of all or substantially all of the assets of such party who expressly assumes all of such party's obligations under this Agreement in connection with such assignment.

20. **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 termination of this Agreement shall survive the expiration or termination of this Agreement and shall remain in effect until all such obligations are satisfied.

21. **Arbitration.** Except for collection actions for payment of fees and for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this agreement or to its breach shall be settled by arbitration by a panel of three arbitrators in accordance with American Arbitration Rules, pursuant to an arbitration held in Orange County, California, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The prevailing party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

22. **Force Majeure.** Restaurant365 shall not be responsible for failure to perform in a timely manner under this services agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.