

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 May 6, 2020, and is subject to updates from time to time. It is accessible via www.restaurant365.com/msa/

Terms & Conditions

- 1. Contracting Parties.** This Agreement is binding between the client specified on its 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 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. During each 12-month period from the initial Agreement effective 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. 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/, which is incorporated herein by reference.
- 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 of the Customer’s signed order form (the “Initial Period”), subject to successive automatic twelve (12) month renewals (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. 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.
- 5. 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 Customer’s signed order form. Subscriptions may be cancelled with at least sixty (60) days’ written notice in advance of the expiration of the then-current Subscription term without fee for such cancellation. Customer will be held responsible for full payment of its remaining Subscription term. These fees will be due in their regular schedule until the end of the Subscription term.
- 6. Refunds.** Customer may cancel the subscription as outlined in section 5 of this Agreement, but Customer will not be issued a refund unless it’s legally required.

7. **Free Trial.** Restaurant365 may, in its sole discretion, offer any Subscription with a free trial for a limited period of time (“Free Trial”). Customer will be required to provide its payment method information in order to sign up for a Free Trial, but will not be charged until the Free Trial has expired. On the final day of the Free Trial period, Customer will be automatically enrolled in the Subscription plan associated with the Free Trial unless it has previously cancelled the Free Trial. Restaurant365 reserves the right at any time to modify the terms of any Free Trial or cancel any Free Trial.
8. **Technology Support.** Support services 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 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.
9. **Setup Fees, Subscription Fees, 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. The first Subscription 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’s signed order form. To be clear, the Customer’s go-live date is not the same as the date billing begins.
10. **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.
11. **Customer Responsibilities.** 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; 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.
12. **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 14th, all subsequent payments are due on the 14th 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 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 any services by shutting off access to the System (after providing fifteen (15) days’ written notice) until it receives all amounts due.

- 13. Grant of License and Authorized Use.** 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 of Customer's signed order forms 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.
- 14. 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.
- 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.
 - 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.
 - 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.
 - The terms and provisions of this Confidentiality Section shall survive any termination of the services agreement for any reason.
- 15. 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.
- 16. Data Sources.** All data sources that are generally available to all Restaurant365 clients ("Data Sources") will be available to Customer. Restaurant365 does not guarantee access to or quality of any particular 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.
- 17. Intellectual Property Rights.** As between Restaurant365 and Customer, the System (including any services provided hereunder) 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, 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 and otherwise use such Aggregated Data.

18. **Feedback**. In the event Customer provides Restaurant365 with any feedback about the System or any services contemplated hereunder or under any of Customer's signed order forms, 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.
19. **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.
20. **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.
21. **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.
22. **Governing Law; Entire Agreement**. 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 located in Orange County, California 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.
23. **Marketing Press Release**. 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.
24. **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.
25. **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 25 is null and void.

26. **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.
27. **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 (3) arbitrators in accordance with the American Arbitration Rules, pursuant to arbitration to be held in Orange County, California. Judgment upon the award rendered by the arbitrators 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.
28. **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.