

# Terms & Conditions

- Contracting Parties.** This Agreement is binding between Restaurant/Company, as specified above, referred to hereinafter as ("Customer"), and Restaurant365 LLC ("Restaurant365").
- Products & Services.** Customer is entitled to use the modules and integrations purchased by the Customer as specified in the Software Pricing section of this Agreement, including all new updates to those specific modules and integrations. The Customer may add additional modules or integrations to their system at any time which will increase the monthly fee to the Customer by the incremental amount of those modules or integrations. All modules 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 after the initial Agreement Period, the price for any module or integration may not increase by more than 4%.
- FYIsoft.** If FYIsoft is purchased, the Customer agrees to the license agreement provided by FYIsoft (see [www.FYIsoft.com](http://www.FYIsoft.com)). The Customer may contact Restaurant365 for 'report-level' support and/or training. If 'system-level' support is required, FYIsoft may be required to provide the support at the then current rate specified by FYIsoft and the Customer shall work directly with FYIsoft to resolve the issue. In the event of a conflict between the terms of the license agreement and this Agreement, the terms of this Agreement shall control.
- 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.
- 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 above (the "Agreement Period"), subject to successive automatic renewals (each a "Renewal Period") unless Customer provides no less than thirty (30) days prior written notice to Restaurant365 or Restaurant365 provides no less than one hundred eighty (180) days prior written notice to Customer of its intent not to renew the Agreement at the end of the initial Agreement Period or then current Renewal Period. Notwithstanding anything to the contrary in this Agreement, after the initial Agreement Period, Customer shall have the right to terminate this Agreement for convenience upon providing Restaurant365 with thirty (30) days prior written notice. Upon any termination hereunder, all rights to use Restaurant365 terminate immediately. Upon termination, Restaurant365 shall provide Customer with the Customer Data as set forth in Section 27(g) below, and the Customer will be responsible for exporting any remaining data out of Restaurant365 within ninety (90) days following the day of termination. Restaurant365 shall delete all of the Customer's information from the System the day within ninety (90) days following the day of termination or upon earlier written notice from Customer directing Restaurant365 to delete the same. If Restaurant365 ceases to do business, Restaurant365 shall use its best efforts to provide Customer with one hundred eighty (180) days prior written notice of the same.
- Cancellation of Modules or Integrations during the Agreement Period.** During the Agreement Period, any module or integration may be cancelled except the Restaurant Financials module. There is no fee for the cancellation of modules or integrations and they may be cancelled at any time upon written notice from Customer. If the Customer would like to cancel all modules and integrations and the Restaurant Financials module, they may do so by cancelling all modules and integration at no fee and then paying a cancellation fee equal to the sum of two (2) months of fees payable by Customer for the Restaurant Financials module (due in full on the day of cancellation).
- Technology Support.** Technology support shall be provided Mon. – Fri. from 8 am PST to 6 pm PST. The Customer is entitled to unlimited product support with their normal monthly fee via phone, 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.
- Setup Fees, First Month Deposit, Implementation.** Each time a new module 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 'Standard Implementation Scope of Work' section. If a module 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 following written notice from Restaurant365 and 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. The monthly billing will begin 30 days after the signed execution date of this Agreement. The first billed month will be prorated. The Customer's go-live date is not when the billing begins.

- 9. Scheduling Onsite Implementation.** For scheduled on-site visits agreed upon by Customer and Restaurant365, all reasonable out of pocket travel expenses for such onsite implementation & training will be billed to Customer. Mileage to be billed at the current federal tax reimbursement rate for mileage. Due to scheduling of resources and travel considerations, once the implementation date has been confirmed with the Customer, Restaurant365 cannot change the implementation date more than two (2) times without an additional expense to the Customer. A minimum implementation date change fee of \$500 plus applicable travel related change fees will apply. A minimum of 1 day is required for scheduling an on-site visit to Southern California, and for visits outside of Southern California, a 2-day minimum will be required.
- 10. Training.** Customer shall receive unlimited access free of charge to the on-line training videos for each module and feature of Restaurant365. Also, additional live training free of charge via web-conferencing will be scheduled for select modules/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.
- 11. 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, and the Customer fails to provide Restaurant365 with such information within three (3) days following receipt of written notice, 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 and applicable 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 first day of the month and are considered past due after the 30<sup>th</sup> day of the month. Amounts not paid when due will be subject to finance charges equal to 5% per year, determined and compounded monthly from the date due until the date paid. If Customer fails to pay any fee following written notice from Restaurant365 and 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 Customer with written 30 days' notice and Customer fails to pay the due amounts within such time period) 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 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.

- 14. 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, financial results, sales details, financial reports, vendors (including pricing for inventory), recipes and operating procedures. Confidential Information also includes information received from others that the disclosing party is obligated to treat as confidential and oral information that is identified and confirmed in writing 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. 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 and shall not be subject to the limitations of liability set forth in this Agreement, including without limitation the limitation set forth in Section 17 below.
  - e. Customer shall have the right to disclose Confidential Information to its respective officers, shareholders, employees, brokers, lenders, accountants, attorneys and other representatives without violating the terms and provisions of this Confidentiality Section.
- 15. 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, that are related to custom development requested and paid for by Customer. The parties mutually acknowledge that Restaurant365 shall own all right, title and interest in and to such other 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, and Restaurant365 shall own all related intellectual property developed by Restaurant365 or created during this Agreement, including but not limited to all code developed for the Customer. Notwithstanding anything to the contrary in this Agreement, the parties hereby acknowledge that Customer is the owner of Customer's tradenames(s), trademark(s), trade dress, intellectual property, and copyright(s) ("Customer's IP"). In no event, including without limitation Customer's breach of this Agreement, shall Agency acquire any interest in Customer's IP.

- 16. Limited Warranty.** Restaurant365 warrants to Customer that Restaurant365 shall use its best efforts (i) to provide a System and Services that are fully functional, (ii) to maintain a high level of accuracy in its data, (iii) to protect the integrity and confidentiality of Customer's data and other Confidential Information, (iv) to ensure that the backup of data occurs no less frequently than as set forth in the Data Security & Storage Summary Addendum set forth on page 18 of this Agreement, and (v) use its best efforts to remedy all unscheduled downtime as quickly as possible in such an event as unscheduled downtime should occur. Subject to the foregoing, Restaurant365 makes and the Customer receives no other warranties, express, implied, or statutory, except as expressly set forth herein. 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. Except to the extent expressly set forth herein, Customer agrees that Restaurant365 does not represent that the System or any Services will be uninterrupted, without omissions, or error free.
- 17. 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 100% of the per period services fees paid hereunder in the twelve (12) 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. Notwithstanding anything to the contrary in this Agreement, the foregoing limitation of liability shall not apply to the extent of any liability arising due to the gross negligence or willful misconduct of Restaurant365. Neither Customer nor any of its employees, agents, successors, assigns, affiliates, or consultants or service providers, shall be liable to Restaurant365 or any third party for any indirect, incidental, special or consequential damages arising out of this Agreement.
- 18. Insurance.** Restaurant365 will provide Customer with proof of Insurance upon request. Restaurant365 covenants that its insurance coverage shall not materially decrease during the term of this Agreement from the coverage in place as of the date of this Agreement.
- 19. 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.
- 20. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Except as provided in Section 24, 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.
- 21. 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.
- 22. 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. Further, notwithstanding the foregoing, Customer shall have the right to assign this Agreement to any entity controlling, controlled by or under common control with Customer. For purposes of clarification, a change in Customer's corporate structure is permitted without Restaurant365's prior written consent and will not terminate this Agreement.

23. 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.
24. 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, which fees are to be set by the arbitrators and included in the judgment.
25. Force Majeure. Neither party shall be responsible for failure to perform in a timely manner under this 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.
26. Additional Services. The services provided under this Agreement shall include the following:
  - a. The ability for Customer to create and process purchase orders to third-party vendors and Customer's internal companies;
  - b. The ability for Customer to update their inventory list and pricing in the System (available currently via export/import). Customer would like future functionality to include vendor ability to provide price list updates automatically via FTP import (currently on dev roadmap for Q1 2018) and to have these changes reported to Customer in a manner that will allow Customer to approve or disapprove such updated inventory and pricing (Not currently on dev roadmap, but can be included as part of agreement with a Q2 2018 target date). Customer acknowledges that these abilities are not fully available as of the date of this Agreement but that its development is part of Restaurant365's development roadmap;
  - c. The ability for Customer to produce sales orders and sales invoices; and
  - d. The ability for Customer to print checks on blank check forms for any of Customer's affiliates and checking accounts, which will allow Customer to avoid switching out check stock for each location.
  - e. An invoice approval process, under which the Customer's accounting department would have the ability to key in an invoice and attach a PDF copy of the invoice to the System, assign a designated person(s) the task to review and approve the invoice, and the System would automatically send the designated person an email of the pending task, including a link that the designated person(s) could click on to approve, disapprove, and/or comment on the invoice. Upon doing so, the System would automatically send a notification email to the requestor of the approval, disapproval and/or comments of the designated person(s). In addition, any designated person would have the ability to log into the System and into a message center that would include a task list and would allow such person to approve, disapprove or comment on an invoice or to document the status of another task. Similarly, the accounting department would have the ability to log into a message center to see the status of the tasks it has requested or that it needs to perform and to document the status of such tasks. The customer will be invited and encouraged to participate in the development discussions during the creation of these new features and any reasonable requests will be considered as part of the development cycle.
27. Data & Security.
  - a. Customer shall remain owner of its data, which shall include without limitation, any and all data that is transferred by Customer to Restaurant365 for processing, that is collected, stored, created or maintained in the course of

performing the services provided under this Agreement, or that is in anyway related to Customer or this Agreement ("Customer Data").

- b. Restaurant365 shall not have the right to use, share or distribute Customer Data for any reason without Customer's prior written approval, which may be withheld in Customer's sole and absolute discretion.
- c. Customer shall have the ability to export any or all Customer Data from the System on demand.
- d. Restaurant365 shall use its best efforts to protect, store, maintain, and backup Customer's Data and shall at all times comply with the Data Security & Storage Summary Addendum attached hereto and incorporated herein by this reference.
- e. The most recent five (5) years of Customer Data shall be available to Customer upon demand. To the extent Customer Data that is older than five (5) years is not available upon demand, Restaurant365 shall make such data available to Customer within a reasonable time period after receipt of Customer's request, but in no event to exceed three (3) business days.
- f. Restaurant365 shall have the right to purge Customer Data that is older than five (5) years, but only upon ninety (90) days prior written notice to Customer. If requested by Customer in such 90-day time period, Restaurant365 shall promptly provide Customer with a copy of such data in a format as reasonably requested by Customer.
- g. Upon expiration of this Agreement or cancellation of this Agreement pursuant to the provisions of Section 5 above, Restaurant365 shall promptly provide Customer with a complete backup of all Customer Data in a format as reasonably requested by Customer.
- h. Upon expiration of this Agreement or cancellation of this Agreement pursuant to the provisions of Section 5 above, Restaurant365 agrees to provide Customer with the Customer Data in a static format through a secure online portal. Restaurant365's obligations under this Section 27(h) are contingent upon (a) receipt of written request from Customer within ninety (90) days following the date of such termination or cancellation and (b) a monthly payment from Customer equal to 20% of the monthly Restaurant Financials software subscription, which shall be due in advance on the first day of each calendar month.

**28. Restaurant365 Financials.** Restaurant365 will provide high-level financial information verbally, upon request, at the discretion of ownership.

**29. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto; provided, however, that any assignment of this Agreement is subject to the provisions of Section 22 above.

**30. Complete Agreement.** The parties agree that these Terms and Conditions, together with any Statement of Work, if any (but only if signed by both parties), and any exhibits, addenda and other applicable agreements referencing these Terms and Conditions and expressly made a part hereof that are duly executed by the parties will be the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of these Terms and Conditions.