

## 365 Platforms Terms of Service

Revised: 01/29/2022

The following describes 365 Retail Markets, LLC (“365”, “we”, “us”, “our”, “AirVend”, “Avanti”, “Company Kitchen”, “Lightspeed”, or “Stockwell”) Terms of Service (“Terms”) that apply to 365 Platforms and any affiliated services (individually and collectively referred to as “365 Platforms” or “Services”):

These Services include online portals, mobile apps and our point-of-purchase kiosks that enables individual persons (each individual person being a “User”) to use 365 Platforms to add, monitor, and manage funds of a stored value account (an “Account” or “My Market Account”) to purchase goods and services from third-party providers of such services at participating locations, including independent third-party providers under agreement with 365 or certain of 365's affiliates (“Third Party Providers”). The following terms of service, together with all updates, supplements, additional terms, and all 365's rules and policies regarding use of 365 Platforms, including 365's Privacy Notice (“Privacy Notice”) and Biometric Data Privacy Policy (“Biometric Policy”), each of which are incorporated by reference, collectively constitute the entire Terms between you and 365. You may obtain a copy of these Terms for your records at: <https://www.365retailmarkets.com/consumer-policy/>. 365 Platforms includes:

- Point of Sales Devices
  - 365 kiosk
  - AirVend
  - Avanti kiosk
  - Company Kitchen kiosk
  - NanoMarket
  - PicoMarket
  - Smart N Go
  - Smart E
  - Smart Market
  - Stockwell
- Corporate Websites
  - <https://365retailmarkets.com>
  - <https://www.avantimarkets.com>
  - <https://lightspeedautomation.com>
  - <https://companykitchen.com>
  - <https://stockwell.ai>
  - 365 Retail Markets Help Center
- Consumer Websites
  - <https://LoadMyCard.net>
  - <https://mykioskcard.com>
  - <https://mymarketaccount.com>
  - <https://mymarketaccount.net>
  - <https://mymarketcard.com>
  - <https://Order.SimpliGet.com>
  - <https://payment.companykitchen.com>
- Mobile Apps

- 365 Retail Markets mobile app
- Avanti Market mobile app
- Company Kitchen mobile app
- Stockwell mobile app
- Operator Websites
  - <https://adm.365retailmarkets.com>
  - <https://consumer.avantimarkets.com>
  - <https://live.app.air-vend.com>
  - <https://manage.SimpliGet.com>
  - <https://mms.mykioskworld.com>
  - <https://operators.companykitchen.com>
  - <https://smarthq.365retailmarkets.com>
  - <https://smartmarketadmin.com>
  - <https://store.avantimarkets.com/>
- Other related technologies whether now known or hereafter developed

PLEASE READ THESE TERMS CAREFULLY BEFORE AGREEING TO THESE TERMS. You accept these Terms by using 365 Platforms. In accepting these Terms, you: (a) acknowledge that you have read and understand these Terms; (b) agree to the provisions of these Terms, including your consent to the Dispute Resolution and Arbitration Agreement (set forth in Section I below); (c) agree to be legally bound by these terms; (d) warrant that you are of legal age within the jurisdiction in which you live to be bound by these terms; and (e) you consent to receiving all records and conducting all transactions involving 365 Platforms, 365, and any other aspect of your relationship with 365 through electronic means (set forth in Section XXXIX below). **IF YOU DO NOT TO AGREE TO THESE TERMS OR THE PRIVACY NOTICE, PLEASE DO NOT ACCESS OR USE 365 Platforms.**

***Notice Regarding Dispute Resolution and Arbitration Agreement: These Terms contain provisions that govern how claims between you and 365 shall be resolved, including a Dispute Resolution and Arbitration Agreement (see Section I below), which will, subject to limited exceptions, require you to submit claims you have against us to binding arbitration, on an individual basis, not as part of any class, collective, or representative proceeding and you will only be permitted to seek relief only on an individual basis, unless you opt-out of arbitration in accordance with section I(E) below.***

## I. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT

Please read this Dispute Resolution and Arbitration Agreement (“Arbitration Agreement”) carefully. It affects legal rights that you may otherwise have, including your right to file a lawsuit in court. This Arbitration Agreement provides for resolution of most disputes through arbitration instead of court trials and class actions. Arbitration is final and binding and subject to only very limited review by a court. If you agree and do not opt out by using the procedures set forth below in Section I(E), this Arbitration Agreement shall survive termination of these Terms and the end of your dealings with 365.

## A. Initial Dispute Resolution

365 is available by phone at 1-888-365-7382 (US/Canada), +1-248-434-3910 (International), email at [privacy@365smartshop.com](mailto:privacy@365smartshop.com), or at <https://www.365retailmarkets.com/> to address any concerns or claims you may have regarding 365 (as defined below in Section II); your use of 365's Services; 365 Platforms; these Terms of Service; our Privacy Notice available at <https://www.365retailmarkets.com/consumer-policy/> and our Biometric Data Privacy Policy, copies of which are available at <https://www.365retailmarkets.com/consumer-policy/>. Most concerns or claims may be quickly resolved in this manner. The parties shall use their commercially reasonable efforts to settle any dispute, claim, question, or disagreement directly through consultation and good faith negotiations which shall be a precondition to either party initiating a lawsuit or arbitration.

- i. **Agreement to Binding Arbitration.** If the parties do not reach an agreed-upon resolution of a concern, claim or dispute within a period of thirty (30) days from the time a party initiates initial dispute resolution pursuant to Section I(A) "**Initial Dispute Resolution**" above, then either party may initiate binding arbitration. Subject to the exceptions set forth below, all claims, disputes and controversies arising out of or relating to: (i) this Arbitration Agreement (including its formation, performance and breach, application, enforceability, formation, interpretation, construction, validity and the arbitrability of any dispute), (ii) the relationship between you and 365; (iii) 365 Platforms, these **Terms of Service**, 365's **Privacy Notice** available at <https://www.365retailmarkets.com/consumer-policy/> and 365's **Biometric Data Privacy Policy** available at: <https://www.365retailmarkets.com/consumer-policy/> or (iv) 365's products and Services (including any transactions, acts or omissions involving 365, its licensors, or Third Party Providers) shall be exclusively and finally resolved by binding arbitration administered by the American Arbitration Association ("AAA") on a confidential basis in accordance with the provisions of AAA's Consumer Arbitration Rules (accessible at [www.adr.org](http://www.adr.org) or by calling the AAA at 1-800-778-7879), as modified by this Arbitration Agreement and excluding any arbitration rules or procedures governing or permitting class, collective, or representative proceedings or relief. If the AAA is unable or unwilling to administer the arbitration for any reason, the arbitration shall be administered by JAMS in accordance with its applicable rules (accessible at: [www.jamsadr.com](http://www.jamsadr.com)) as modified by this Arbitration Agreement or if not by JAMS, then by another arbitration organization selected by 365 that is able to administer the arbitration. Copies of applicable arbitration rules are available at <https://www.365retailmarkets.com/consumer-policy/>. For the avoidance of doubt, the arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all such covered claims, disputes, and controversies between the parties, including but not limited to disputes relating to the interpretation, effect, breach, enforcement, applicability, enforceability or formation of these Terms (and all 365 Notices and Policies referred to herein), this Arbitration Agreement, any claim that all or any part of this Arbitration Agreement is void or voidable, and the arbitrability of any claim. The arbitrator shall be empowered to grant whatever relief would be available in court under law or in equity subject to the terms of this Arbitration Agreement, including the Waiver of Class and Collective Actions set forth below in Section I(B). The arbitrator's award shall be final and binding on the parties and may be entered as a judgment in any court of competent jurisdiction, subject to review in accordance with applicable statutes governing arbitration awards. The interpretation and enforcement of this Arbitration Agreement shall be governed by the Federal Arbitration Act.

- ii. 365 WILL PAY THE ARBITRATION FILING AND ARBITRATOR FEES FOR THE ARBITRATION TO THE EXTENT REQUIRED BY APPLICABLE RULES AND THE ARBITRATOR.
- iii. THE PARTIES UNDERSTAND AND AGREE THAT AGREEING TO BINDING ARBITRATION MEANS THAT YOU AND 365 HEREBY WAIVE ANY RIGHT TO A TRIAL BEFORE A JURY OR JUDGE IN A COURT OF LAW ON CLAIMS SUBJECT TO THIS ARBITRATION AGREEMENT.

**B. Waiver of Class and Collective Actions.** THE PARTIES FURTHER AGREE THAT ANY ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS ONLY AND NOT AS A CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION. THE PARTIES EXPRESSLY WAIVE THEIR RIGHT TO FILE A CLASS OR COLLECTIVE ACTION OR SEEK RELIEF ON A CLASS OR COLLECTIVE BASIS. IF ANY COURT OR ARBITRATOR DETERMINES THAT THIS WAIVER OF CLASS OR COLLECTIVE ACTIONS IS INVALID OR UNENFORCEABLE FOR ANY REASON, SUCH DETERMINATION SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISION OF THIS ARBITRATION AGREEMENT AND THIS WAIVER OF CLASS OR COLLECTIVE ACTIONS PROVISION SHALL BE MODIFIED SO IT BECOMES VALID AND ENFORCEABLE UNLESS IT MUST BE EXCISED FROM THIS ARBITRATION AGREEMENT AS A MATTER OF LAW.

#### **C. Exceptions to this Arbitration Agreement**

- i. Small Claims Court Claims. Notwithstanding anything to the contrary in this Arbitration Agreement, either you or 365 may seek relief in a small claims court on an individual basis for disputes or claims within the scope of that court's jurisdiction.
- II. California Private Attorneys General Act (PAGA) Action. Notwithstanding anything to the contrary in this Arbitration Agreement, either party may seek relief in a court of law for a claim arising under California's Private Attorneys General Act.
- III. Governmental Proceedings. Notwithstanding anything to the contrary in this Arbitration Agreement, either party retains the right to file a charge with or participate in proceedings with a governmental agency.

#### **D. Severability**

If any provision of this Arbitration Agreement is found to be unenforceable, such finding shall not affect any other provision of this Arbitration Agreement and the unenforceable provision shall be modified so that it is enforceable, or, if such modification is not permissible under applicable law, the provision shall be severed from this Arbitration Agreement.

#### **E. 30 Day Right to Opt Out of Arbitration**

You have the right to opt-out and not be bound by this Arbitration Agreement and its Waiver of Class and Collective Actions waiver provision set forth above in Section I(C) by sending written notice of your decision to opt-out to the following address: 1743 Maplelawn, Troy, MI, 48084, email at [privacy@365smartshop.com](mailto:privacy@365smartshop.com), or online at: <https://www.365retailmarkets.com/>. The opt-out notice must be sent within thirty (30) days of you agreeing to these Terms and this Arbitration Agreement, otherwise you shall be bound to arbitrate disputes in accordance with the terms of this Arbitration Agreement. If you opt-out of this Arbitration Agreement, we also will not be bound by it.

#### **F. Exclusive Venue for Litigation**

If for any reason this Arbitration Agreement does not apply to a particular claim or dispute, the parties agree that any litigation between them shall be filed exclusively in state or federal courts located in Oakland County, Michigan because that is where 365 is located and where the Services and 365 Platforms

are administered (except for small claims court actions which may be brought in the county where you reside).

## II. DEFINITIONS.

In these Terms, the words "including" and "include" mean "including, but not limited to." The words "365", "we", "us", "our", "AirVend", "Avanti", "Company Kitchen", "Lightspeed", or "Stockwell" mean 365 Retail Markets, LLC, its current and former parent, subsidiary, or related entities; 365's service providers, Third Party Providers, Licensors and any other entity or individual that assists 365 in providing the Services; and their respective current and former owners, members, shareholders, directors, officers, employers, agents, successors and assigns. The words "you" or "your" means you, your spouse, executors, administrators, successors, and assigns. The words "party" or "parties" mean you and/or 365 as defined in this Section II.

## III. LICENSE

Subject to your compliance with these Terms, 365 grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferrable license to: (i) 365 Platforms on your personal device(s) solely in connection with your use at participating locations; and (ii) access and use of any content, information and related materials that may be made available through 365 Platforms, in each case solely for your personal, noncommercial use in compliance at all times with these Terms. Any rights not expressly granted herein are reserved by 365 and 365's licensors.

## IV. OWNERSHIP

Neither these Terms nor your use of 365 Platforms convey or grant to you any rights: (i) in or related to 365 except for the limited license granted above in Section III; or (ii) to use or reference in any manner 365's company name, logos, product and service names, trademarks or services marks or those of 365's licensors and service providers.

## V. NETWORK ACCESS AND DEVICES

You are responsible for obtaining the data network access necessary to use 365 Platforms (except for Point of Sales Devices). Your mobile network's data and messaging rates and fees may apply if you access or use 365 Platforms from a wireless-enabled device. You are responsible for acquiring and updating compatible hardware or devices necessary to access and use 365 Platforms. 365 does not guarantee that 365 Platforms, or any portion of 365 Platforms, will function on any particular hardware or device. 365 Platforms may be subject to malfunctions and delays inherent in the use of the Internet and electronic communications.

## VI. ABOUT YOUR ACCOUNT

In order to use 365 Platforms, you must agree to these Terms and our Privacy Notice by electronically signing your name and clicking the buttons located at the bottom of the Privacy Notice. You must be at least 18 years of age to obtain an Account or the legal age of majority within the jurisdiction in which you live to enter into these Terms. Account registration requires you to submit to 365 certain personal information, including your name and your e-mail address. You agree to maintain accurate, complete, and up-to-date information in your Account. Your failure to maintain accurate, complete, and up-to-date

Account information may result in your inability to access and use 365 Platforms and may also result in 365 terminating your Account and its relationship with you, although the Arbitration Agreement will remain in effect notwithstanding such termination. You agree to maintain the security and secrecy of your Account username, password and other access information at all times, and you are responsible for all activity that occurs under your Account. Unless otherwise permitted by 365 in writing, you may only possess one Account. You may not authorize third parties to use your Account, and you may not allow persons under the age of 18 to use your Account unless they are accompanied by you. You may not assign or otherwise transfer your Account to any other person or entity.

365 Platforms allows you to load a local currency value via the Point of Sales Devices, Consumer Websites or the Mobile App onto your Account as prepayment for future purchases at participating locations that accept an Account as payment. The local currency value that you load onto your Account is a prepayment only for the goods and services of participating locations. No credit card, debit card, credit line, overdraft protection or deposit Account is associated with 365 Platforms. Unless otherwise permitted by law, amounts loaded to your Account may be refundable per the local terms of the participating location at which you use your Account. No interest, dividends or any other earnings on funds loaded to your Account will accrue or be paid or credited to you by 365. The value associated with your Account is not insured by the Federal Deposit Insurance Corporation (FDIC).

Credits (courtesy credits, referral credits, snack credits, Referral Program Rewards, Referral Program Codes, loyalty credits) and offers (promotional offers), are non-transferrable, may not be resold, and are not redeemable for cash or other considerations. We reserve the right to expire, limit or modify any credits or offer at any time. If your account is cancelled for any or no reason, you may forfeit any pending, current, or future credits or promotional offers and any other forms of unredeemed value in or associated with your account without prior notice to you. You agree we may change the terms and conditions of the Referral Program, terminate the Referral Program, or expire, deduct, limit, or modify your Referral Program Rewards at any time for any reason, including but not limited to, the event that we determines or believes that your participation in the Referral Program or use or redemption of Referral Program Codes was in error, fraudulent, illegal, or otherwise in violation of these Terms.

Your Account is designated to work at your home location, identified by an invitation to create an Account from your home location. We reserve the right not to accept any Account payment and we may otherwise terminate or limit the use of an Account if we reasonably believe that the use is unauthorized, fraudulent or otherwise unlawful.

Unless otherwise agreed by 365 in a separate written agreement with you, your Account is made available solely for your personal, noncommercial use.

## VII. LOADING VALUE TO YOUR ACCOUNT

You can load a value (in local currency) to your Account by using an approved credit card or debit card from the Point of Sale Device, from Consumer Websites or our Mobile Apps. All amounts loaded onto your Account are held and denominated in local currency.

Value can also be loaded onto your Account in the form of courtesy credits, referral credits, loyalty credits, snack credits, offers, and promotions. These Credits have no cash value, are non-transferable, non-refundable, cannot be used to pay taxes or fees, and are not escheatable unless otherwise required by law.

## VIII. MAKING A PURCHASE

You may use your Account to pay for purchases at participating merchant locations, provided that your Account has a sufficient balance to complete the transaction. When a purchase is made using your Account, your Account balance will be reduced by the amount of the transaction, including but not limited to the product price, taxes, and any additional fees. If your Account balance is insufficient at the time of the attempted purchase, the transaction will be denied and you must add funds to complete the purchase. All inquiries regarding your purchase should be addressed to the operator of the location where the goods were purchased.

## IX. RECEIPTS AND TRANSACTION HISTORY

When you use your Account, 365 will provide a receipt upon your request. Depending on the location where the purchase was made, receipt options may include any or all of the following: SMS (standard rates apply), print, email, or the Mobile App. The receipt will indicate that the purchase was made using your Account and which goods were purchased and their purchase price. It is your responsibility to maintain any receipts and regularly ensure that your transaction history and Account balance are correct. You can check the balance of your Account via the Mobile Apps or via the device where purchases are made. You can review past transaction history via Consumer Websites or on the Mobile Apps.

## X. REQUESTING A REFUND

365 is not liable for the quality, safety, legality, or any other aspect of the good purchased using your Account. If for any reason you believe that a good purchased violated or failed to meet any of the previously stated aspects, you reserve the right to request a refund for the price of the product. There are two primary methods available for requesting refunds: 1) request a refund using your Mobile App; or 2) contact the operator of the market where you made the purchase requesting a refund. Please note that refunds are not guaranteed to be approved as all settled transactions are considered finalized. The operator of the market holds all responsibility for approving refunds. Refunds are often issued in courtesy credits added to your Account and redeemable in your market.

## XI. SUSPICIOUS OR UNAUTHORIZED ACTIVITY

365 reserves the right to restrict access to your Account if we have reason to believe that suspicious or unauthorized activity may be taking place. 365 is not responsible for monitoring your Account to determine if and when there is suspicious or unauthorized activity. You agree to take all responsibility in maintaining the integrity and protection of your Account. If you permit someone else to use your Account, 365 will treat that action as your authorization of that person to use your Account and you will be responsible for all transactions by that person using your Account. It is your responsibility to monitor Account activity and maintain accurate records of Account purchases and funding events and to immediately report any suspicious activity or discrepancies to 365.

## XII. REVOCATION, EXPIRATION AND CLOSURE OF AN ACCOUNT

Each Account is considered the legal property of 365 and as such, is subject to revocation, expiration, or closure at any time without cause or notice as deemed reasonable by 365. If your Account is subject to revocation, expiration, or closure, you are expected to immediately cease use of your Account and comply with 365 in adherence with this document. 365 will facilitate reasonable efforts to refund Account

balances. In cases where the Account's owner cannot be reasonably contacted, the balance will be appropriated per state escheatment laws. If the state is unknown, funds held in our possession will be escheated to the State of Delaware.

- A. **Expiration of an Account:** Unless otherwise defined by an independent written agreement, 365 is the Merchant of Record (MoR), and as such, 365 reserves the right to periodically review, close and destroy personal information on any Account with at least 5 consecutive years of inactivity. Remaining balances on accounts with 5 years or more of inactivity will be considered unclaimed property and 365 will turn over to the appropriate state government in conjunction with state escheatment laws. If the state is unknown, funds held in our possession will be escheated to the State of Delaware. 365 will make a reasonable attempt to notify Account holders via email prior to closing an Account. Account holders are responsible to maintain accurate, complete, and up-to-date information in your profile.
- B. **Closing an Account:** You reserve the right to close your Account at any time with a claim to the remaining Account balance. There are two primary methods available for Account closures: 1) close your Account using your Mobile App; or 2) contact the operator of your primary market requesting to close your Account. You may be required to provide an active credit card number or mailing address for a refund of your Account balance. Operators will be responsible for handling all Account closures.

### XIII. LIMITATIONS, FEES AND CHARGES

Limitation of Liability: 365 will not be liable for any loss or damage you suffer in the following circumstances:

- If, through no fault of 365, your Account is not honored.
- The inability to access your funds after 365 has restricted use of your Account after you claim its suspicious or unauthorized activity.
- If, through no fault of 365, you do not have the necessary funds in your Account to complete a transaction.
- If any equipment or electronic devices used during a transaction do not work properly.
- Loss and damage resulting from any illegal, fraudulent, or other wrongful conduct by you while using your Account. This includes but is not limited to providing 365 with erroneous or inaccurate information or using your Account to violate any applicable laws or regulations.

365 does not charge any issuance, activation, or service fees on your account. See our Privacy Notice, available at <https://365retailmarkets.com/consumer-policy/>, for more information about our data retention period for inactive accounts.

### XIV. TEXT MESSAGING

If you opt to receive SMS receipts, based on your preferences in your Account (available at Consumer Websites or the Mobile App) you agree that 365 may send you informational text (SMS) messages as part of the normal business operation. Standard text message rates may apply. You may opt-out of receiving text (SMS) messages from 365 at any time by updating your preferences online in your Account (available



at Consumer Websites or the Mobile App). You acknowledge that opting out of receiving text (SMS) messages may impact your use of 365 Platforms. Standard carrier rates may apply.

You may also elect to receive a one-time SMS message at a Point of Sale Device by selecting the “Text” option for a receipt when completing your transaction. 365 will send you a one-time SMS message of your receipt in response to this request unless you later opt to receive SMS messages as described above. Standard text message rates may apply.

## XV. EMAIL RECEIPTS

If you opt to receive email receipts, based on your preferences in your Account (available at Consumer Websites or the Mobile App) you agree that 365 may send you informational email messages as part of the normal business operation. You may opt-out of receiving email messages from 365 at any time by updating your preferences online in your Account (available at Consumer Websites or the Mobile App). You acknowledge that opting out of receiving email messages may impact your use of 365 Platforms.

You may also elect to receive a one-time email message at a Point of Sale Device by selecting the “Email” option for a receipt when completing your transaction. 365 will send you a one-time Email message of your receipt in response to this request unless you later opt to receive email messages as described above.

## XVI. BILLING ERRORS, CORRECTIONS

We reserve the right to correct the balance of your Account if we believe that a clerical, billing, or accounting error occurred. If you have questions regarding your transaction history or any correction, or if you dispute any transaction or correction that has been assessed against your Account, please contact 365 at [accounthelp@365smartshop.com](mailto:accounthelp@365smartshop.com). We will conduct an investigation, communicate the results and correct any errors. If no error was found, we will communicate an explanation. We shall have no liability for any billing error unless you provide us notice within 60 days of the date of the transaction in question. You should monitor your transactions and Account balances closely.

## XVII. LIABILITY FOR UNAUTHORIZED TRANSACTIONS

Because your Account is used like cash for purchases from participating locations, you are responsible for all transactions associated with your Account, including unauthorized transactions. However, if your Account information is lost, stolen or compromised, your Account can be frozen with the balance remaining on it at the time you call or contact us to request that we freeze your Account. Your Account balance is only protected from the point in time you notify 365. We will freeze the remaining balance on your Account at the time you notify us and will hold that remaining balance until you reactivate your Account.

## XVIII. PRIVACY NOTICE

For information concerning how we collect, use, disclose information concerning Users and how to select privacy preferences, see our Privacy Notice located at: <https://365retailmarkets.com/consumer-policy/>

## XIX. SUBMISSION OF IDEAS

Separate and apart from any content contributions such as blogs, wikis, discussion forums, posts, chats, or other forms of media created by you (“User Content”) which you provide, you can submit questions, comments, feedback, suggestions, ideas, plans, notes, drawings, original or creative materials or other information about 365 and our services (collectively, “Ideas”). Ideas provided to 365 by email or otherwise are entirely voluntary, non-confidential, gratuitous and noncommittal. You hereby assign to 365, and 365 shall own, exclusive rights, including all intellectual property rights to Ideas, and 365 shall be entitled to the unrestricted use and dissemination of Ideas for any purpose, commercial or otherwise, without acknowledgment or compensation to you. Do not send us Ideas if you expect to be paid or want to continue to own or claim rights in them; we may have already had the same or similar idea and we do not want disputes.

## XX. PROHIBITED USES

You may use 365 Platforms only for lawful purposes and in accordance with these Terms and the Privacy Policy. You agree not to use 365 Platforms in any of the following ways:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the United States or other countries).
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personal or sensitive information or otherwise.
- To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail,” “chain letter,” or “spam” or any other similar solicitation.
- To refer, sign-up, gift a snack credit, or otherwise use 365 Platforms to interact with a third party that does not consent to receive such communications.
- To impersonate or attempt to impersonate 365, a 365 employee, another user, or any other person or entity (including, without limitation, by using e-mail associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone’s use or enjoyment of 365 Platforms, or which, as determined by us, may harm 365 or users of 365 Platforms or expose them to liability.
- In any way that violates the restrictions stated in Section XXVIII (Copyright and Restrictions) of these Terms.

## XXI. USER CONTENT

365 Platforms may contain content or materials provided by Users of 365 Platforms (collectively, “User Content”). All User Content must comply with the User Content Standards set out in Section XXII of these Terms.

By submitting User Content to us, you grant us the perpetual, irrevocable and worldwide right and license to use, modify, publicly perform, publicly display, reproduce, and distribute such User Content on and through 365 Platforms to any other Users in any medium now know or hereafter devised. You waive any and all of your rights to any User Content you submit, post or display on or through the Service, including “moral rights” or *droit moral*.

You represent and warrant that (1) the User Content is yours (you own it) or you have the right to use it and grant the license us the rights and license as provided in these Terms; (2) the submission of your User Content does not violate the privacy rights, publicity rights, copyrights, contract rights or any other rights of any person; and (3) all of your User Content does and will comply with these Terms.

You understand and acknowledge that you are responsible for any User Content you submit or contribute, and you, not 365, have full responsibility for such content, including its legality, reliability, accuracy and appropriateness. We are not responsible, or liable to any third party, for the content or accuracy of any User Content posted by you or any other user of 365 Platforms.

You agree that if the Content you share include(s) personal data that such data will be subject to our Privacy Policy at <https://www.365retailmarkets.com/consumer-policy/>.

## XXII. USER CONTENT STANDARD

Any User Content you submit must comply with all applicable laws and regulations and must not:

- CONTAIN ANY MATERIAL WHICH IS DEFAMATORY, VIOLENT, HATEFUL, OR PROMOTE SEXUALLY EXPLICIT OR PORNOGRAPHIC MATERIAL, VIOLENCE, OR DISCRIMINATION;
- INFRINGE ANY PATENT, TRADEMARK, TRADE SECRET, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OR OTHER RIGHTS OF ANY OTHER PERSON;
- IMPERSONATE ANY PERSON, OR MISREPRESENT YOUR IDENTITY OR AFFILIATION WITH ANY PERSON OR ORGANIZATION OR OTHERWISE BE LIKELY TO DECEIVE ANY PERSON;
- PROMOTE ANY ILLEGAL ACTIVITY, OR ADVOCATE, PROMOTE OR ASSIST ANY UNLAWFUL ACT;
- GIVE THE IMPRESSION THAT THEY EMANATE FROM OR ARE ENDORSED BY US OR ANY OTHER PERSON OR ENTITY, IF THIS IS NOT THE CASE; OR
- CONTENT OR OTHER COMPUTER TECHNOLOGY THAT MAY DAMAGE, INTERFERE WITH, SURREPTITIOUSLY INTERCEPT, OR EXPROPRIATE ANY SYSTEM, PROGRAM, OR DATA, INCLUDING VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR CANCELBOTS.

## XXIII. MONITORING AND ENFORCEMENT

We have the right to (but not the obligation to):

- Remove or refuse to post any User Content for any or no reason in our sole discretion.
- Notwithstanding anything else to the contrary on 365 Platforms, disclose your identity or other information about you to any third party who claims that material submitted by you violates their rights, including their intellectual property rights or their right to privacy;

- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of 365 Platforms; and/or
- Terminate or suspend your access to all or part of 365 Platforms for any or no reason, including without limitation, any violation of these Terms.
- Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through 365 Platforms. **YOU WAIVE AND HOLD HARMLESS 365 AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.**

## XXIV. RELIANCE ON INFORMATION

The information, materials and User Content presented on or through 365 Platforms is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information, materials and User Content. Any reliance you place on such information, materials and User Content is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such information, materials and User Content by you or any other visitor to 365 Platforms or by anyone who may be informed of any of their contents.

## XXV. THIRD PARTY CONTENT

365 may provide third party content via 365 Platforms, including links to web pages and content of third parties (collectively, "Third Party Content") as a service to those interested in this information. We do not control, endorse, or adopt any Third-Party Content and can make no guarantee as to its accuracy or completeness. You acknowledge and agree that 365 is not responsible or liable in any manner for any Third-Party Content and undertakes no responsibility to update or review such Third Party Content. You agree to use such Third-Party Content at your own risk.

## XXVI. INFORMATION ABOUT YOU AND YOUR VISITS OR USE OF 365 Platforms

365 Platforms are governed by and operated in accordance with United States law. If you are located outside of the United States, you use this Service at your own risk. Your information will be transferred to and processed in the United States where many of our central databases operate. By using 365 Platforms, you: (a) acknowledge that the data protection laws of other countries, including the United States, may provide a less comprehensive or protective standard of protection than those in your country, and (b) consent to all actions taken by us with respect to your information in compliance with the Privacy Notice and applicable privacy laws.

## XXVII. ADVERTISEMENTS AND PROMOTIONS

365 may display advertisements and promotions from third parties via 365 Platforms or may otherwise provide information about or links to third-party products on 365 Platforms. Your business dealings or correspondence with, or participation in promotions of, such third parties, and any terms, conditions, warranties, or representations associated with such dealings or promotions are solely between you and such third party. 365 is not responsible or liable for any loss or damage of any sort incurred as the result of such dealings or promotions or as the result of the presence of such non-365 advertisers or third-party information on 365 Platforms.

## XXVIII. COPYRIGHT AND RESTRICTIONS

Unless otherwise indicated, 365 Platforms and all content and other materials therein, including, without limitation, the 365 logo and all designs, text, graphics, pictures, information, data, software, sound files, other files and the selection and arrangement thereof are the proprietary property of 365 or its licensors or users and are protected by U.S. and international copyright laws. You are granted a limited, non-sublicensable license to access and use available at Point of Sale Services, Consumer Websites or the Mobile App for account management purposes only.

You may not: (i) remove any copyright, trademark or other proprietary notices from any portion of 365 Platforms (ii) reproduce, modify, prepare derivative works based upon, distribute, license, lease, sell, resell, transfer, publicly display, publicly perform, transmit, stream, broadcast or otherwise exploit 365 Platforms except as expressly permitted by 365; (iii) decompile, reverse engineer or disassemble 365 Platforms except as may be permitted by applicable law; (iv) link to, mirror or frame any portion of 365 Platforms; (v) cause or launch any programs or scripts for the purpose of scraping, indexing, surveying, or otherwise data mining any portion of 365 Platforms or unduly burdening or hindering the operation and/or functionality of any aspect of 365 Platforms; or (vi) attempt to gain unauthorized access to or impair any aspect of 365 Platforms or its related systems or networks.

Any use of 365 Platforms or associated materials other than as specifically authorized in these Terms, without the prior written permission of 365, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated herein, nothing in these Terms shall be construed as conferring in any manner, whether by implication, estoppel or otherwise, any title or ownership of, or exclusive use-rights to, any intellectual property or other right and any goodwill associated therewith.

## XXIX. TRADEMARK INFORMATION

The 365, AirVend, Avanti, Company Kitchen, Lightspeed, and Stockwell logos are registered trademarks of 365. All other 365 trademarks, service marks, domain names, logos, company names and indicia of origin referred to on 365 Platforms are either trademarks, service marks, domain names, logos, company names or indicia of origin, or are otherwise the property of 365 or its affiliates or licensors. In countries where any of the 365 trademarks, service marks, domain names, logos, company names or indicia of origin are

not registered, 365 claims all other rights associated with unregistered trademarks, service marks, domain names, logos, trade name, company names and indicia of origin. You may not use any trademark, service mark, domain name, logo, company name, trade name or indicia of origin of 365 or any third party without permission from the owner of the applicable trademark, service mark, domain name, logo, company name, trade name or indicia of origin. All rights not expressly granted are reserved.

### XXX. NO SECURITY VIOLATIONS

You may not use the Services to violate the security or integrity of any network, computer or communications system, software application, or network or computing device (each, a “System”). Prohibited activities include:

- **Unauthorized Access.** Accessing or using any System without permission, including attempting to probe, scan, or test the vulnerability of a System or to breach any security or authentication measures used by a System.
- **Interception.** Monitoring of data or traffic on a System without permission.
- **Falsification of Origin.** Forging TCP-IP packet headers, e-mail headers, or any part of a message describing its origin or route. The legitimate use of aliases and anonymous remailers is not prohibited by this provision.

### XXXI. NO NETWORK ABUSE

You may not make network connections to any users, hosts, or networks unless you have permission to communicate with them. Prohibited activities include:

- **Monitoring or Crawling.** Monitoring or crawling of a System that impairs or disrupts the System being monitored or crawled.
- **Denial of Service (DoS).** Inundating a target with communications requests so the target either cannot respond to legitimate traffic or responds so slowly that it becomes ineffective.
- **Intentional Interference.** Interfering with the proper functioning of any System, including any deliberate attempt to overload a system by mail bombing, news bombing, broadcast attacks, or flooding techniques.
- **Operation of Certain Network Services.** Operating network services like open proxies, open mail relays, or open recursive domain name servers.
- **Avoiding System Restrictions.** Using manual or electronic means to avoid any use limitations placed on a System, such as access and storage restrictions.

### XXXII. CHANGES TO THESE TERMS

CHANGES ARE PERIODICALLY MADE TO THE INFORMATION CONTAINED IN THESE TERMS. 365 MAY MAKE CHANGES TO 365 Platforms AT ANY TIME AND AT ITS SOLE DISCRETION. The most current version of these Terms can be reviewed by clicking on <https://www.365retailmarkets.com/consumer-policy/>. Any changes to the Terms shall supersede all previous versions of the Terms. By accepting any changes to the Terms,

either by clicking on “Accept” or “I Agree” if prompted or continuing to use 365 Platforms after the Terms have been updated, you hereby (1) acknowledge and agree that you accept all such Terms, notices, updates, enhancements, new features, and conditions as modified; (2) acknowledge and agree that any personal information provided to 365 shall now be governed under any updated Terms; and (3) **waive and release 365 of any liability under any previous versions of the Terms.**

### XXXIII. SUPPLEMENTAL TERMS

Supplemental terms may apply to certain services, such as policies for a particular event, activity or promotion, and such supplemental terms will be disclosed to you in connection with the applicable services. Supplemental terms are in addition to, and shall be deemed a part of, these Terms for the purposes of the applicable services. Supplemental terms shall prevail over these Terms in the event of a conflict with respect to the applicable services.

### XXXIV. INDEMNITY

You agree to indemnify, defend, and hold harmless 365, its affiliates, members, employees, directors, shareholders, officers, agents, customers, successors or assigns from and against any loss, liability, damage, penalty or expense (including reasonable attorneys' fees and court costs) which may be claimed by a third party as a result of: (i) your use of 365 Platforms; (ii) any breach or non-compliance by you of these Terms; (iii) your violation of any representation, warranty or agreements referenced herein; (iv) any dispute or litigation caused by your actions or omissions, including your User Content; (v) your negligence or violation of any applicable law or rights of a third party; (vi) your violation of any third-party intellectual property right, publicity, confidentiality, property or privacy right; or (vii) any disputes or issues between you and any third party, including Third Party Providers.

### XXXV. GOVERNING LAW – MICHIGAN

These Terms and the parties' relationship shall be governed by and construed in accordance with the laws of the State of Michigan notwithstanding any conflict of law rules.

### XXXVI. DISCLAIMERS AND LIMITS OF LIABILITY

Unless otherwise prohibited by law, 365's total, aggregate liability under these Terms shall in no circumstance exceed \$100 USD.

EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, IN NO EVENT SHALL 365 BE LIABLE FOR ANY PUNITIVE OR EXEMPLARY DAMAGES, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOST PROFITS, INCLUDING WITHOUT LIMITATION PUNITIVE OR EXEMPLARY DAMAGES, CONSEQUENTIAL OR SPECIAL DAMAGES FOR PERSONAL INJURY OR ILLNESS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOSS OF WORK PRODUCT, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, DIRECT OR INDIRECT, RESULTING FROM THE USE OF 365 PLATFORMS OR OTHERWISE, EVEN

IF 365 HAS BEEN ADVISED OF THAT POSSIBILITY. 365 IS NOT RESPONSIBLE FOR THE ACCURACY OF ANY PAYMENT INSTRUMENT, INCLUDING WITHOUT LIMITATION, WHETHER SUCH INFORMATION IS CURRENT.

EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## XXXVII. CLAIMS OF COPYRIGHT INFRINGEMENT

You may not use 365 Platforms to transmit, route, provide connections to or store any material that infringes copyrighted works, trademarks or otherwise violates or promotes the violation of the intellectual property rights of any third party.

365, pursuant to 17 U.S.C. Section 512 as amended by Title II of the Digital Millennium Copyright Act (the "Act"), reserves the right, but not the obligation, to terminate your Account and your license to use 365 Platforms if it determines in its sole and absolute discretion that you are involved in infringing activity, including alleged acts of first-time or repeat infringement, regardless of whether the material or activity is ultimately determined to be infringing. 365 accommodates and does not interfere with standard technical measures used by copyright owners to protect their materials. In addition, pursuant to 17 U.S.C. Section 512(c), 365 has implemented procedures for receiving written notification of claimed infringements and for processing such claims in accordance with the Act. All claims of infringement must be submitted to 365 in a written complaint that complies with the requirements below and is delivered to 365' designated agent to receive notification of claimed infringement:

By mail: 1743 Maplelawn, Troy, MI, 48084

By phone (US/Canada): 1-888-365-7382

By phone (International): +1-248-434-3910

By email: [privacy@365smartshop.com](mailto:privacy@365smartshop.com)

In addition, any written notice regarding any defamatory or infringing activity, whether of a copyright, patent, trademark or other proprietary right must include the following information:

1. A physical or electronic signature of a person authorized to act on behalf of (a) the owner of an exclusive right that is allegedly infringed or (b) the person defamed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site is covered by a single notification, a representative list of such works at that site. Similarly, for materials that are defamatory



or infringe patent, trademark, or other proprietary rights of a third party, please submit a list of such materials.

3. Identification of the material that is claimed to be infringing, to be the subject of infringing activity, or that is claimed to be defamatory and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit 365 to locate the material.
4. Information reasonably sufficient to permit 365 to contact the owner or the person defamed, such as their address, telephone number, and/or electronic mail address.
5. A statement that the owner or the person defamed has a good faith belief that use of the material in the manner complained of is not authorized by the copyright or other proprietary right owner, its agent, or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that the person submitting the notification is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed or on behalf of the person defamed.

## XXXVIII. RECEIPTS AND STATEMENTS

Account holders are not sent statements of itemized transactions from an Account. You can check the balance of your Account or review recent transactions by logging into your Account at available at Consumer Websites or the Mobile App. When you use your Account, you will have the option to receive a receipt via email or SMS, or no receipt. The receipt will indicate that the purchase was made using an Account and will provide the remaining balance of your Account. You should keep your receipts and check your purchase history to ensure that your Account balance is correct.

## XXXIX. CONSENT TO ELECTRONIC RECORDS AND TRANSACTIONS

By creating and using your Account, you consent to receiving all records and conducting all transactions involving 365 Platforms, 365, our Services, these Terms, our Privacy Notice, and our Biometric Data Privacy Policy: available at: <https://www.365retailmarkets.com/consumer-policy/>, or any other aspect of your relationship with 365 through electronic means. You may obtain paper copies of the above by contacting us at <https://www.365retailmarkets.com/>. You also agree that agreeing to documents and transactions electronically is a form of electronic signature that is as legally binding as if you signed paper agreements.

## XL. ASSIGNMENT

We may assign all or part of these Terms without such assignment being considered a change to any agreement between us and without notice to you. The assignee shall have the same rights and obligations as the assignor and shall agree in writing to be bound by these Terms.

## XLI. CANCELLATION OF THESE TERMS

We may suspend or terminate these Terms and revoke or limit any or all of the rights and privileges granted to you at any time without notice or liability. Accounts may be terminated upon written request by you or for inactivity (the failure to use 365 Platforms during any 5 year period) or for failure to maintain accurate, complete and up-to-date information in your Account as described above in Section VI (About Your Account). Account termination may also result from fraudulent or unauthorized use of 365 Platforms as well as for any other legally permissible reason. If we terminate these Terms for inactivity, inaccurate Account information, fraudulent or unauthorized use of 365 Platforms the balance held in your Account will be forfeited.

## XLII. ENTIRE AGREEMENT, CONSTRUCTION

These Terms and any supplemental terms as well as the documents referenced therein are the complete and exclusive statement of agreement between you and 365, and supersedes and merges all prior proposals, representations, and all other agreements addressing any of the subject matters covered herein. In the event that any provision of these Terms (and any other terms or documents referenced herein) shall be determined to be illegal or unenforceable, that provision shall be modified by the arbitrator or other tribunal so that the provision shall be legal and enforceable, provided that if such modification is not permissible under applicable law, the provision will be excised to the minimum extent necessary and all other Terms shall otherwise remain in full force and effect and enforceable. Headings herein are for convenience of reference only and shall in no way affect interpretation of these Terms.

## XLIII. INQUIRIES OR QUESTIONS

If you have any questions regarding these Terms, 365, 365 Platforms, or your Account, please visit our web site at <https://365retailmarkets.com/>, or call us at 1-888-365-7382 (US/Canada), +1-248-434-3910 (International), or email us at [privacy@365smartshop.com](mailto:privacy@365smartshop.com).