

Websites 999, LLC Terms of Use

Websites999, LLC (hereinafter "999") provides a website creation and hosting subscription service that provides restaurant owners with a personalized restaurant website for \$9.99 per month (hereinafter "Website Service"). 999 also provides restaurant owners with an ordering system, branded as Ordering999, through which restaurant patrons can place online web orders and the restaurant receives the details of the order via a mobile device or other electronic means (hereinafter "Online Ordering Service").

As used in these Terms of Use, "999 Services", "Our Services" or "The Services" means the Website Service and Online Ordering Service, including all features and functionalities, and user interfaces, as well as all content and software associated with our service.

You (the restaurant owner) (hereinafter, "Owner") have accepted these Terms of Use, which govern your use of Our Services. Personal identifying information is subject to our Privacy Statement, the terms of which are incorporated herein. Please review our Privacy Statement to understand our practices.

OWNER AGREES TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER DESCRIBED IN SECTION 6 TO RESOLVE ANY DISPUTES WITH 999 (EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT).

1. Service

- 1.1 Owner's 999 Services will continue month-to-month and automatically renew until terminated. To use the 999 Services, Owner will provide us with one or more current, valid, accepted methods of payment, as may be updated from time to time (hereinafter "Payment Method"). Owner must cancel 999 Services before they renew each month in order to avoid billing of the next month's service fees to your Payment Method (see "Cancellation" below).
- 1.2 999 may offer a number of service plans, including special promotional plans or service plans offered by third parties in conjunction with the provision of their own products and services. 999 is not responsible for the products and services provided by such third parties. Some service plans may have differing conditions and limitations, which will be disclosed at your sign-up or in other communications made available to you.

2. Billing and Cancellation

- 2.1 The service fee for 999 Services and any other charges you may incur in connection with your use of 999 Services, such as taxes and possible transaction fees, will be charged on a monthly basis to your Payment Method commencing on or about the first calendar day of the month after your service begins until 999 Services are cancelled. Service fees are fully earned upon payment.
- 2.2 To use the 999 Services Owner must provide one or more Payment Methods. Owner remains responsible for any uncollected amounts. If a payment is not successfully settled due to expiration, insufficient funds, or otherwise, and Owner does not cancel 999 Services, 999 may suspend Owner's access to 999 Services until 999 has successfully charged a valid Payment Method. Owner will also be responsible for a \$25 fee any time a payment is rejected from Owner's bank for any reason.

- 2.3 Owner can cancel the 999 account at any time. Once Owner cancels, Owner will no longer have access to the 999 Services. 999 does not provide refunds or credits for any partial-month service periods. Owner is responsible for any charges already incurred up until cancellation. To cancel, Owner shall send an email to support@websites999.com requesting cancellation. If Owner cancels 999 Services, Owner's account will automatically close and Owner's Websites Services will be taken offline.
- 2.4 999 reserves the right to change its service plans or adjust pricing for 999 Services in any manner and at any time as 999 may determine in its sole and absolute discretion. Except as otherwise expressly provided for in these Terms of Use, any price changes or changes to Owner's service plan will take effect following notice to Owner.
- 2.5 Owner must notify 999 about any billing problems or discrepancies within thirty (30) days after they first appear. If Owner does not bring such problems or discrepancies to 999 within 30 days, Owner waives the right to dispute such problems or discrepancies.

Website Service

- 3.1 Owner must be 18 years of age, or the age of majority in Owner's respective province, territory or country, to register for 999 Services. Individuals under the age of 18, or applicable age of majority, may utilize the service only with the involvement of a parent or legal guardian, under such person's account and otherwise subject to these Terms of Use.
- 3.2 Owner agrees to use the 999 Services, including all features and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, or other restrictions on use of the service or content therein. 999 may terminate or restrict Owner's use of 999 Services if Owner violates these Terms of Use or is engaged in illegal or fraudulent use of 999 Services.
- 3.3 999 solely owns all of the intellectual property rights associated with the website and domain it creates for Owner. 999 may agree to transfer a domain to Owner for an additional fee. During the term of this Agreement, Owner agrees that ownership of its Google Business Listing will be shared by Owner and 999 so that website traffic can be maximized to Owner's business. 999 is not responsible for marketing Owner's website. Owner is responsible for the accuracy of any menu items, prices, photos, data, links, advertising, trade or service mark, trade name, and any other information contained within Owner's website.

Online Ordering Service

- 4.1 Use of the Online Ordering Service is optional and separate from the Website Service. If Owner uses the Online Ordering Service, Owner agrees to the terms in this Section 4.
- 4.2 Owner assumes all responsibility for accepting and confirming any orders that are received via the Online Ordering System. 999 is not responsible for any orders that are not received by Owner or not picked up by the end user.
- 4.3 There is no setup fee for using the Online Ordering Service. The cost of using the Online Ordering Service is \$9.99 per month plus five percent (5%) of the total amount of net sales processed through the Online Ordering System, or as otherwise agreed.

○ 4.4 Payment processing services for Owners are provided by Stripe (unless Owner utilizes its own third-party processing company) and are subject to the terms found here <https://stripe.com/connect-account/legal>, which includes the Terms of Service found here <https://stripe.com/legal> (collectively, the “Stripe Services Agreement”). By agreeing to these terms or continuing to operate as an Owner, you agree to be bound the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of 999 enabling payment processing services through Stripe, you agree to provide 999 accurate and complete information about you and your business, and you authorize 999 to share it and transaction information related to your use of the payment processing services provided by Stripe. 999 will charge Owner 2.99% + \$.25 per transaction to process such transactions. For credit card processing through 999, Owner is solely responsible for any credit card chargebacks from its credit card processing activity and will remain liable to 999 for any uncollected chargeback amounts. Owner will immediately reimburse 999 for any uncollected chargebacks. 999 may suspend payments owed to Owner or debit its account immediately to recover any chargebacks. This section 4.4 shall survive any termination of this Agreement.

○ 4.5 Owner may opt to process credit cards through its own third-party credit card processor (and not 999s merchant processing account). In this case, Owner will be responsible for the enrollment and fees associated with the credit card gateway account, if applicable. Owner will also be subject to the third-party processor’s terms and conditions.

○ 4.7 999 may provide Owner with a tablet and/or a receipt printer along with other peripherals (collectively, the “Hardware”). Owner shall have no right, title, or interest in or to the Hardware except the right to use the Hardware during the term and pursuant to the conditions of this Agreement. Owner shall immediately notify 999 of any problems with the Hardware, and shall use best efforts to work with 999 to resolve any such problems. Upon any termination of 999 Services, or at any other time upon demand by 999, Owner, at its sole expense, shall return the Hardware to 999. Owner will continue to be billed for monthly services until the Hardware has been returned. In the event that Owner fails to return the Hardware to 999 within thirty (30) days of the requested return date, 999 may debit Owner’s account for the estimated retail cost of the Hardware plus an additional \$99 processing fee.

5. Disclaimers of Warranties and Limitations on Liability

○ 5.1 THE 999 SERVICES AND ALL CONTENT AND SOFTWARE ASSOCIATED THEREWITH, OR ANY OTHER FEATURES OR FUNCTIONALITIES ASSOCIATED WITH THE 999 SERVICES, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. 999 DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE 999 SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. 999 SPECIFICALLY DISCLAIMS LIABILITY FOR THE USE OF APPLICATIONS.

○ 5.2 TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, IN NO EVENT SHALL WEBSITES 999 OR ITS SUBSIDIARIES OR ANY OF THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR LICENSORS BE LIABLE (JOINTLY OR SEVERALLY) TO OWNER FOR PERSONAL INJURY OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER.

○ 5.3 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.

○ 5.4 NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.

6. Arbitration Agreement

○ 6.1 If Owner utilizes 999 Services in the United States (including its possessions and territories), Owner and 999 agree that any dispute, claim or controversy arising out of or relating in any way to the 999 Services, these Terms of Use and this Arbitration Agreement, shall be determined by binding arbitration or in small claims court. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award and nothing in this Arbitration Agreement shall be interpreted as limiting any non-waivable statutory rights. Owner agrees that, by agreeing to these Terms of Use, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that Owner and 999 are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of this Agreement and the termination of Owner's 999 Services.

○ 6.2 If Owner elects to seek arbitration or file a small claim court action, Owner must first send to 999, by certified mail, a written Notice of its claim ("Notice"). The Notice to 999 must be addressed to: General Counsel, 1001 Green Bay Rd #237 Winnetka, IL 60093 ("Notice Address"). If 999 initiates arbitration, it will send a written Notice to the email address used for Owner's membership account. A Notice, whether sent by Owner or by 999, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If 999 and Owner do not reach an agreement to resolve the claim within 30 days after the Notice is received, Owner or 999 may commence an arbitration proceeding or file a claim in small claims court.

○ 6.3 The arbitration will be governed by the Commercial Arbitration Rules (the "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and Forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, including issues relating to the scope and enforceability of this arbitration agreement. Unless Websites 999 and Owner agree otherwise, any arbitration hearings will take place in the county (or parish) of Owner's residence. The arbitrator's award shall be final and binding on all parties, except (1) for judicial review expressly permitted by law or (2) if the arbitrator's award includes an award of injunctive relief against a party, in which case that party shall have the right to seek judicial review of the injunctive relief in a court of competent jurisdiction that shall not be bound by the arbitrator's application or conclusions of law.

○ 6.4 OWNER AND 999 AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both Owner and 999 agree otherwise, the arbitrator may not consolidate more than one person's claims with Owner's claims, and may not

otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

7. Miscellaneous

- 7.1 These Terms of Use shall be governed by and construed in accordance with the laws of the State of Illinois, U.S.A. without regard to conflict of laws provisions. These terms will not limit any consumer protection rights that Owner may be entitled to under the mandatory laws of its state of residence.
- 7.2 If any provision or provisions of these Terms of Use shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.
- 7.3 999 may, from time to time, change these Terms of Use. Such revisions shall be effective immediately; provided however, for existing members, such revisions shall, unless otherwise stated, be effective 30 days after posting. 999 may assign its agreement with Owner to any affiliated company or to any entity that succeeds to all or substantially all of 999's business or assets related to the applicable 999 Services.
- 7.4 999 will send Owner information relating to Owner's account (e.g. payment authorizations, invoices, changes in password or Payment Method, confirmation messages, notices) in electronic form only, for example via emails to Owner's email address provided during registration. Owner agree that any notices, agreements, disclosures or other communications that 999 sends to Owner electronically will satisfy any legal communication requirements, including that such communications be in writing.
- 7.5 Owner agrees to defend, indemnify and hold harmless 999, its parent entities, subsidiaries, third party vendors, affiliates, officers, and employees, from any and all claims and demands, including attorneys' fees, due to or arising from Owner's use of 999 Services and any other conduct related in any way to 999 Services, including but not limited to, breaching any provision contained in these Terms of Use.