

Ordering360 Terms of Use

Ordering360, LLC (hereinafter "360") provides a website creation and hosting subscription service that provides restaurant owners with a personalized restaurant website (hereinafter "Website Service"). 360 also provides restaurant owners with an ordering system from 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").

You, the restaurant 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.

As used in these Terms of Use, "360 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 AGREE TO THE ARBITRATION AGREEMENT AND CLASS ACTION WAIVER DESCRIBED IN SECTION 6 TO RESOLVE ANY DISPUTES WITH 360, EXCEPT FOR MATTERS THAT MAY BE TAKEN TO SMALL CLAIMS COURT.

1. Service

- 1.1 Your 360 Services will continue month-to-month and automatically renew until terminated. To use the 360 Services, you provide us with one or more Payment Methods. "Payment Method" means a current, valid, accepted method of payment (i.e. bank account), as may be updated from time to time. You must cancel your service before it renews each month in order to avoid billing the next month's service fees to your Payment Method (see "Cancellation" below).
- 1.2 We may offer a number of services, including some integrated services offered by third parties. We are not responsible for any 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 the 360 Services and any other charges you may incur in connection with your use of 360 Services, such as taxes and possible transaction fees, will be charged on a monthly basis to your Payment Method on the calendar day corresponding to the commencement of 360 Services until 360 Services are canceled. Service fees are fully earned upon payment.
- 2.2 To use the 360 Services you must provide one or more Payment Methods. You remain responsible for any uncollected amounts and returned items fees. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and you do not cancel your account, we may suspend your access to 360 Services until we have successfully charged a valid Payment Method.
- 2.3 You can cancel your 360 Services at any time. Once you cancel, you will no longer have access to the 360 Services. We do not provide refunds or credits for any partial-month service periods. You

are responsible for any charges already incurred prior to cancellation. To cancel, please send an email to support@ordering360.com stating that you wish to cancel. If you cancel 360 Services, your Websites Services may be taken offline.

- 2.4 360 may provide you with a tablet and/or a receipt printer along with other peripherals (collectively, the “Hardware”). You 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 in this agreement. You shall immediately notify 360 of any problems with the Hardware, and shall use best efforts to work with 360 to resolve the problems. Upon any cancellation or termination of service, or at any other time upon demand by 360, you shall return the Hardware to 360, at your sole expense, and retain a copy of the shipping receipt as proof of shipment. You will continue to receive monthly charges on your account until the Hardware has been received by 360.

- 2.5 We reserve the right to change our service plans or adjust pricing for The Services in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in these Terms of Use, any price changes or changes to your service plan will take effect following notice to you, usually in the form of an email to your email address on file.

- 2.5 Payments are nonrefundable and there are no refunds or credits for partially used periods. You must notify us about any billing or funding problems or discrepancies within thirty (30) days after they first appear. If you do not bring such problems or discrepancies to our attention within 30 days, you agree that you have waived the right to dispute such problems or discrepancies.

Website Service

- 3.1 You agree to use the 360 Services, including all features and functionalities associated therewith, in accordance with all applicable laws, rules and regulations, or other restrictions on use of The Services or content therein. We may terminate or restrict your use of The Services if you violate these Terms of Use or are engaged in illegal or fraudulent use of The Services.

- 3.2 360 solely owns all of the intellectual property rights associated with the website and domain it creates for you. 360 may, in its sole discretion, agree to transfer a domain to you for an additional fee. During the term of this Agreement, you agree that ownership of your Google Business Listing will be shared by you and 360 so that website traffic can be maximized to your business. You agree that your Google Business Listing must point to the website containing your 360 ordering link. In the event that your Google Business Listing does not point to a website with the 360 ordering link, you may be charged a \$99 per month non-compliance fee, in addition to the other fees. You are 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 your website.

Online Ordering Service

- 4.1 Use of the Online Ordering Service is optional and separate from the Website Service. If you use the Online Ordering Service, you agree to the terms in this Section 4.

- 4.2 You assume all responsibility for accepting and confirming any orders that are received via the Online Ordering Service. 360 is not responsible for any refunds of orders that are not received by you.

- 4.3 You may accept credit cards as payment for orders placed through the Online Ordering Service via Stripe. You will be charged a minimum of 2.99% + \$.25 per transaction to process the transactions via Stripe. All fees for The Services shall be debited on or about the 5th day of the following month for the previous month's activity.
- 4.4 If you opt to process credit cards through any third-party credit card processor (non-Stripe), you will enter into a separate agreement with the third-party credit card processor and be subject to that third-party processor's terms and conditions (including confirmation of receipt of funds).
- 4.5 For credit card processing through Stripe, you are solely responsible for any credit card chargebacks from your credit card processing activity and will remain liable to 360 for any uncollected chargeback amounts. You will immediately reimburse 360 for any uncollected chargebacks. 360 may suspend payments owed to you or debit your account immediately to recover any chargebacks. This section 4.5 shall survive any termination of the agreement.

5. Disclaimers of Warranties and Limitations on Liability

- 5.1 THE 360 SERVICE AND ALL CONTENT, WEBSITES (SPECIFICALLY AS IT RELATES TO THE AMERICANS WITH DISABILITIES ACT AND THE WORLDWIDE WEB'S CONSORTIUM ACCESSIBILITY GUIDELINES (WCAG) 2.0 LEVELS A AND AA) AND SOFTWARE ASSOCIATED THEREWITH, OR ANY OTHER FEATURES OR FUNCTIONALITIES ASSOCIATED WITH THE 360 SERVICE, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. 360 DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE 360 SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. 360 SPECIFICALLY DISCLAIMS LIABILITY FOR THE USE OF APPLICATIONS. IN NO EVENT WILL 360 BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY, FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, EVEN IF 360 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN HAS FAILED ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW 360'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO ONE HUNDRED DOLLARS (\$100). EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS ENTERED INTO THESE TERMS RELYING ON THE LIMITATIONS OF LIABILITY STATED HEREIN AND THAT THOSE LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.
- 5.2 TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, IN NO EVENT SHALL 360 OR ITS SUBSIDIARIES OR ANY OF THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR LICENSORS BE LIABLE (JOINTLY OR SEVERALLY) TO YOU FOR PERSONAL INJURY OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER.
- 5.3 SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH STATES, 360'S LIABILITY OF WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- 5.4 NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.

6. Arbitration Agreement

- 6.1 You and 360 agree that any dispute, claim or controversy arising out of or relating in any way to 360 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 in 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. You agree that, by agreeing to these Terms of Use, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and 360 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 your 360 service.
- 6.2 If you elect to seek arbitration or file a small claim court action, you must first send to 360, by certified mail, a written notice of your claim ("Notice"). The Notice to 360 must be addressed to: General Counsel, 955 Eastwood Rd Glencoe IL 60022 ("Notice Address"). If 360 initiates arbitration, it will send a written Notice to the email address on file. A Notice, whether sent by you or by 360, must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If 360 and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or 360 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 360 and you agree otherwise, any arbitration hearings will take place in Cook County, Illinois. 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 YOU AND 360 AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and 360 agree otherwise, the arbitrator may not consolidate more than one person's claims with your 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 you may be entitled to under the mandatory laws of your 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.
- 7.3 360 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. 360 may assign its agreement with you to any affiliated company or to any entity that succeeds to all or substantially all of 360's business or assets related to the applicable 360 Service.
- 7.4 360 will send you information relating to your account (e.g. payment authorizations, invoices, changes in password or Payment Method, confirmation messages, notices, etc.) in electronic form only, for example, via emails to your email address provided during registration. You agree that any notices, agreements, disclosures or other communications that 360 sends to you electronically will satisfy any legal communication requirements, including that such communications be in writing.
- 7.5 You agree to defend, indemnify and hold harmless 360, 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 your use of the service and any other conduct related in any way to the service, including but not limited to breaching any provision contained in these Terms of Use.