



Herr Business Solutions, Inc.
PO Box 6541
Falls Church, VA 22040

Phone: 717.586.9483
Fax: 888.407.9296
support@forkfile.com

Forkfile.com Client Restaurant Service Contract

Scope of Agreement

1. The services that Herr Business Solutions provides to the Client Restaurant are subject to the following Terms of Use ("Terms"). Herr Business Solutions may automatically amend this Agreement at any time by sending information regarding the amendment to the mailing address or fax number the Client Restaurant has provided Herr Business Solutions.

Description of Service

2. Herr Business Solutions provides the Forkfile.com Online Ordering Service to its Client Restaurants. The service consists of online menu storage, online ordering, and marketing. The services, including any updates, enhancements, and/or new features are subject to these Terms.

Terms of Agreement

3. The Client Restaurant hereby agrees to engage Herr Business Solutions to provide the Client Restaurant with the Forkfile.com Online Ordering Service.
4. Menu and profile updates will be made upon request. Herr Business Solutions hereby agrees to provide such services to the Client Restaurant.
5. The Client Restaurant fax machine associated with Forkfile.com's Online Ordering Service must remain on at all times. It is the responsibility of the restaurant to receive and fulfill all orders faxed by Forkfile.com.
6. Client Restaurants must provide their own fax machine, as well as all necessary resources and supplies for operation. This includes but is not limited to: a phone line and service from the Client Restaurant's telephone provider, a fax machine, paper to operate the fax machine, and ink. If the fax machine is not operating, they must contact Forkfile.com representatives immediately. Herr Business Solutions is not responsible for fax machine malfunctions or problems.
7. Prices and specials listed online must be honored by the restaurant when a customer makes a purchase. In the case of an incorrectly listed price or special, the Client Restaurant should contact Forkfile.com representatives immediately to correct this error.
8. The Client Restaurant may contact Forkfile.com representatives to make changes/updates to any restaurant information, which may include menu, specials, prices, holiday hours,

and hours of operation. One week advanced notice is required for any requested changes/updates to be implemented.

9. The Client Restaurant is required to advertise for their Online Ordering Service with Forkfile.com at the restaurant. Specifically, the Client Restaurant must post a Forkfile.com display visibly on the exterior or interior of the restaurant. These marketing materials will be provided by Forkfile.com.
10. The Client Restaurant is responsible for securely containing and disposing of faxed order information, which may contain sensitive information, such as credit card numbers. Herr Business Solutions is not liable for any theft or misuse of this sensitive information.
11. In the unlikely case that an item on the Client Restaurant's menu is not compatible with the Forkfile.com system, the item will be omitted from the online menu.
12. Herr Business Solutions is not liable for any loss incurred by the Client Restaurant due to a submitted order that is not paid for, picked up, or delivered.

Website Changes

13. The Forkfile.com website may change at any time without notice to the Client Restaurant. This includes interface changes, error fixes, enhancements, and the addition of new features, but does not include changes to restaurant or menu data.
14. Herr Business Solutions is not liable for any errors, malfunctions, or downtime of the Forkfile.com website that may negatively impact the Client Restaurant.

Compensation

15. The Client Restaurant agrees to pay Herr Business Solutions all charges for use of Forkfile.com services according to the payment plan applicable to the service.
16. Client Restaurants will be billed on a monthly basis. Payment of all statements is expected within thirty (30) days of the date such are rendered. Charges appearing on statements will be deemed accurate and valid unless disputed in writing and received within 30 days of any given statement's date. Herr Business Solutions' standard policy is for Restaurant Clients to pay all fees incurred during the month billed.
17. Herr Business Solutions reserves the right to change prices or institute new charges at our discretion with a 30-day notice to the Client Restaurant. Client Restaurant's continued use of the Forkfile.com service indicates they agree to pay the new charges.
18. Depending on the payment plan, charges may include Activation, Recurring Subscription, Usage Fees, and a Monthly Minimum Fee. Usage charges are charged as and when such charges are incurred or by accumulating such charges (in the sole discretion of Herr Business Solutions) in accordance with the usage rates of the Forkfile.com service.
19. Refunds may be requested by the Client Restaurant for canceled or changed orders and the decision to honor them is at the sole discretion of Herr Business Solutions.
20. In the unlikely event of an error in the Client Restaurant's menu or other data, the Client Restaurant should immediately report the error to Forkfile.com representatives. If the errors include incorrect prices from which orders were made, refund requests should also be submitted to Forkfile.com representatives. Herr Business Solutions is not liable for any negative impact to the Restaurant Client that is caused by incorrect data and is not required to honor a refund request.

Payment Penalties

21. All statements rendered (including previous unpaid balances due), which are not paid in full within forty-five (45) days of the billing date, will incur a service charge of eighteen percent (18%) per year (one and one-half percent (1-1/2%) per month, compounded monthly), on any unpaid balance.
22. In the unlikely event that collection on this account becomes necessary, such reasonable costs associated therewith (including collection fees/costs both pre- and post-judgment entry), our attorney's fees, and any associated court fees under this engagement agreement would be the Client Restaurant's obligation. This agreement shall be interpreted and enforced under the laws of the Commonwealth of Virginia and the parties consent to jurisdiction and venue in Arlington County, Virginia. The parties specifically waive any right to a trial before a jury as to any matters for which this engagement covers and/or fees/services in connection therewith.

Cancellation

23. The Client Restaurant's decision to cancel service with Forkfile.com must be received in writing 15 days in advance of termination date.

Termination

24. Herr Business Solutions reserves the right to suspend or terminate the Forkfile.com services if Herr Business Solutions, in its sole discretion, believes that the Client Restaurant is not abiding by the terms, conditions, and notices set forth by this Contract.
25. Herr Business Solutions shall have no responsibility to notify any third party, including any third party providers of services, merchandise or information, of any suspension, restriction or termination of your account.
26. Any termination of the Client Restaurant account shall not relieve you from any amounts owing or any other liability accruing under this Agreement prior to the time that such termination becomes effective.

No Resale of Service

27. Client Restaurant agrees not to resell the use of the Forkfile.com services.

Data Protection and Information Storage

28. Restaurant Menu and Contact information will be publicly available through the Forkfile.com service. Restaurant account number and payment information are considered sensitive information, and will be kept private. Herr Business Solutions shall maintain administrative, technical and physical safeguards to protect the security, confidentiality and integrity of sensitive Client Restaurant information in its possession.

No Unlawful or Prohibited Use

29. As a condition of your use of the Forkfile.com services, you will not use service for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the services in any manner that could damage, disable, overburden, or impair any Herr Business Solutions server, or the network(s) connected to any Herr Business Solutions server, or interfere with any other party's use and enjoyment of the Forkfile.com service. You may not attempt to gain unauthorized access to any services, other accounts, computer systems or networks connected to any Herr Business Solutions

server or to any of the services, through hacking, password mining or any other means. You will not use or register the name Herr Business Solutions, Forkfile.com, or any other trade name or trade mark of Herr Business Solutions without express, prior permission, and you will not obstruct the identification procedures used by Herr Business Solutions in the Forkfile.com service.

30. Herr Business Solutions does not:
- a. Represent or endorse the accuracy or reliability or any opinion, advice or statement made through the Forkfile.com service;
 - b. Assume liability for any harassing, offensive or obscene material distributed through the Forkfile.com service,
 - c. Assume any liability for any material distributed through the Forkfile.com service which is distributed in violation of any third party's copyright or other intellectual property right.
 - d. Assume liability for claims concerning unsolicited fax messages sent by you or others under your account, including (but not limited to) Telephone Consumer Protection Act of 1991, CRTC 2001-193, FTC regulations, and the Can-Spam Act.
31. Herr Business Solutions reserves the right at all times to disclose any information as Herr Business Solutions deems necessary to satisfy any applicable law, regulation, legal process or governmental request.
32. You agree to indemnify and hold Herr Business Solutions and its agents harmless from any and all direct, indirect or consequential claims, losses, damages, judgments, expenses and costs (including any attorney's fees and expenses) arising out of your use of the Forkfile.com service, your violation of the terms of this agreement, or the infringement of any trademark or copyright by you.

Ownership

33. All programs, services, processes, designs, software, technologies, trademarks, trade names, inventions and materials comprising the Forkfile.com service are wholly owned by Herr Business Solutions and/or its licensors and service providers except where expressly stated otherwise.

Contract Updates

34. Revisions and additions to this contract can be made at the discretion of Herr Business Solutions. The new version will be provided to the Restaurant Client and will be effective immediately.
35. The client restaurant may also have a signed written agreement which is expressly incorporated herein, and which in conjunction with the terms, conditions and policies referred to herein comprise the entire Agreement between Herr Business Solutions and the Client Restaurant. The Written Agreement may contain different or additional terms which supersede any terms in this document and may refer to earlier versions of these terms.
36. HERR BUSINESS SOLUTIONS WILL FAX OR MAIL THE CLIENT RESTAURANT NEW VERSIONS OF THE CONTRACT INCLUDING NOTICE OF AMENDMENTS. YOU SHALL BE DEEMED TO HAVE ACCEPTED SUCH AMENDMENTS BY CONTINUING TO USE THE SERVICES AFTER SUCH AMENDMENTS OR INFORMATION REGARDING SUCH AMENDMENTS HAS BEEN SENT TO YOU.

Otherwise, this Agreement may not be amended except in writing signed by both you and HERR BUSINESS SOLUTIONS.

37. The most current version of the Client Service Contract can be obtained by faxing a request to Forkfile.com.

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

38. THE SERVICES ARE PROVIDED 'AS IS' AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE WITH RESPECT TO THE SERVICES OR ANY OTHER PRODUCT, DOCUMENTATION OR SERVICE PROVIDED HEREUNDER OR IN CONNECTION HERewith. HERR BUSINESS SOLUTIONS AND FORKFILE.COM FURTHER EXPRESSLY DISCLAIMS GUARANTEE OF CONTINUED AVAILABILITY OF THE SERVICE OR ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE TITLE OR NON-INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO MARKETING LITERATURE OR COLLATERAL OR STATEMENTS REGARDING PERFORMANCE OF THE SERVICES BY HERR BUSINESS SOLUTIONS WHICH IS NOT CONTAINED IN THIS SECTION SHALL BE CONSIDERED TO BE A WARRANTY OR REPRESENTATION, AND SHOULD NOT BE RELIED UPON AND IS NOT BINDING UPON HERR BUSINESS SOLUTIONS AND FORKFILE.COM.

NEITHER HERR BUSINESS SOLUTIONS, FORKFILE.COM NOR ANY OF ITS PARTNERS AFFILIATES OR SERVICE PROVIDERS SHALL BE HELD RESPONSIBLE IN ANY WAY OR BY ANY MEANS, EITHER DIRECTLY OR INDIRECTLY, FOR ANY COMMUNICATIONS OR OTHER DIFFICULTIES OUTSIDE OF HERR BUSINESS SOLUTIONS' OR ANY SUCH PARTNER'S, AFFILIATE'S OR SERVICE PROVIDER'S CONTROL WHICH COULD LEAD TO ANY DELAY, INTERRUPTION OR MISDIRECTION OF FAX VOICE OR DATA DELIVERY SERVICE TO THE CUSTOMER'S EMAIL ADDRESS, PAGER, TELEPHONE OR ANY OTHER RECEIVING DEVICES OR THIRD-PARTY PHONE OR FAX MACHINES, DATA STORAGE AND/OR DELIVERY SERVICES.

The aggregate liability of Herr Business Solutions, it's parent, subsidiaries or affiliates, whether for tort (including negligence), breach of contract (including fundamental breach or failure of an essential purpose), misrepresentation or otherwise in respect of a single occurrence or a series of occurrences, shall in no circumstances exceed the amounts paid by the Client Restaurant to Herr Business Solutions with respect to the Service giving rise to the claim. IN NO EVENT SHALL HERR BUSINESS SOLUTIONS, ITS LICENSORS OR THE PARENT, SUBSIDIARIES OR AFFILIATES OF ANY OF THEM BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY THE CLIENT RESTAURANT OR ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF REVENUES OR PROFITS, LOSS OF

DATA OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS (INCLUDING WITHOUT LIMITATION, LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, WRONG DELIVERIES, SERVICE INTERRUPTIONS, PERFORMANCE OR FAILURE OF THE INTERNET OR FORKFILE.COM'S INTERNET SERVICE PROVIDER, OR DELETION OR FAILURE TO SAVE DELIVERIES), EVEN IF FORKFILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE.