



Details Flowers.com User Agreement

THIS AGREEMENT is made and entered into as of the day it is accepted by Details Flowers, LLC, a Florida limited liability company (the "Company") and the individual or entity identifying itself as the "Customer" [on the signature line below] [by acknowledging acceptance of all terms and conditions herein by clicking "Accept" below], on the date hereof, (the "Effective Date"). Company and Customer referred to herein sometimes as the "parties" or individually as a "party."

In light of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Purpose and Scope of Agreement.** The purpose of this Agreement is for Customer to access Company's proprietary online floral and event planning portal (the "System").

2. **Company's Services.** Subject to the further terms and conditions hereof, Company shall provide the following services to Customer (the "Services"):

(a) **Access to the System.** Company shall provide Customer with access to the System, including all planning, invoicing, purchasing, reporting and other capabilities available to customers through the online portal. Access shall be granted via a unique username and password combination.

(b) **Customer Service.** Customer service and assistance with user-interface with the System shall be available during regular business hours, Monday through Friday, 9:00am to 5:00pm, Eastern time, via phone, email or support desk. Requests for assistance received via email will be responded to in the order received, and the Company will make every effort to respond to any email request within one (1) business day.

(c) **Uptime.** Company will strive to achieve a 99% uptime for the System, exclusive of planned maintenance and force majeure events. Company will, where practicable, advise Customer in advance of any scheduled downtime or planned maintenance for the System. When possible, maintenance will be performed outside of regular business hours.

(d) **Details Flowers Service.** Details Flowers service may include customization. Details Flowers reserves the right to change improve and/or update the Details Flowers Service periodically in its sole discretion.

(e) **Professional Services.** Details Flowers may optionally provide to Customer Professional Services. Professional Services may include consultations over the web, in-person training, customization, and integration. A Proposal of Work will be provided to Customer before performance of any Professional Service.

3. **Customer Obligations.** Customer agrees that: (i) the System and Services may only be used for lawful purposes; (ii) it is responsible for maintaining the confidentiality of its account information and for any unauthorized use of its account; (iii) it will not engage in any activity that interferes with or disrupts the System, or the servers and networks related to the Services; (iv) it is solely responsible, at its costs and expense, for maintaining hardware and operating systems necessary to access and utilize the System; (v) it is solely responsible for all costs of internet access necessary to access the System, and that the System will perform best over a high speed internet connection; and (vi) that it will pay the Fees as provided hereunder. Customer agrees that it is responsible for the acts or omissions of its employees and other agents hereunder.

4. **Fees; Payment Terms.** For the Services as contemplated herein, Customer shall pay Company a fee of \$99 per month or \$1,000 annually (the "Fees") depending on the package selected. Company shall [invoice monthly or annually] [require credit card authorization/ACH/etc.]. All amounts that are not timely paid shall bear interest at 1.5% per month (or the highest rate allowable by law, whichever is less). Unless provided otherwise therein all payments are noncancelable and amounts paid are nonrefundable. All pricing terms are confidential, and Customer agrees not to disclose them to any third party.

5. **Term; Termination.** This Agreement shall start on the Effective Date and shall continue in effect for a period of 30 days (the "Initial Term") or Annually. This Agreement shall automatically renew for a additional, successive 1 month or 1 year term/s (each a "Renewal Term," the Initial Term and any Renewal Terms collectively referred to herein as the "Term" of this Agreement). Company may terminate this Agreement immediately upon Customer's material breach of this Agreement, including but not limited to, Customer's failure to timely pay any Fees due. Upon termination, Company shall immediately cease provision of the Services and Customer shall immediately pay any and all amounts due for all Services rendered through the date of termination.

6. **Suspension of Service.** Details Flowers reserves the right to suspend service or terminate this Agreement and Customer access to the Details Flowers service if (a) Customer is in material breach of the Agreement and, in Details Flowers sole judgment, an immediate restriction or suspension is necessary to protect the Details Flowers service, Details Flowers network, or Details Flowers ability to provide services to other customers, or (b) Customer's account is unpaid.

7. **Termination.** *Either party may terminate this Agreement if the other party (1) terminates or suspends its business activities, (2) becomes insolvent, admits in writing its inability to pay debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to control of a trustee, receiver or similar authority, or (3) becomes subject to any bankruptcy or insolvency proceeding, or proceeding involving the protection of or from its creditors, that is not dismissed within sixty (60) days.*

8. **Data Retention.** Details Flowers reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter request access to the Details Flowers Service. Customer acknowledges and agrees that Details Flowers has no obligation to retain Customer Data when an account is suspended or

after expiration or termination of this Agreement, and that such Customer Data may be irretrievably deleted if Customer account is 30 days or more delinquent.

9. **Prohibited Uses.** It shall be deemed a material violation of this Agreement giving rise to Company's right of termination if Customer, directly or through a third party: (i) disseminates malware or other malicious or damaging code (even if unintentionally malicious); (ii) creates a new account to use the Services after Company has terminated this Agreement or Customer's account for any reason; or (iii) engages in any action or practice that reflects poorly on Company or otherwise disparages or damages Company's reputation or goodwill. The existence of the foregoing termination right shall not preclude Company's exercise of any other rights and remedies, at law or in equity, which Company may have.

10. **Software License.** During the term of the Agreement, Company grants Customer a non-exclusive, non-sublicensable, limited license to access the System for the purposes provided under this Agreement. This license shall immediately terminate upon termination of this Agreement.

11. **Content.** All information or material accessible as part of, or through, the Services (including but not limited to any and all content uploaded by Customer, if any)(the "Content") is the sole responsibility of the person from whom such material originated. All Content may be protected by intellectual property rights, which are owned by the provider of the Content (or by third parties). Customer agrees that it will not modify, distribute, copy, sell, or create derivative works based on Content not owned by Customer. Customer acknowledges and agrees that: (i) Company and its licensors own all legal, right, title, and interest in and to the Services, the System, and to the Content created by Company and its licensors, including any intellectual property rights which subsist in the System and Services, including any trademarks, copyrights, and the goodwill associated therewith (whether those rights happen to be registered or not, and wherever in the world those rights might exist)(the "Company IP") and that should Customer ever acquire any right, title, or interest in the Company IP, Customer shall assign all such right, title, or interest to Company or its licensor immediately upon request; and (ii) that Company is in no way responsible for, nor shall have any liability related to, any Content which is not created by Company or its licensors.

12. **License to Customer Data.** Customer shall indemnify, defend and hold Details Flowers, its affiliates, and their respective officers, directors, employees, agents and advisors, harmless from and against any and all liability, damages, costs or expenses (including responsible attorney's fee) that are or may be sustained or incurred by an indemnified party as a result of any asserted claim or claims that the Customer Data infringes or misappropriates the intellectual property right of any person or entity. Customer hereby grants Details Flowers data gathering methods to track statistics about Customer. Data includes, but is not limited to, quantity, location, cost, price, rating, markup, time, demographics, and products; This data allows Details Flowers to offer customer better services including sales of flowers, products, rentals and vase ware and forecasting for our needs, and the customer.

13. **Customer Representations and Warranties.** Customer represents and warrants that: (i) all information provided to Company is true, accurate, correct, and complete; (ii) it has the power and authority to enter into this Agreement; and (iii) its performance of its obligations hereunder does not violate any agreement with any third party; (iv) customer is responsible for all activity occurring under Customer accounts. Customer shall notify Details Flowers immediately of any unauthorized use of any password or account.

14. **Confidentiality.** The term Confidential Information means any material disclosed to Customer by Company and designated in writing as. Customer agrees that it will not disclose the Confidential

Information to any third party and that this Agreement is Confidential Information as contemplated herein. Customer further agrees that, the System and Services, and all proprietary information and trade secrets related thereto, are Confidential Information of Company, regardless of whether or not the same are identified as "Confidential."

15. **Indemnity.** Customer agrees to indemnify, defend, and hold harmless Company, from and against any action brought against Company, by any third party, with respect to any claim, demand, cause of action, debt, or liability, including reasonable attorneys' fees, to the extent that such action is based upon, or in any way related to Customer's breach of any of its representations, warranties, or covenants contained herein, or based on Customer's use of the System or Services, including without limitation, Customer's uploading of any Content to the System.

16. **Limitation on Liability; Disclaimer of Warranties.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, COMPANY HAS NO LIABILITY TO CUSTOMER OR ANY THIRD PARTY. IN NO EVENT WILL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, ARISING FROM OR IN ANY WAY RELATED TO, THIS AGREEMENT, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, COMPANY MAKES NO WARRANTIES HEREUNDER, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM AND THE SERVICES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Customer recognizes that the Internet consists of multiple participating networks that are separately owned and not subject to Details Flowers control. Customer agrees that Details Flowers shall not be liable for damages incurred or sums paid when the services are temporarily or permanently unavailable due to malfunction of, or cessation of, internet services by network(s) or internet service providers not subject to Details Flowers' control, or for transmission errors in, corruption of, or the security of customer information carried on such networks or internet service providers or as a result of the disconnection from or unavailability of any network.

17. **Calculation and Taxation.** Customer agrees that it is solely responsible for calculating and verifying all amounts that are listed on its invoices and that it charges to its customers. Customer further agrees that it is solely responsible for calculating, collecting, and remitting all sales and other taxes charged on products and services that it provides to its customers. Complying with all applicable laws relating to Customer's business and its transactions with its customers is Customer's sole and exclusive responsibility. Customer agrees to indemnify, defend, and hold harmless the Company from and against all claims, demands, causes of action, debts, and liabilities, including reasonable attorneys' fees, that arise from Customer or any third party bringing a claim against the Company relating to amounts that Customer charges or the collection and payment of any taxes by Customer. THE COMPANY UNDERTAKES NO RESPONSIBILITY FOR ANY OF THE MATTERS REFERENCED IN THIS SECTION, NOR DOES IT MAKE ANY REPRESENTATION, WARRANTY, OR COVENANT ABOUT THEM, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY THE COMPANY AND WAIVED BY CUSTOMER.

18. **Survival.** Upon termination of this Agreement, the provisions of paragraphs 8 through 25 shall survive such termination.

19. **Acknowledgment.** Customer acknowledges and agrees that: (1) it has read and understood this Agreement; (2) the terms of this Agreement are fair, reasonable, and not unduly restrictive; and (3) Customer has had the opportunity to confer with legal counsel of its choosing regarding this Agreement prior to executing same.

20. **Entire Agreement.** This Agreement comprises the entire understanding between the parties with respect to, and supersedes any prior understanding or agreement, oral or written, relating to, the subject matter hereof. A writing signed by both parties may only amend this Agreement.

21. **Notices.** All notices and other communication hereunder shall be in writing, shall be addressed to the receiving party's email address as listed above or as a party may designate by notice hereunder, and shall be deemed to have been given at the time that receipt thereof has been acknowledged by electronic confirmation or otherwise.

22. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

23. **Further Assurances.** The parties hereto shall at any and all times, upon request by the other party, or its legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

24. **Waiver.** Failure by any party at any time to require performance by another party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice any party as regards any subsequent action.

25. **Governing Law; Jurisdiction; Venue.** Florida law, without regard to conflicts of laws, shall govern this Agreement. Any proceeding arising out of the parties' relationship shall be brought exclusively in the courts of the State of Florida, County of Volusia or the federal court with subject matter jurisdiction and encompassing the County of Volusia, Florida. Either party may, as a matter of convenience, request the other to execute the Agreement some place other than the State of Florida. In exchange for such convenience, each party hereby knowingly and voluntarily waives any defense it may have to jurisdiction and venue of any action brought on this Agreement, and irrevocably consents and submits to the jurisdiction of, and venue in, the aforementioned courts, and further waives any claim that a proceeding brought therein has been brought in an inconvenient forum.

26. **Attorneys' Fees.** In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorneys' fees, whether incurred during settlement, at trial, in arbitration, on appeal, or in any bankruptcy proceeding.

27. **Assignment; Binding Effect.** Customer may not assign this Agreement without Company's consent; provided however, this Agreement may be assigned to any purchaser of all or substantially all of the assets of Customer, if and only if the provisions of this Agreement are binding in full on the successor.

28. **Force Majeure.** Company shall not be deemed in breach of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted, or prevented by reason of any act of God, natural disaster, act of government, utility outage or any other act or condition beyond Company's reasonable control.

29. **Counterparts; Headings.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement. The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.