

**SAAS SERVICES ORDER FORM**

Customer:	Contact:
Address:	Phone:
EIN:	E-Mail:
<b>Services:</b> Flourish Donor Management Platform hosted on <a href="https://flourishchange.com">https://flourishchange.com</a> (the "Service(s)") as defined in <b>Exhibit A</b> .	
<b>Services Fees:</b> As described in <b>Exhibit B</b>	<b>Initial Service Term:</b> 12 Months
<b>Service Capacity:</b> No limits	
<b>Implementation Services:</b> Company will use commercially reasonable efforts to provide Customer the Services described in <b>Exhibit A</b> hereto and Customer shall pay Company the Onboarding Fee in accordance with the terms herein. <b>Onboarding Fee (one-time):</b> \$ <u>  0  </u>	
<b>Bank Transfers:</b> The Company will automatically initiate wire transfers from its escrow to the Customer, within ten (10) business days, when the Customer's balance in the escrow surpasses their defined balance limit ("Bank Transfer Limit") or at a regular interval ("Bank Transfer Interval") no more frequent than one transfer per thirty (30) days.  <b>Bank Transfer Limit:</b> \$ _____ or <b>Bank Transfer Interval:</b> _____ days	

**SAAS SERVICES AGREEMENT**

This SaaS Services Agreement (“Agreement”) is entered into on \_\_\_\_\_ (the “Effective Date”) between Flourish Change, INC. a Delaware C-Corp (“Company”), and the Customer listed above, \_\_\_\_\_, with a place of business at \_\_\_\_\_ (“Customer”).

This Agreement includes and incorporates the above Order Form, as well as the attached Exhibits and Terms and Conditions which contain, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

By executing a transaction with Flourish Change, INC. for services to be rendered, YOU SIGNIFY YOUR ASSENT AND TO BE BOUND BY THESE TERMS AND CONDITIONS (the "Terms") OF THIS AGREEMENT.

**Address written communications and notices, including address changes, required under this Agreement to:**

**[Company, Inc.]:** Flourish Change, INC.

**[Customer]:** \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. SAAS SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company's standard practice.

### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.3 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including, without limitation, costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of

Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including, but not limited to, administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 The Company shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects

of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### **4. PAYMENT OF FEES**

4.1 Customer will pay Company the then-applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum amount permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

#### **5. TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement for the Initial Service Term shall be for twelve (12) months, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their

nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

5.3 The parties recognize that Company will expend substantial resources to onboard the Customer. In the event that Customer seeks to terminate this Agreement before the end of the term, then the Customer agrees to pay Company a Termination Fee in the amount of the Gross Donation Revenue collected on behalf of the Customer during the prior 6 months or \$10,000, whichever is greater. The Termination Fee shall be due within five (5) business days of Termination. Until the Termination Fee is paid, Company has no obligation to release any records to Customer. Additionally, upon Termination and for twelve (12) months thereafter, the Customer agrees not to: (a) directly or indirectly solicit or encourage any employees to leave the employment of the Company; (b) provide any reports, work-product or analysis performed by the Company to any person or entity which competes with Company; or (c) retain a competitor to perform the same or substantially similar services as the Company.

#### **6. WARRANTY AND DISCLAIMER**

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### **7. INDEMNITY**

7.1 Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. In the event this indemnity is triggered, Company shall have the right to control the defense, hire counsel and shall not be required to settle any claim or lawsuit.

Furthermore, Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Customer's rights hereunder and provide Customer a refund of any prepaid, unused fees for the Service.

7.2 Customer shall indemnify and hold the Company harmless for all claims, lawsuits or damages which exceed the limitation of liability contained in Section 8 below.

## **8. LIMITATION OF LIABILITY**

8.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) THE LESSER OF EITHER ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY OR \$10,000 WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2 Customer warrants and represents that it does and will comply with all laws, rules, regulations and statutes including but not limited to the Telephone Consumer Protection Act, is solely responsible for providing the list of people to be called or texted pursuant to Exhibit C, has prior express consent of all persons or entities who will receive calls or texts pursuant to Exhibit C, has validated that no person or entity is on any DO NOT CALL list. Customer shall hold Company harmless and indemnify it for any claims, lawsuits or disputes for violations of law and/or violations of the Telephone Consumer Protection Act. This indemnity is intended to be construed as broadly as possible and will include the obligation to pay defense costs for counsel chosen at Company's sole election, litigation expenses and any settlement, judgment or damages.

## **9. DISPUTES**

Any dispute between the Parties or arising under the terms of this Agreement, or under any other document or instrument executed in connection with this Agreement, shall be resolved by arbitration, which shall be conducted in Dallas, Texas, in accordance with the then-prevailing JAMS Streamline Arbitration Rules and Procedures, and in accordance with the Expedited Procedures in those Rules before the Honorable Glen Ashworth. If, for any reason, Judge Ashworth is unwilling or cannot serve in the capacity designated herein, then each party shall select one (1) arbitrator and those two (2) arbitrators shall then jointly select a third arbitrator in accordance with JAMS's Streamlined Rules & Procedures. The Parties agree that irreparable damage would occur in the event of any breach of this Agreement by Customer and that the Arbitrator(s) may award injunctive relief, specific performance of the terms hereof, or other equitable relief without prejudice to any other rights and remedies that the Parties may have for a breach of this Agreement at law or in equity. Also, the Parties have specifically agreed that the Arbitrator(s) cannot consider or award punitive, incidental or consequential damages.

## **10. CONSENT TO JURISDICTION; INTERIM RELIEF**

Notwithstanding Section 9 of this Agreement, the Parties agree that (i) irreparable damage would occur in the event of any breach of this Agreement; (ii) the Company shall be entitled to preliminary and/or interim injunctive relief, specific performance of the terms hereof, or other equitable relief in the state and Federal courts of Dallas, Texas, without prejudice to any other rights and remedies that the parties may have for a breach of this Agreement at law or in equity, to enforce the terms of this Agreement; and (iii) Customer waives any challenge or objection to personal jurisdiction in the State of Texas, and agrees that any action or proceeding arising out of or brought to enforce the provisions of this Agreement may be brought in any Federal or state court in Dallas, Texas.

**11. GOVERNING LAW AND CONSENT TO JURISDICTION**

This Agreement shall be construed in accordance with and governed by the laws of the State of Texas, without regard to its conflict of law provisions.

**12. CLASS ACTION WAIVER**

NOTWITHSTANDING THE AGREEMENT TO ARBITRATE, THE CUSTOMER ALSO HEREBY WAIVES ANY PARTICIPATION IN A CLASS ACTION AS A CLASS MEMBER OR AS A REPRESENTATIVE ON BEHALF OF A CLASS. CUSTOMER SHALL ONLY PARTICIPATE IN LITIGATION AS AN INDIVIDUAL ENTITY AND WILL NOT COMBINE ANY CLAIMS WITH ANY OTHER PERSON OR ENTITY.

**13. FORCE MAJEURE**

In the event that the Company is unable to perform any of its obligations under this Agreement because of natural disaster, actions or decrees of governmental bodies, labor dispute, electric power failure, communication line failure or other cause beyond the control of the Company (hereinafter, "Force Majeure Event"), Company will immediately give notice to Customer and will use best efforts to resume performance as soon as practicable. Upon the occurrence of a Force Majeure Event and for so long as the Force Majeure Event continues, all affected obligations under this Agreement will be suspended.

**14. ENTIRE AGREEMENT**

This Agreement, including appendices attached hereto, embodies the entire agreement between the Parties, and supersedes all prior agreements or understandings, whether written or oral, between the Parties, with respect to the subject matter hereof. No changes in, additions to, or waivers of, the terms and conditions of the Agreement will be binding upon any Party, unless approved in writing by such Party's authorized representative.

**15. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any

kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

I have read the foregoing Terms and Conditions. By clicking "Continue," I accept, agree, and consent to all Terms and Conditions as set forth herein and in the attached exhibits.

## EXHIBIT A

Services the Company will provide under the donor platform and brand Flourish:

1. Donor transaction handling is defined as
  - a. Donor spend tracking
  - b. Initializing ACH bank transfers from the user to the Company for small sums no larger than \$25
  - c. Balance reporting to the Customer of pending and realized donations
  - d. Aggregating donor transfers to a larger sum than the **Bank Transfer Limit**, as defined above, or for the period defined as the **Bank Transfer Interval**, as defined above, before initializing an automated transfer to the Customer
  - e. Providing invoices to the Customer to indicate how donors want their money to be spent by indicating the % split of money across projects, if applicable
  - f. Providing a credit card one time donation platform
2. Donor tax forms to be approved by January 31 annually by the Customer and distributed no later than the last day in February as PDF's to donor email addresses.
  - a. Donor tax forms will contain the total amount donated by the donor to the Customer throughout the trailing calendar year
  - b. Customer Tax ID number
  - c. It will be sent as a PDF to donor email addresses on Customer letterhead
3. Provide a texting platform that enables the foodbank to send one-time, scheduled, and recurring messages to people.
  - a. Provide a shared or dedicated short code
  - b. Send SMS or MMS messages from a web interface to cell phones
  - c. Access a dashboard that shows reports to include, but not limited to, clicks, deliverability and poll results
  - d. Provide an inbox where a Customer team member can respond to messages individually

## EXHIBIT B

“**Fees**” means the amount that the Company will charge the Customer.

“**Gross Donation Revenue**” means the amount charged to the donor before deduction of any processing fees or expenses.

“**Net Donation Revenue**” means the **Gross Donation Revenue** less **Fees**.

**Fees** will automatically be deducted from the payment based on the **Gross Donation Revenue**, processed in the following manner:

1. \$0 per month for use of the **Services**.
2. 8% of **Gross Donation Revenue** will be charged for any transaction processed in **Gross Donation Revenue** per calendar month using the **Services**.
3. SMS or MMS messages are charged on a per message basis in accordance to **Exhibit C**

After **Fees** are deducted, the **Net Donation Revenue** will be transmitted to Customer, when the Customer’s **Net Donation Revenue** reaches the defined **Bank Transfer Limit** as defined on page 1 of this agreement and transferred within ten (10) business days.



**EXHIBIT C**

<b>US Account -- Shared Short Code</b>						
<b>Total Monthly Messages</b>	<b>Cost per message</b>	<b>Total Monthly Charges</b>	<b>Annual Discount</b>	<b>Annual cost per</b>	<b>Annual commitment cost</b>	<b>Total Messages</b>
20,000	0.05	\$1,000.00	20%	0.04	\$9,600.00	240,000
100,000	0.046	\$4,583.33	20%	0.037	\$44,000.00	1,200,000
225,000	0.044	\$9,843.75	20%	0.035	\$94,500.00	2,700,000
300,000	0.042	\$12,500.00	20%	0.033	\$120,000.00	3,600,000
500,000	0.038	\$18,750.00	20%	0.030	\$180,000.00	6,000,000
1,000,000	0.021	\$20,833.33	20%	0.017	\$200,000.00	12,000,000

<b>US Account --Dedicated Short Code</b>						
<b>Total Monthly Messages (Min. Commitment)</b>	<b>Cost per message</b>	<b>Total Monthly Charges</b>			<b>Annual commitment cost</b>	<b>Total Messages</b>
75,000	0.015	\$1,125.00			\$0.00	900,000
1,000,000	0.0135	\$13,500.00			\$0.00	12,000,000
5,000,000	0.01125	\$56,250.00			\$0.00	60,000,000
10,000,000	0.0075	\$75,000.00			\$0.00	120,000,000

<b>Dedicated code</b>	<b>Type</b>	<b>Length</b>	<b>Annual Cost</b>
Provision & Application(SMS only)	Required	1 time	\$3,000
Provision & Application(MMS)	Optional	1 time	\$3,500
Non-Vanity Short Code	Required	12 months	\$7,500
Vanity Short Code	Optional	12 months	\$15,000
Flourish Service Retainer	Required	Monthly	\$200

<b>Add ons</b>	<b>Monthly Cost</b>
Keyword	\$50