

Last Revised: March 17, 2021

## TERMS OF USE

### INTRODUCTION

These Terms of Use (the “**Terms**” or “**this Agreement**”) are a legal agreement between you and Mimi.Care, Inc., d/b/a Mimi® (“**Mimi**”, “**we**”, “**our**”, or “**us**”) governing your access to and use of the Company’s website located at <http://www.mimi.care/> (the “**Site**”) and the services which Company agrees to provide to you in connection with the Site (the “**Services**”).

If you are accessing the Site or using the Service on behalf of a third party that has entered into a separate agreement with Mimi in connection with the Services (“**Services Agreement**”), your use of the Site and Services will also be subject to the terms and conditions of the Services Agreement.

BY REGISTERING FOR THE SITE OR SERVICE, OR BY OTHERWISE ACCESSING THE SITE OR USING ANY OF THE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS AND THE CODE OF CONDUCT.

**1. PRIVACY.** Mimi respects the privacy of its users. Mimi collects, uses and discloses information about you in accordance with the Mimi Privacy Policy <http://www.mimi.care/privacy> (“**Privacy Policy**”). You and your family’s privacy are very important to Mimi. We do not collect personally identifiable information from any child without verifiable parental consent. We do not share your information except under certain circumstances as outlined in the Privacy Policy. You understand and agree that, notwithstanding any measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to confidential information. Accordingly, Mimi cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

**2. REGISTRATION.** You may access certain online features of the Services through your account on the Site (your “**Account**”). You may log into your Account using a unique username and password. You are responsible for safeguarding your password and you agree not to disclose your password to any third party. You are solely responsible for any actions taken under your username. You agree that the information that you provide to Mimi about yourself upon registration of your Account, and at all other times, (“**User Data**”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the User Data to ensure that it remains true, accurate, current and complete. You may not impersonate any other person or use a username or password that you are not authorized to use. Mimi reserves the right to require you to change your password for any reason at any time. If you become aware of any unauthorized use of your Account, you agree to notify Mimi immediately at [privacy@mimi.care](mailto:privacy@mimi.care).

**3. YOUR CONTENT AND DERIVATIVE WORKS.** In connection with your access to, or use of, the Site or the Services, you may have the opportunity upload to the Site certain information data documents, photos, website links and other materials (“**Pre-Existing Content**”). As between you and Company, you remain the owner of all Pre-Existing Content that you make available in connection with the Services. You unconditionally grant to Mimi all rights to your Pre-Existing Content necessary to perform the Services. You represent and warrant to Mimi that you have all rights necessary to provide the license and make the Pre-Existing Content available on the Site and that you are the owner of the Pre-Existing Content. You grant Mimi full authority to develop Derivative Works using the Site and Services based on the Pre-Existing Content, whether made by Mimi staff or by others, including you, using the Site and Services. You acknowledge and agree that all Derivative Works developed using the Site and Services shall belong solely to Mimi and you shall have a non-exclusive license to

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use the Derivative Works through the Site and Services. For the purposes of these Terms, “**Derivative Works**” shall mean: (i) for material subject to copyright, registered or unregistered design protection, any work which is based on Pre-Existing Content, such as revision, modification, improvement, upgrades, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted using the Site and Services; and (ii) for material subject to trade secret protection, any new material, information or data relating to and derived from the Pre-Existing Content using the Site and Services, including new material which may be protected by copyright, patent or other proprietary right, and, with respect to each of the above, the preparation and/or use of which, in the absence of this Agreement or other authorization from the owner, would constitute infringement under applicable law. Notwithstanding anything in the foregoing, to the extent you have a separate Master Services Agreement with Mimi governing your use of the Site and Services, in the event of any conflict between such Master Services Agreement and these Terms, the Master Services Agreement shall govern.

**4. REVIEW OF CONTENT AND MATERIALS.** We may review your conduct and content for compliance with these Terms and our Code of Conduct. However, we have no obligation to do so. We aren’t responsible for your compliance with these Terms or the Code of Conduct, or any other party’s compliance with these Terms or the Code of Conduct.

**5. THIRD PARTY SOFTWARE AND LINKING.** Although we or our users may make software, hyperlinks, and other products of third-party companies available to you, your use of such products is subject to the respective terms and conditions imposed by the third party owning, manufacturing or distributing such products, and the agreement for your use will be between you and such third party. Mimi makes no warranty with regard to the products or websites of any other entity. Mimi has no control over the content or availability of any third-party software or website. In particular, (a) Mimi makes no warranty that any third-party software you download or web site you visit will be free of any contaminating or destructive code, such as viruses, worms or Trojan horses and (b) it is your responsibility to become familiar with any web site's privacy and other policies and terms of service, and to contact that site's webmaster or site administrator with any concerns.

**6. SUSPENSION AND TERMINATION.** Mimi reserves the right to suspend, modify, or terminate your access to and use of the Site and Services, at any time, without notice. Further, you agree that Mimi shall not be liable to you or any third party for any termination, modification, or suspension of your access to the Site or Services.

**7. DISCLAIMERS.**

**7.1 THE SERVICES AVAILABLE THROUGH THE SITE ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND WITHOUT WARRANTIES OF ANY KIND. MIMI EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE OR SERVICES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

**7.2 MIMI, AND ITS PERSONNEL, ARE NOT ACTING AS LAWYERS OR FINANCIAL PROFESSIONALS IN PROVIDING THE SERVICES, AND THE SERVICES SHOULD NOT BE TREATED AS A SUBSTITUTE OR REPLACEMENT FOR LAWYERS OR FINANCIAL PROFESSIONS. MIMI CANNOT AND DOES NOT PROVIDE ANY KIND OF ADVICE, EXPLANATION, OPINION, OR RECOMMENDATION ABOUT POSSIBLE LEGAL RIGHTS, REMEDIES OR STRATEGIES. NOR DOES MIMI PROVIDE ANY FINANCIAL OR TAX PLANNING METHODS OR STRATEGIES. COMMUNICATIONS BETWEEN YOU AND MIMI ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE.**

**8. PROPRIETARY AND PRIVACY PROTECTION FOR OTHER USERS’ CONTENT ON THE SITE.** Mimi hereby notifies you that all the information, content, image files, software and materials on the Site may be protected by U.S.

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and international copyright and other intellectual property laws and by other applicable laws, including privacy laws. You may not copy or distribute such material without the written consent of Mimi.

**9. INDEMNITY.** You agree to indemnify, and hold Mimi, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with (a) your access to or use of the Site or Services; (b) your violation of these Terms; (c) your violation of any third party right, including without limitation any intellectual property right or any publicity, confidentiality, property or privacy right; (d) any claim that your use of the Site or Services caused damage to a third party, or (e) any incorrect or fraudulent statements or information you provide in connection with the Services.

**10. LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR ANY LIABILITY FOR MIMI'S FRAUD, FRAUDULENT MISREPRESENTATION, OR GROSS NEGLIGENCE, IN NO EVENT WILL MIMI, ITS AFFILIATES, SUPPLIERS OR DISTRIBUTORS BE LIABLE FOR: (A) ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR (B) ANY LOSS OF USE, DATA, BUSINESS, OR PROFITS, REGARDLESS OF LEGAL THEORY.

THIS LIMITATION APPLIES REGARDLESS OF WHETHER OR NOT MIMI OR ANY OF ITS AFFILIATES HAS BEEN WARNED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

ADDITIONALLY, MIMI, ITS AFFILIATES, SUPPLIERS AND DISTRIBUTORS WILL NOT BE LIABLE FOR AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICES FOR MORE THAN THE GREATER OF TWENTY DOLLARS (\$20) OR THE AMOUNTS PAID BY YOU TO MIMI FOR THE PAST TWELVE (12) MONTHS OF THE SERVICES IN QUESTION.

Some places don't allow the types of limitations in this paragraph, so they may not apply to you.

## **11. GENERAL.**

**11.1 Modification.** Mimi may modify these Terms at any time. Modifications become effective immediately upon your first access to or use of the Site or Services after the "Last Revised" date at the top of these Terms. Your continued access to or use of the Site or Services after the modifications have become effective will be deemed your conclusive acceptance of the modified Terms. If you do not agree with the modifications, do not access or use the Site or Services.

**11.2 Applicable Law and Dispute Resolution.** These Terms shall be governed by the laws of the State of Delaware<sup>1</sup> without giving effect to any conflict of laws principles that may require the application of the law of another jurisdiction. If you believe that Mimi has not adhered to these Terms, please contact us by e-mail at [privacy@mimi.care](mailto:privacy@mimi.care) do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. If you and Mimi are unable to reach a resolution to the dispute, you and Mimi will settle the dispute exclusively under the rules of the American Arbitration Association ([www.adr.org](http://www.adr.org)) at its Denver, Colorado office. Any election to arbitrate by one party will be final and binding on the other. YOU UNDERSTAND THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. YOU AND MIMI AGREE THAT ANY ARBITRATION WILL BE LIMITED TO THE DISPUTE BETWEEN MIMI AND YOU INDIVIDUALLY. YOU ACKNOWLEDGE AND AGREE THAT YOU AND MIMI ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Mimi otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not

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<sup>1</sup> Is this okay?

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otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the use of the Site or the Services or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred.

**11.3 Contact.** Mimi is located in Denver, Colorado. Any questions, comments or suggestions, including any report of violation of these Terms should be provided to the Administrator as follows:

By E-mail: [privacy@mimi.care](mailto:privacy@mimi.care)  
By Postal Mail: Mimi.Care, Inc.  
6280 East Appleton Court  
Denver, CO 80112

**11.4 Entire Agreement.** These Terms, along with any other applicable agreement referenced herein, constitutes the entire agreement between you and Mimi and govern your use of the Site and the Services, superseding any prior agreements between you and Mimi. The failure of Mimi to exercise or enforce any right or provision of these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is found by a court of competent jurisdiction to be invalid, you and Mimi nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms shall remain in full force and effect.

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## CODE OF CONDUCT

This Code of Conduct is a part of the Terms of Use governing your access to, and use of, the Services provided by Mimi. Capitalized terms used but not disclosed in this Code of Conduct have the meaning provided in the Terms of Use.

You agree not to misuse the Services or help or encourage any other party to misuse the Services. For example, and without limitation, you may not:

- interfere, disrupt or attempt to gain unauthorized access to other accounts on the Site or any other computer network;
- breach or otherwise circumvent any security or authentication measures;
- circumvent storage space limits
- create user accounts by automated means or under fraudulent or false pretenses;
- create or transmit unsolicited electronic communications such as spam to users or promote any products or services;
- sell the Services unless specifically authorized to do so;
- harass, threaten or intentionally embarrass or cause harm or distress to another person or group;
- distribute, upload, or otherwise make available any Content or other materials that: (a) are defamatory, abusive, harassing, threatening, or an invasion of a right of privacy of another person; (b) are bigoted, hateful, or racially or otherwise offensive; (c) are illegal or encourage or advocate illegal activity; (d) infringe or violate the rights of any party (e) are violent, vulgar, obscene, pornographic or otherwise sexually explicit; or (f) harm or can reasonably be expected to harm any person or entity;
- collect and publish any information about any of our users;
- adapt, modify or reverse engineer any portion of the Services or the Site;
- use any spider, robot, retrieval application, or any other device to retrieve any portion of the Site;
- disseminate, store or transmit viruses, worms, Trojan horses or other malicious code or program;
- encourage conduct in connection with the Services that would constitute a criminal or civil offense;
- violate any applicable federal, state, local or international law or regulation;
- exploit any person;
- invade the privacy of any person, including but not limited to submitting personally identifying or otherwise private information about a person without their consent;
- submit false or misleading information to Mimi or other users;
- engage in any other activity deemed by Mimi to be in conflict with the spirit of the Terms, the Privacy Policy or this Code of Conduct; or
- attempt to do any of the foregoing or encourage or enable any third party to do any of the foregoing.