

WEBSITE TERMS & CONDITIONS
VERSION 1.0
LAST REVISED ON: MARCH 27, 2020

The website located at www.middlemist.co (the “**Site**”) is a copyrighted work belonging to Middlemist, LLC (“**Company**”, “**us**”, “**our**”, and “**we**”). Certain features of the Site may be subject to additional guidelines, terms, or rules, which will be posted on the Site in connection with such features. All such additional terms, guidelines, and rules are incorporated by reference into these Terms.

THESE TERMS AND CONDITIONS (THESE “**TERMS**”) SET FORTH THE LEGALLY BINDING TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SITE. BY ACCESSING OR USING THE SITE, OR OTHER RELATED ONLINE SERVICES OFFERED BY THE COMPANY (COLLECTIVELY, THE “**SERVICES**”) YOU ARE ACCEPTING THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THESE TERMS (ON BEHALF OF YOURSELF OR THE ENTITY THAT YOU REPRESENT). YOU MAY NOT ACCESS OR USE THE SITE OR ACCEPT THE TERMS IF YOU ARE NOT AT LEAST 18 YEARS OLD. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THESE TERMS, DO NOT ACCESS AND/OR USE THE SITE, PURCHASE GOODS USING THE SERVICES, OR ENTER INTO ANY TRANSACTIONS ON THE SERVICE WITH THE COMPANY.

THESE TERMS IMPOSE MANDATORY ARBITRATION (SECTION 9.2) ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMIT THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

1. ACCOUNTS

1.1 Account Creation. In order to use certain features of the Site, you must create an account (“**Account**”) and provide certain information about yourself as prompted by the account registration form. You represent and warrant that: (a) all required information you submit is truthful and accurate; (b) you will maintain the accuracy of such information. You may delete your Account at any time, for any reason, by following the instructions on the Site. Company may suspend or terminate your Account in accordance with Section 8.

1.2 Account Responsibilities. You are responsible for maintaining the confidentiality of your Account login information and are fully responsible for all activities that occur under your Account. You agree to immediately notify Company of any unauthorized use, or suspected unauthorized use of your Account or any other breach of security. Company cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

2. ACCESS TO THE SITE

2.1 License. Subject to these Terms, Company grants you a non-transferable, non-exclusive, revocable, limited license to use and access the Site solely for your own personal use.

2.2 Certain Restrictions. The rights granted to you in these Terms are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site, whether in whole or in part, or any content displayed on the Site; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site; (c) you shall not access the Site in order to build a similar or competitive website, product, or service; and (d) except as expressly stated herein, no part of the Site may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Unless otherwise indicated, any future release, update, or other addition to functionality of the Site shall be subject to these Terms. All copyright and other proprietary notices on the Site (or on any content displayed on the Site) must be retained on all copies thereof.

2.3 Modification. Company reserves the right, at any time, to modify, suspend, or discontinue the Site (in whole or in part) with or without notice to you. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Site or any part thereof.

2.4 No Support or Maintenance. You acknowledge and agree that Company will have no obligation to provide you with any support or maintenance in connection with the Site.

2.5 Ownership. You acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Site and its content are owned by Company or Company's suppliers. Neither these Terms (nor your access to the Site) transfers to you or any third party any rights, title, or interest in or to such intellectual property rights, except for the limited access rights expressly set forth in Section 2.1. Company and its suppliers reserve all rights not granted in these Terms. There are no implied licenses granted under these Terms.

3. INDEMNIFICATION. You agree to indemnify and hold Company (and its officers, employees, and agents) harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Site, (b) your violation of these Terms or (c) your violation of applicable laws or regulations. Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without the prior written consent of Company. Company will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

4. TERMS AND CONDITIONS OF SALE

4.1 Products And Pricing. All products listed on the Site ("**Products**"), their descriptions, and their prices are each subject to change. Company reserves the right, at any time, to modify, suspend, or discontinue the sale of any Product with or without notice. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuance of any Product (except as set forth in Section 8). In the event a Product is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or Product information received from our suppliers, we shall have the right to decline or cancel any such orders, whether or not the order has been confirmed and/or your credit card charged. If your credit card, debit card, or Square account has already been charged for the order and we cancel your order, we shall immediately issue a refund to your credit card, debit card, or Square account in the amount of the charge.

4.2 Orders. When you place an order, you are making an offer to purchase, and such offer is subject to our acceptance. Your receipt of an order confirmation from us does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell; we are simply confirming our receipt of your order. We reserve the right at any time after receipt of your order to accept or modify or decline or cancel your order (in whole or in part) for any reason. We may require additional verifications or information before accepting any order. In the event you are purchasing a gift order, you will be required to accurately provide the gift recipient's name and shipping address and a phone number where either you or the gift recipient can be reached. For orders that are shipped via third-party couriers, your order is not accepted until we send you shipping information for the order (or the accepted portion thereof). Notwithstanding the foregoing, you agree that, if we cancel all or a part of your order, your sole and exclusive remedy is either that (a) we will issue a refund to your credit card, debit card, or Square account in the amount charged for the cancelled portion (if your credit card, debit card, or Square account has already been charged for the order) or (b) we will not charge your credit card, debit card, or Square account for the cancelled portion of the order.

4.3 Payment Terms; Subscriptions.

(a) Payment Terms. For each Product you order on the Site, you agree to pay the price applicable for the Product as of the time you submitted your order ("**Product Price**"), the delivery fees for the delivery service you select ("**Delivery Fees**"), and any applicable Taxes (defined below). You will be solely responsible for payment of all taxes (other than taxes based on Company's income), fees, duties, and other governmental charges, and any related penalties and interest, arising from the Product purchase (collectively, the "**Taxes**") not withheld by Company. All payments are non-refundable (except as expressly set forth in this Section 4). Without limiting other remedies, we reserve the right to charge a late fee on all past due payments equivalent to the lesser of one and a half

percent (1.5%) per month on the unpaid balance or the highest rate allowed by law. You agree to pay for all collection costs, attorneys fees, and court costs incurred in the collection of past due amounts. Acceptable forms of payment are credit card, debit card, and in some instances, Square, or other payment options at Company's sole discretion.

(b) Subscription. If you purchase a subscription for repeated deliveries or other ongoing services (a "**Service Subscription**"), then you hereby authorize the Company and its service providers to bill your credit card for the amounts and at the intervals described on our Service (or at approximately those intervals, to accommodate for holidays and other irregularities) until you affirmatively terminate your Service Subscription, until the end of the Service Subscription period, or indefinitely if you decide to purchase an open-ended Service Subscription. In cases where your credit card expires, is canceled, is over the limit, or is otherwise declined for any reason, we will not continue to deliver Products or renew your Service Subscription, though we may, but are not obligated to, contact you to notify you of the issue.

(i) When you purchase a Service Subscription, you will be able designate the frequency of deliveries for specific products, as well as the pre-paid period of the overall subscription (e.g., weekly, biweekly, or monthly deliveries, etc.).

(ii) At the expiration of the pre-paid period of your Service Subscription, your Service Subscription will automatically renew at the frequency referenced on your subscription page (or if not designated, then monthly) and you will be charged applicable subscription and delivery fees until you affirmatively cancel your subscription or we terminate it. You may cancel your subscription at any time by emailing care@middlemist.co

(iii) We reserve the right to adjust pricing for any subscription in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in this Agreement, any price changes to your Service Subscription will take effect on the next renewal date.

4.4 Shipping Policy. We deliver within the state of Colorado. We do not deliver to PO Boxes. Any delivery times provided by Company are estimates. All delivery areas are subject to change, at our sole discretion. All orders that are shipped may be shipped using third-party couriers. Title and risk of loss for any purchases of Products pass to you upon delivery to our courier, or if shipped by Company, title and risk of loss passes to you upon delivery to you. We reserve the right to ship partial orders (at no additional cost to you), and the portion of any order that is partially shipped may be charged at the time of shipment. Unless as a result of events outside of our direct control, orders of goods purchased by you through the Service will be delivered within the time period specified for the delivery method you have selected. All orders are shipped using third-party couriers. The earliest delivery date available for an order is as indicated for the item on the Service. Shipping is not available for delivery on Saturdays, Sundays, or Mondays, unless otherwise indicated. Online tracking may be available at our courier's website (for example, FedEx), though we make no warranties regarding its availability because it is not under our control. While deliveries may be scheduled for a specified arrival, we cannot guarantee delivery by any specific time. No recipient signature is typically required for deliveries of our products. The courier may leave the package at the address whether the recipient or another person is available or not. **We strongly encourage recipients to be at the delivery location to receive the flowers as flowers that remain outside are more likely to have a reduced quality and a shortened life, and may wilt and die.** Product purchases will be subject to a shipping fee that is clearly stated prior to completing purchase. As a thank you for your continued business, subscription and scheduled reoccurring deliveries may receive discounted shipping.

4.5 Return Policy.

(a) Refunds and Cancellations. Your purchase is final and nonrefundable. No Product may be returned or refunded except as outlined in Section 4(d).

(b) Prepaid and Gift Subscriptions are one-time transactions that cannot be cancelled or refunded.

(c) Exchanges. We do not accept any Product exchanges.

(d) **Damaged Products.** If the Product arrives damaged (“**Damaged Product**”), Company will provide a replacement product if the original (damaged) product is: (1) returned by you and received by Company; or (2) a photograph showing damage is received by Company within two (2) calendar days of original shipment date. Provided that Company confirms that your Product was a Damaged Product and was returned or otherwise demonstrated to have arrived damaged in accordance with this Agreement, your sole and exclusive remedy is that we will send a replacement Product. In the event that the Company is unable to provide a replacement Product, or if replacement is not requested by Customer, the Company may at its sole discretion elect to refund the credit card, debit card, or Square account used for purchase in the original amount of the purchase. If a replacement Product is issued, we cannot guarantee that the replacement Product will contain exactly the contents or will have the same theme as the originally provided Product.

4.6 Promotions. Please read the rules that accompany each special offer, coupon, discount, contest and sweepstakes that we may offer or conduct. Special offers, coupons, or discounts cannot be used in conjunction with other offers. Limit one promotion per order. Promotions are valid for a limited time only. The Company reserves the right to modify, cancel, deactivate, or delete any or all promotions at any time, for any reason at our sole discretion.

4.7 Promo Code and Custom URL. The Company may provide a discount or credit for referrals via a User promo code and associated custom URL. We may refuse to provide such discount or credit for any reason including, but not limited to, fraud, actual or expected financial hardship, or any other reason at our sole discretion. Publishing User promo code and custom URL via, but not limited to, mass messages to individuals the User does not personally know, automated systems or bots, coupon websites, or other third-party websites constitutes a breach of the Terms and may result in, but not limited to, forfeiture of all acquired discounts and credits, suspension or termination of User account. Should a user abuse a promo code, custom URL, or referral through fraudulent activities such as referring oneself, creating multiple accounts or other means that constitute theft and/or fraud, we may notify the authorities, and you may be prosecuted under statutes, including 17 U.S.C. § 506 No Electronic Theft Act, 18 U.S.C. § 1029 Fraud and Related Activity in Connection with Access Devices, 18 U.S.C. § 1030 Fraud and Related Activity in Connection with Computers, or other similar laws or statutes. We reserve the right to charge any payment method on file the full retail price of all deliveries under any account deemed to be fraudulent, and these charges may include any amounts previously discounted in a previous promotion.

4.8 No Delivery to Children. In furtherance of our policy of not collecting personal information from children under the age of 13, users are not allowed to give the Company the personal information of any children under the age of 13 for delivery or shipping purposes or any other reason.

5. THIRD-PARTY LINKS & ADS; OTHER USERS

5.1 Third-Party Links & Ads. The Site may contain links to third-party websites and services, and/or display advertisements for third parties (collectively, “**Third-Party Links & Ads**”). Such Third-Party Links & Ads are not under the control of Company, and Company is not responsible for any Third-Party Links & Ads. Company provides access to these Third-Party Links & Ads only as a convenience to you, and does not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Links & Ads. You use all Third-Party Links & Ads at your own risk, and should apply a suitable level of caution and discretion in doing so. When you click on any of the Third-Party Links & Ads, the applicable third party’s terms and policies apply, including the third party’s privacy and data gathering practices. You should make whatever investigation you feel necessary or appropriate before proceeding with any transaction in connection with such Third-Party Links & Ads.

5.2 Other Users. Your interactions with other Site users are solely between you and such users. You agree that Company will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Site user, we are under no obligation to become involved.

5.3 Release. You hereby release and forever discharge the Company (and our officers, employees, agents, successors, and assigns) from, and hereby waive and relinquish, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or that relates directly or indirectly to, the Site (including any interactions with, or act or omission of, other Site users or any Third-Party Links & Ads). IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL

CODE SECTION 1542 IN CONNECTION WITH THE FOREGOING, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

6. DISCLAIMERS

THE SITE, AND THE PRODUCTS OFFERED FOR SALE ON IT, AND THE TRANSACTIONS CONDUCTED THROUGH IT, ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND COMPANY (AND OUR SUPPLIERS) EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, NON-INFRINGEMENT AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. THE SERVICE MAY INCLUDE INACCURACIES, MISTAKES, OR TYPOGRAPHICAL ERRORS. WE DO NOT WARRANT THAT THE CONTENT WILL BE UNINTERRUPTED OR ERROR FREE. WE (AND OUR SUPPLIERS) MAKE NO WARRANTY THAT SITE, AND THE PRODUCTS OFFERED FOR SALE ON IT, AND THE TRANSACTIONS CONDUCTED THROUGH IT, WILL MEET YOUR REQUIREMENTS, WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS, OR WILL BE ACCURATE, RELIABLE, FREE OF VIRUSES OR OTHER HARMFUL CODE, COMPLETE, LEGAL, OR SAFE. IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SITE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF FIRST USE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

7. LIMITATION ON LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY (OR OUR SUPPLIERS) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATING TO THESE TERMS OR YOUR USE OF, OR INABILITY TO USE, THE SITE, OR THE PRODUCTS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO A MAXIMUM OF FIFTY US DOLLARS (U.S. \$50). THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT. YOU AGREE THAT OUR SUPPLIERS WILL HAVE NO LIABILITY OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

8. TERM AND TERMINATION.

8.1 Subject to this Section, this Agreement and these Terms will remain in full force and effect while you used the Site until terminated. You may terminate this Agreement by discontinuing your use of the Service and affirmatively cancelling all accounts, features or services to which you are subscribed. You will continue to incur and

be responsible for any recurring subscription fees associated with any account, feature or service until you have affirmatively terminated each such account, feature or service in accordance with all applicable terms.

8.2 We may suspend or terminate your rights to use the Site (including your Account) at any time for any reason at our sole discretion, including for any use of the Site in violation of these Terms. Upon termination of your rights under these Terms, your Account and right to access and use the Site will terminate immediately. Company will not have any liability whatsoever to you for any termination of your rights under these Terms, including for termination of your Account. Even after your rights under these Terms are terminated, the following provisions of these Terms will remain in effect: Sections 2.2 through 2.5 and Sections 3 through 9.

9. GENERAL

9.1 Changes. These Terms are subject to occasional revision, and if we make any substantial changes, we may notify you by sending you an e-mail to the last e-mail address you provided to us (if any), and/or by prominently posting notice of the changes on our Site. You are responsible for providing us with your most current e-mail address. In the event that the last e-mail address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the e-mail containing such notice will nonetheless constitute effective notice of the changes described in the notice. Any changes to these Terms will be effective upon the earlier of thirty (30) calendar days following our dispatch of an e-mail notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Site. Continued use of our Site following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes.

9.2 Dispute Resolution. *Please read this Arbitration Agreement carefully. It is part of your contract with Company and affects your rights. It contains procedures for MANDATORY BINDING ARBITRATION AND A CLASS ACTION WAIVER.*

(a) Applicability of Arbitration Agreement. All claims and disputes (excluding claims for injunctive or other equitable relief as set forth below) in connection with the Terms or the use of any product or service provided by the Company that cannot be resolved informally or in small claims court shall be resolved by binding arbitration on an individual basis under the terms of this Arbitration Agreement. Unless otherwise agreed to, all arbitration proceedings shall be held in English. This Arbitration Agreement applies to you and the Company, and to any subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or goods provided under the Terms.

(b) Notice Requirement and Informal Dispute Resolution. Before either party may seek arbitration, the party must first send to the other party a written Notice of Dispute (“**Notice**”) describing the nature and basis of the claim or dispute, and the requested relief. A Notice to the Company should be sent to: 3440 Youngfield Street #234, Wheat Ridge, Colorado 80033. After the Notice is received, you and the Company may attempt to resolve the claim or dispute informally. If you and the Company do not resolve the claim or dispute within thirty (30) days after the Notice is received, either party may begin an arbitration proceeding. The amount of any settlement offer made by any party may not be disclosed to the arbitrator until after the arbitrator has determined the amount of the award, if any, to which either party is entitled.

(c) Arbitration Rules. Arbitration shall be initiated through the American Arbitration Association (“**AAA**”), an established alternative dispute resolution provider (“**ADR Provider**”) that offers arbitration as set forth in this Section. If AAA is not available to arbitrate, the parties shall agree to select an alternative ADR Provider. The rules of the ADR Provider shall govern all aspects of the arbitration, including but not limited to the method of initiating and/or demanding arbitration, except to the extent such rules are in conflict with the Terms. The AAA Consumer Arbitration Rules (“**Arbitration Rules**”) governing the arbitration are available online at www.adr.org or by calling the AAA at 1-800-778-7879. The arbitration shall be conducted by a single, neutral arbitrator. Any claims or disputes where the total amount of the award sought is less than Ten Thousand U.S. Dollars (US \$10,000.00) may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount of the award sought is Ten Thousand U.S. Dollars (US \$10,000.00) or more, the right to a hearing will be determined by the Arbitration Rules. Any hearing will be held in a location within 100 miles of your residence, unless you reside outside of the United States, and unless the parties

agree otherwise. If you reside outside of the U.S., the arbitrator shall give the parties reasonable notice of the date, time and place of any oral hearings. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. If the arbitrator grants you an award that is greater than the last settlement offer that the Company made to you prior to the initiation of arbitration, the Company will pay you the greater of the award or \$2,500.00. Each party shall bear its own costs (including attorney's fees) and disbursements arising out of the arbitration and shall pay an equal share of the fees and costs of the ADR Provider.

(d) *Additional Rules for Non-Appearance Based Arbitration.* If non-appearance based arbitration is elected, the arbitration shall be conducted by telephone, online and/or based solely on written submissions; the specific manner shall be chosen by the party initiating the arbitration. The arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise agreed by the parties.

(e) *Time Limits.* If you or the Company pursue arbitration, the arbitration action must be initiated and/or demanded within the statute of limitations (i.e., the legal deadline for filing a claim) and within any deadline imposed under the AAA Rules for the pertinent claim.

(f) *Authority of Arbitrator.* If arbitration is initiated, the arbitrator will decide the rights and liabilities, if any, of you and the Company, and the dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages, and to grant any non-monetary remedy or relief available to an individual under applicable law, the AAA Rules, and the Terms. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and the Company.

(g) *Waiver of Jury Trial.* THE PARTIES HEREBY WAIVE THEIR CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY, instead electing that all claims and disputes shall be resolved by arbitration under this Arbitration Agreement. Arbitration procedures are typically more limited, more efficient and less costly than rules applicable in a court and are subject to very limited review by a court. In the event any litigation should arise between you and the Company in any state or federal court in a suit to vacate or enforce an arbitration award or otherwise, YOU AND THE COMPANY WAIVE ALL RIGHTS TO A JURY TRIAL, instead electing that the dispute be resolved by a judge.

(h) *Waiver of Class or Consolidated Actions.* ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER.

(i) *Confidentiality.* All aspects of the arbitration proceeding, including but not limited to the award of the arbitrator and compliance therewith, shall be strictly confidential. The parties agree to maintain confidentiality unless otherwise required by law. This paragraph shall not prevent a party from submitting to a court of law any information necessary to enforce this Agreement, to enforce an arbitration award, or to seek injunctive or equitable relief.

(j) *Severability.* If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable by a court of competent jurisdiction, then such specific part or parts shall be of no force and effect and shall be severed and the remainder of the Agreement shall continue in full force and effect.

(k) *Right to Waive.* Any or all of the rights and limitations set forth in this Arbitration Agreement may be waived by the party against whom the claim is asserted. Such waiver shall not waive or affect any other portion of this Arbitration Agreement.

(l) *Survival of Agreement.* This Arbitration Agreement will survive the termination of your relationship with Company.

(m) *Small Claims Court.* Notwithstanding the foregoing, either you or the Company may bring an individual action in small claims court.

(n) *Emergency Equitable Relief.* Notwithstanding the foregoing, either party may seek emergency equitable relief before a state or federal court in order to maintain the status quo pending arbitration. A request for interim measures shall not be deemed a waiver of any other rights or obligations under this Arbitration Agreement.

(o) *Claims Not Subject to Arbitration.* Notwithstanding the foregoing, claims of defamation, violation of the Computer Fraud and Abuse Act, and infringement or misappropriation of the other party's patent, copyright, trademark or trade secrets shall not be subject to this Arbitration Agreement.

(p) *Courts.* In any circumstances where the foregoing Arbitration Agreement permits the parties to litigate in court, the parties hereby agree to submit to the personal jurisdiction of the courts located within Larimer County, Colorado, for such purpose

9.3 Force Majeure. The Company shall not be liable for any delay or failure to perform resulting from causes outside our reasonable control, including, without limitation, any failure to perform hereunder due to unforeseen circumstances or cause beyond our control such as acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation facilities, fuel, energy, labor or materials.

9.4 Attorneys' Fees. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the reasonable costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.

9.5 Export. The Site may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree not to export, reexport, or transfer, directly or indirectly, any U.S. technical data acquired from Company, or any products utilizing such data, in violation of the United States export laws or regulations.

9.6 Disclosures. Company is located at the address in Section 9.11. If you are a California resident, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Product of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.

9.7 Electronic Communications. The communications between you and Company use electronic means, whether you use the Site or send us emails, or whether Company posts notices on the Site or communicates with you via email. For contractual purposes, you (a) consent to receive communications from Company in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Company provides to you electronically satisfy any legal requirement that such communications would satisfy if it were be in a hardcopy writing. The foregoing does not affect your non-waivable rights.

9.8 Entire Terms. These Terms constitute the entire agreement between you and us regarding the use of the Site. Our failure to exercise or enforce any right or provision of these Terms shall not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. The word "including" means "including without limitation". If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other. These Terms, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without Company's prior written consent, and any attempted assignment, subcontract,

delegation, or transfer in violation of the foregoing will be null and void. Company may freely assign these Terms. The terms and conditions set forth in these Terms shall be binding upon assignees.

9.9 Copyright/Trademark Information. Copyright © 2019 Middlemist, LLC All rights reserved. All trademarks, logos and service marks (“Marks”) displayed on the Site are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.

9.10 DMCA Notice.

(a) It is the policy of the Company to respond to notices of alleged copyright infringement that comply with the Digital Millennium Copyright Act (the “DMCA”). Anyone who believes that his or her work has been reproduced in the Service in a manner which constitutes copyright infringement may submit a notification to the Company copyright agent in accordance with the DMCA, by providing the following information in writing:

- (i) identification of the copyrighted work that is claimed to be infringed;
- (ii) identification of the allegedly infringing material that is requested to be removed, including a description of where it is located on the Service;
- (iii) information for our copyright agent to contact you, such as an address, telephone number, and, if available, e-mail address;
- (iv) a statement that you have a good faith belief that the identified, allegedly infringing use is not authorized by the copyright owners, its agent or the law;
- (v) a statement that the information above is accurate, and under penalty of perjury, that you are the copyright owner or the authorized person to act on behalf of the copyright owner; and
- (vi) a physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or of an exclusive right that is allegedly infringed.

(b) If you are asserting infringement of an intellectual property right other than copyright, please specify the intellectual property right at issue (for example, trademark) by notating this in your written notice. You acknowledge that if you fail to comply with all of the requirements for a notice of infringement as specified above, your DMCA notice may not be valid.

(c) Notices of copyright infringement claims should be sent by email to care@middlemist.co. The Company will respond expeditiously to claims of copyright infringement using the Service that are reported to Company’s copyright agent in the notification explained above. It is the Company’s policy, in appropriate circumstances and at its discretion, to disable or terminate the accounts of users who infringe copyrights or intellectual property rights of others.

9.11 Contact Information:

Middlemist, LLC
Address: 3440 Youngfield Street #234, Wheat Ridge, Colorado 80033
Email: care@middlemist.co

10. ACKNOWLEDGEMENT AND AGREEMENT

I HEREBY ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE FOREGOING AGREEMENT AND AGREE THAT MY USE OF THE SERVICE IS AN ACKNOWLEDGMENT OF MY AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.