



# EZPay Terms

## Terms of Use

YOUR USE OF THIS SITE (the "Site") AND/OR ANY SERVICES (COLLECTIVELY, THE "SERVICES") PROVIDED VIA THE SITE ("YOU") AND/OR YOUR CLICKING THE "ACCEPT" OR "AGREE" BUTTON ON THE SITE USER REGISTRATION PAGE CONSTITUTES YOUR AGREEMENT WITH AND ACCEPTANCE OF THE TERMS AND CONDITIONS PROVIDED BELOW (THE "TERMS OF USE" OR THE "AGREEMENT"). YOU REPRESENT AND WARRANT THAT YOU ARE OF LEGAL CONTRACTING AGE AND HAVE LEGAL CAPACITY TO CONTRACT.

PLEASE CAREFULLY READ THESE TERMS OF USE BEFORE USING THE SITE AND/OR ANY SERVICES PROVIDED VIA THE SITE, AS THEY AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS. THE TERMS OF USE INCORPORATE BY REFERENCE AND INCLUDE OUR PRIVACY POLICY, THE CURRENT VERSION OF WHICH IS POSTED HERE. THESE TERMS OF USE REQUIRE YOU TO GRANT US CERTAIN WAIVERS, CONSENTS, RIGHTS AND LICENSES AND LIMIT OUR LIABILITY AND OBLIGATIONS TO YOU.

ANY DISPUTE OR CLAIM RELATING IN ANY WAY TO YOUR USE OF THE SITE OR ANY OF THE CONTENT OR SERVICES PROVIDED VIA THE SITE WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION, RATHER THAN IN COURT, AND YOU HEREBY WAIVE THE RIGHT AND AGREE NOT TO JOIN IN ANY CLASS ACTION INVOLVING THE SITE OR ANY OF SUCH CONTENT OR SERVICES.

These Terms of Use constitute a binding legal agreement between you as a user of the Services ("you") and the operator of the Site and Participating Company ("we" or "us"). We may modify the Terms of Use effective upon publishing on the Site and/or other notification by email or otherwise, as well as discontinue, withdraw, replace or change any content, products or the Services offered via the Site at any time and your continued access and use of the Site and/or the Services thereafter constitutes your acceptance of such changes. IF YOU DO NOT AGREE WITH THE TERMS OF USE, YOU ARE NOT AUTHORIZED TO USE THIS SITE OR ANY SERVICES PROVIDED VIA THE SITE AND MUST TERMINATE YOUR ACCESS AND USE OF THE SITE AND THE SERVICES IMMEDIATELY.

You acknowledge and agree that these Terms of Use are supported by good and valuable consideration that includes, without limitation, your use of the Site and the electronic acceptance of these Terms of Use by clicking to agree and/or

by accessing and using the Services has the same force and effect as if you physically signed the Terms of Use. The Terms of Use ensure that users are using the Site and the Services with due regard to the rights of other users and in conformity with the requirements of our network environment, security requirements and applicable laws.

## 1. Description of the Services

This Site is operated by ProPay, Inc. ("Site Operator"), a third-party service provider to Kemba Credit Union, Inc. ("Participating Company"), as a private label online payment platform. Your use of this site is your agreement to make electronic payments to Participating Company (the "Services") subject to these Terms of Use. Your authorization to access and use the Services is based on your designation as an eligible user by the Participating Company with which you have a contractual relationship. The Services are provided to each Participating Company and their respective customers in conjunction with certain third party, affiliated service providers, including without limitation each of the payment processor affiliates who are responsible for the collection and remission of all payments made on or through the Site (the "Participating Affiliates").

You, as a customer of a Participating Company, are eligible to use the Services to make payments which are allowed under our service agreements with the Participating Company and Participating Affiliates. Your allowed debit card, electronic checking or savings account ACH payments made through the Services will be remitted to your applicable Participating Company in accordance with our service agreement with the Participating Company and Participating Affiliates; provided however, that each Participating Company hereby reserves the right to restrict the payment methods offered to their respective customers through the Site and Service, including without limitation the right of each Participating Company to restrict or disallow the use of credit card payments to make payments on loans.

In order to use the Site and the Service, you must obtain, as applicable, access to the World Wide Web, Internet, and a cellular network, either directly or through certain devices (including without limitation computers and mobile devices) that access web-based content and a cellular network, and you hereby understand and agree that you are solely responsible for paying any and all service fees associated with such access including, without limitation, any and all fees or charges associated with the connection to, transmission over, or receipt of messages or data from, as may be applicable, the World Wide Web, Internet, and a cellular network resulting from the Service and the Site which may be charged to you by any applicable third party service provider. In addition, you must supply, at your own expense, all

necessary equipment to connect to the World Wide Web, Internet, or a cellular network, including without limitation, a computer, a modem, router, mobile phone, or any other necessary access devices (the "Access Devices").

## **2. Registration Obligations**

In order to use the Services you are required to register and create an account on the Site (the "User Account") and create a Personal Identification Number (PIN) and are required to review and agree to these Terms of Use as in effect at the time that the Services are used, by clicking the applicable box on the Site's user registration page in order to, as may be applicable, set up, enter into, or pay on an account on the Site. You agree to: (a) create only one account (unless specifically approved by us in writing); (b) provide accurate, truthful, current and complete information for your account; (c) maintain and promptly update your account information and payment method information; (d) maintain the security of your account by not sharing your PIN with others and restricting access to your account and otherwise not permitting third parties to access or use your account; (e) promptly notify the Participating Company at info@kembacu.org if you discover or otherwise suspect any security breaches relating to your User Account; (f) not sell, transfer or assign your username and password; and (g) accept sole responsibility for all transactions or activities that occur under your PIN, whether or not you have authorized the activity. You shall indemnify us with respect to any claims arising from or related to any use of your User Account, whether authorized or unauthorized. We reserve the right, exercisable as we determine in our sole and absolute discretion, to suspend, disable or terminate access to your Services user account based on suspected or actual unauthorized use or other violation of these Terms of Use or any of the other agreements, terms and conditions applicable to the Services. If you access the Services from outside the United States you hereby consent to the transmission and/or transfer of data relating to your user account and communications and transactions relating to the Services across all applicable international boundaries. After you accept this Agreement and your registration has been accepted by us, your User Account will be established. You are solely responsible for any consequences arising out of your failure to maintain the confidentiality of your PIN. You will notify Participating Company of any unauthorized use or other breach in security of your Account immediately after you learn of the same. You will promptly notify Participating Company of any change in the information you provide on your registration form during your registration for the Services (including, without limitation, any change in your mailing address, telephone numbers or email address). The registration information provided by you on your registration form during your registration for the Services, together with any and all updates provided by you from time to time under this paragraph, is referred to in this Agreement as the "Registration Information." Participating Company's policy regarding the privacy and use of the Registration Information is set forth in its privacy policy, as the same may be modified and amended by us from time to time (the "Privacy Policy"). When you accept this Agreement, you acknowledge that you agree to the terms of the Privacy Policy.

You hereby understand and agree that we will not be liable for any damage or loss arising from your failure to comply with the terms and conditions of this Section and hereby disclaim any and all responsibility or liability for any such damage or loss, to the maximum extent allowable by any applicable law or regulations, including without limitation any credit card or debit card company or association regulations.

## **3. Use of the Site and Services**

As a condition of your use of the Site and the Services, you represent, warrant and covenant to us that you will not use the Site or the Services for any purpose that is unlawful or prohibited by these Terms of Use. You may not use the Site or the Services in any manner that could damage, disable, overburden, or impair the Site or the Services or interfere with any other party's use and enjoyment of the Site or the Services. Your use of the Services is subject to all applicable local, state, national and international laws and regulations and your rules of membership with Participating Company. We may use automated procedures to detect unacceptable level of usage and may immediately disable offending accounts, and the process of detection may vary from time to time, based on misuse detected. You agree that you shall not use the Site or the Services in order to obtain knowledge and information regarding the Site or the Services to then directly or indirectly create or cause to be created a site or software product or service that performs the same or substantially the same functions and/or has the same or substantially the same features, whether for your own internal use or for use by others. By way of example, and not as a limitation, you agree that when using the Site and/or the Services and when submitting any information or content to the Site or via the Services, you will not:

- Use a robot, spider or other automated device, process or means to access the Site or the Services or send viruses, corrupted files, or any other similar software or programs that may damage the operation of the Site, the Services or third party systems.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information or otherwise defame, abuse, harass, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Send false or misleading information.

We shall have no obligation to monitor the usage of the Site or the Services. However, we reserve the right to review any communications or submissions directed to the Site or submitted via the Services and to remove any of same as we determine in our sole discretion. We may, at any time and without notice to you, terminate your access to the Site and/or the Services or block your access to same if we believe that you have violated these Terms of Use or your rules of membership with Participating Company or have otherwise engaged in any activities that may harm or damage the reputation, rights, person, or property of the Site, the Services, Participating Company, or other users or third parties, or if requested by law enforcement or other government agencies; or if your account has extended periods of inactivity. We further reserve the right to terminate your access to the Site and/or the Services at any time without notice for any reason whatsoever. We further reserve the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any

information or materials, in whole or in part, as we determine in our sole discretion. Materials presented on the Site or via the Services are subject to limitations on usage, reproduction and/or dissemination. You are responsible for adhering to such limitations.

#### **4. Electronic Communications**

All of your transactions with or through the Site and/or the Services or with Participating Company may, at our option, be conducted electronically, except where paper documents and handwritten signatures are required under applicable legal requirements. If we decide to proceed non-electronically, those services will still be governed by the remainder of these Terms of Use unless you enter into different terms on a form provided by us. If the law allows you to withdraw this consent or if we are ever required to deal with you non-electronically, we reserve the right to charge or increase fees and you agree to print or make an electronic copy of the Terms of Use and any other contract or disclosure that we are required to provide to you. By clicking "Submit" on any step of a transaction on this Site or using the Services, you agree to conduct such transaction by electronic means. You understand that by clicking the box titled "I agree" or similar wording you are agreeing to conduct an electronic transaction and to use and receive communications through electronic means. You agree to enter the requested information electronically via the Internet, and to be notified regarding any transaction electronically through the email address you have provided. You understand that electronically signed documents have the same legal effect as hard copies with ink signatures. You understand that you may refuse to conduct other electronic transactions in the future. Any payment or other transactions undertaken using the Services are subject to these Terms of Use, which are agreed upon when you proceed with your transaction. Except as otherwise provided in these Terms of Use, we will give you any notices regarding the Site and the Services by posting them on the Site. You also authorize us to send notices (including notice of subpoenas or other legal process, if any) via electronic mail. You must check the Site for notices, and you will be considered to have received a notice when it is posted on the Site, or when sent by us via electronic mail, whether or not received by you. You must keep your email address current and any notice sent by us to an email address that you have provided to us will be considered effective notice. You hereby consent to receive, as may be applicable, emails and text messages from your Participating Company and us through the Services with respect to your account and your relationship with your Participating Company or us. You have the right to decline to receive additional electronic mail or text messages from your Participating Company or us related to or via the Services and can unsubscribe or opt-out at any time by requesting same in writing via email to [info@kembacu.org](mailto:info@kembacu.org).

#### **5. Content of Stored Data and Files**

You are solely responsible for the accuracy of, and obtaining the rights to use, all content or data that you submit, store or retrieve from your User Account and for all transmissions by you from and to your User Account. We reserve the right to refuse, remove or disable access to any data or files stored on our servers with immediate effect that we learn may be illegal, may violate the Terms of Use, may violate the rights of any third party or otherwise may be reasonably objectionable.

#### **6. Fees and Payments**

If you will be charged by us for access to portions of the Services or for any use of the Services, including without limitation the making of any allowed debit card, or electronic checking or savings account ACH payment using the Services, we will obtain your prior consent and authorization to pay such charges. Your continuation of access to, or use of, the Services after receipt of disclosure of such charges shall constitute your consent and authorization to pay such charges. You understand and agree that once you have consented to and authorized the payment of such charges for such access to or use of the Services, you will be obligated to pay, and shall pay, any and all such charges so authorized in those certain amounts displayed on the Services during such authorization which you incur through your User Account, which shall be the rates then in effect for the billing period in which such charges are incurred, including but not limited to any charges for any services offered through the Services by us, by Participating Affiliates, or by any other vendor or service provider. You acknowledge, understand, and agree that we reserve the right at any time to charge and/or increase fees which we charge for access to portions of the Services or the Services as a whole. You understand and agree that you shall pay any and all applicable taxes relating to the use of the Services through your User Account, and the purchase of any other services through the Site or your User Account. You hereby acknowledge, understand, and agree that late fees and other such related charges may be assessed by your Participating Company under your agreement with your Participating Company as may be applicable if your payments to them are late.

#### **7. Payment Cancellation, Credit and Refunds**

For payments you believe were accidentally or otherwise improperly made by you through the Services, you may cancel, void or otherwise rescind any such payment but only through the options to do so on the Site and as otherwise presented by the Services; provided, however, that any such cancelling, voiding or rescinding (i) must be performed by you through the Services prior to the time of posting of such payment by the Services, which triggers the remittance of such payment to your Participating Company; and (ii) is further subject to all the rules, restrictions, and information regarding such canceling, voiding or rescinding, as such may be stated on the Site or otherwise presented by the Services or the Participating Company or otherwise in accordance with all applicable laws and regulations, including without limitation any credit card or debit card company or association regulations. If a payment dispute arises at any time after such allowed payment is posted by the Services and thereby made to your Participating Company using the Services, you should contact your Participating Company directly, as the responsibility to settle any payment (each if and as may be applicable to each such Participating Company and its respective customers) dispute rests with you and your Participating Company; provided however, that to the degree that any such dispute arises as a result of the Services, your Participating Company shall serve as a liaison between you and us and any applicable Participating Affiliate; and further provided that only the Participating Company shall contact us to resolve any such disputed payment. To the extent allowed by any applicable law, any credit card or debit card company or association regulations, or by any agreement by and between your Participating Company and the applicable Participating Affiliate, you hereby waive the right to cancel any allowed credit card, debit card, or electronic checking or savings account ACH payments which have

been authorized and made by you and cleared through any applicable Participating Affiliates' clearing entity. You hereby acknowledge, understand, and agree that your Participating Company has the capability through the Services to reject, in its sole and absolute discretion, any and all payments tendered by you through the Services prior to any such payment being posted by the Participating Company to your account with the Participating Company and that the Site Operator has no control over the actions of the Participating Company with respect to this option, and, as such, we shall have no liability to you or any other third party for any such action performed by the Participating Company in their sole and absolute discretion.

#### **8. Service Cancellation; Termination for Violations**

Your Participating Company may cancel your access or use of the Services and/or your User Account with or without cause, at any time, without notice, and effective immediately. If you have any outstanding fees or other payments due, you will remain liable for them after the applicable effective date of cancellation. The Site Operator may terminate or suspend your User Account and/or your use of the Services immediately, at any time without notice if you, in our sole and absolute discretion, fail to comply with any provision of the then current Terms of Use, if your Participating Company has terminated the Services with the Site Operator, or if your Participating Company has had the Service suspended by the Site Operator.

The failure by you to comply with these Terms of Use will result in User Account deactivation. We will be the sole arbiter as to what constitutes a violation of the Terms of Use. We reserve the right to remove any User Account without prior notice. When we become aware of an alleged violation of its Terms of Use, we will initiate an investigation. During the investigation, we may restrict your access to the Site and the Services, including your User Account in order to prevent further potentially unauthorized activity. Depending on the severity of the violation, we may, in our sole discretion, restrict, suspend, or terminate your use of the Services and/or User Account and/or pursue other civil remedies. If such violation is a criminal offense, we will notify the appropriate law enforcement authorities of such violation. Upon any such suspension or termination, Sections 8 and 10-22 hereof, as may be applicable, shall be deemed to survive any such termination or suspension.

#### **9. Security of Site, Services and Stored Data**

You shall not provide access to your User Account to others to view or retrieve the data and files you store or retrieve from your User Account. You acknowledge and agree that it may be necessary for us to access users' User Accounts for support or security requirements. It may also be necessary to access users' User Accounts to verify that the accounts are not being misused, especially with respect to digital copyright laws and resource misuse checks including bandwidth. You hereby agree and consent to our accessing your User Account for such purposes. Violations of system or network security are STRICTLY prohibited and may result in criminal and civil liability. Unless expressly agreed to in writing otherwise, you are solely responsible for backing up your data. We do not guarantee uptime or issue credits for outages incurred through service disablement. You hereby release and agree to indemnify and hold us and our affiliates and our and our affiliates' respective officers, managers, directors, employees, independent contractors, agents and other representatives from any claims resulting from the use of our Services that damages them or any other party. No oral advice or written information given by us, its employees, licensors or the like, will create a warranty; nor may you rely on any such information or advice. We and our partners and suppliers will not be liable for any cost or damage arising either directly or indirectly from any transaction or use of the service.

#### **10. Intellectual Property**

This Site and all Site design, including but not limited to text, content, software, photographs, video, audio, interfaces, graphics and the selection and the arrangement thereof is protected by copyrights, trademarks, service marks, international treaties and/or other proprietary rights and laws of the US and other countries. All individual articles of information, policies and other elements making up the Services are also copyrighted works. You agree to abide by all applicable patent, trademark, copyright and other laws, as well as any additional patent, trademark and copyright notices or restrictions contained in the Services. Any use of materials on this Site other than as permitted under this Agreement, including without limitation reproduction, modification, distribution, or republication of any said materials without our prior written permission, is absolutely prohibited. You acquire absolutely no rights or licenses in or to the Services and materials contained within the Services other than the limited right to utilize the Services in accordance with the then current Terms of Use. All right, title, and interest in and to the Site and the Services is expressly retained by us.

#### **11. Disclaimer of Warranties and Limitation of Liability**

The information, services, products, and materials contained in this Site, including, without limitation, the Services and any text, graphics, and links, are provided on an "AS IS" basis with no warranty. TO THE MAXIMUM EXTENT PERMITTED BY ANY APPLICABLE LAW, WE DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH INFORMATION, SERVICES, PRODUCTS, AND MATERIALS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER OR OTHER ELECTRONIC VIRUS OR INFECTION, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. ADDITIONALLY, YOU HEREBY ACKNOWLEDGE, UNDERSTAND, AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY ANY APPLICABLE LAW, WE WILL NOT BE RESPONSIBLE OR HAVE ANY LEGAL LIABILITY FOR ANY OF YOUR ACTS (REGARDLESS OF WHETHER SUCH MAY BE REASONABLE, NEGLIGENT, GROSSLY NEGLIGENT, OR INTENTIONAL) OR OMISSIONS WITH RESPECT TO YOUR USER ACCOUNT, THE SERVICE, OR THE SITE. IN NO EVENT SHALL WE HAVE ANY OBLIGATION OR LIABILITY TO YOU FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR DATA OR FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF DATA, REVENUE OR PROFITS OR BUSINESS INTERRUPTION) OR OTHER PECUNIARY LOSS ARISING OUT OF YOUR USE OR INABILITY TO USE YOUR USER ACCOUNT OR THE SERVICES OR YOUR LOSS OF DATA OR FILES STORED THEREIN. TO

THE FULL EXTENT POSSIBLE UNDER APPLICABLE LAW, IN NO EVENT SHALL OUR CUMULATIVE LIABILITY WITH RESPECT TO ANY CLAIM OR LIABILITY UNDER THIS AGREEMENT OR WITH RESPECT TO THE SERVICES EXCEED THE AMOUNT OF THE SERVICE FEES, IF ANY, RECEIVED BY US WITH RESPECT TO THE TRANSACTION OR SERVICES INVOLVED IN THE APPLICABLE CLAIM DURING THE SIX (6) MONTHS PRECEDING THE DATE THAT THE APPLICABLE CLAIM AROSE.

## **12. Indemnification**

You hereby agree to indemnify us and our affiliates and our and our affiliates' employees, representatives, agents and suppliers (the "indemnified parties"), against any claim, suit, action or other proceeding brought against the indemnified parties by a third party, to the extent that such claim, suit, action or other proceeding brought against the indemnified parties is based on or arises in connection with your said acts and omissions, or the service or any links on the service, including, but not limited to: (i) use of your Access Devices by you or anyone for use of the Services; (ii) use of your User Account; (iii) violation of the terms of use by you or anyone using your Access Devices or your User Account; (iv) a claim that any use of the Services by you or someone using your Access Devices or User Account infringes any intellectual property right of any third party, or any right of personality or publicity, or is libelous or defamatory, or otherwise results in injury or damage to any third party; (v) any deletions, additions, insertions or alterations to, or any unauthorized use of, the Services by you or someone using your Access Devices or User Account; or (vi) any misrepresentation, including false or inaccurate sign up information or other User Account information, or breach of representation or warranty made by you contained herein. You agree to pay any and all costs, damages and expenses, including but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by or in connection with or arising from any such claim, suit, action or proceeding attributable to any such claim.

## **13. Governing Law; Arbitration; Waiver of Jury Trial; Waiver of Class Action**

All disputes, controversies, or differences which may arise between the parties out of or in connection with the Agreement, which cannot be settled by negotiation within thirty (30) days of the matter first being notified in writing to the other by the complaining party, shall be finally settled by binding arbitration in accordance with the commercial arbitration rules. The arbitration of all matters shall be conducted by three (3) arbitrators ("Panel of Three") with each party selecting one (1) arbitrator, and the third to be selected from the panel of arbitrators, who shall serve as the chair of the Panel of Three. The parties may agree to a single arbitrator instead of a Panel of Three. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after receipt of written notice from the other party requesting it to do so, the requesting party may appoint two (2) arbitrators. The place of the arbitration shall be Hamilton or Butler County, Ohio. The arbitration award shall be final and binding upon the parties. Any judgment upon such award may be enforced in any court having jurisdiction, or application may be made to such court for a judicial confirmation of such award and judgment or order of enforcement, as the case may be. The cost of the arbitration shall be borne equally by the parties unless otherwise provided in the arbitration award. The parties hereto agree that the arbitration award will be the sole and exclusive remedy between them regarding any and all claims, counterclaims, or issues. In order to have arbitration as the sole and exclusive remedy the parties hereto exclude the right of appeal to courts of the United States, or any other courts, in connection with any question of law arising in the course of the reference to arbitration or out of the arbitration award. Notwithstanding the foregoing, we may bring legal action in the state or federal courts located in Hamilton County, Ohio to seek specific performance, injunctive relief or other equitable remedies to enforce this Agreement, and you consent to personal jurisdiction in such courts and agree not to assert any claim, defense or argument that such courts present an improper or inconvenient forum.

YOU AND WE EACH WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES. YOU HEREBY IRREVOCABLY WAIVE THE RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS.

## **14. Changes to the Site or the Services**

You acknowledge that we have the right to change the content, look and feel, or technical specifications of any aspect of the Site and/or the Services at any time without notice at our sole and absolute discretion. You further understand and agree that any such changes may result in your being unable to access the Site or Services without notice, and that we shall not be responsible in any way to you or any other third party for any such inability to access the Site or the Services, including without limitation, any late fees for any bill payments charged to you for failing to timely pay your bills because of your inability to access the Site or the Services for any reason, including without limitation because of any such changes to the Site or the Services.

## **15. Captions and Headings**

The captions and headings appearing herein are for reference only and will not be considered in construing this Agreement.

## **16. Severability**

If any provision of the then current Terms of Use, or the application thereof, is found invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this agreement will remain in full force.

## **17. Entire Agreement; Translation and Interpretation of the Agreement**

These Terms of Use, including without limitation the User Account information, contain the entire understanding and agreement between you and us with respect to its subject matter, superseding all prior or contemporaneous representations, understandings, and any other oral or written agreements between the parties with respect to such subject matter. To the extent permitted by applicable law, these Terms of Use shall supersede and control between you

and us in the event of any conflict with the terms of any agreement between you and your Participating Company or any merchant account to which you are submitting an electronic payment, or any third party. For all purposes hereunder, this English language version of these Terms of Use shall be the original, governing instrument and understanding of the parties hereto. In the event of any conflict between this English language version of the Terms of Use and any subsequent translation of such terms into any other language, including without limitation the Spanish language version hereof, this English language version shall govern and control in all respects.

#### **18. Continuing Consent Representations and Warranties**

You acknowledge and agree that each time that you click the “Accept” or “Agree” button or any other button or field in the Site or in the workflow of any service available on the Site, and each time that you access or use the Site or any of the Services available via the Site, you hereby represent and warrant that you have read, acknowledge and agree to be bound by, in each such instance, the then current Terms of Use governing the Site and the Services, including our Privacy Policy and our collection, use and transfer of your personal information as described in the Privacy Policy. You further represent and warrant that: (i) you have the power and authority to enter into this Agreement; (ii) you are at least eighteen (18) years old; (iii) you will comply with all applicable laws regarding the transmission of any data obtained from the Services; (iv) you will not use the Site, the Services, your User Account, or any other services available on the Site for illegal or fraudulent purposes; and (v) you will not interfere or disrupt any networks connected to the Site, the Services, your User Account, or any other services available on the Site. If you access and/or use the Site or the Services on behalf of an entity, you represent and warrant that you have legal authority to bind such entity to this Agreement, and in such event the terms “you” and “your” also refer to such entity, except that if you do not have actual legal authority to bind such entity, you are and shall be personally bound and liable under these Terms of Service and you agree to indemnify us with respect to any claims, losses, expenses (including, without limitation, legal expenses), damages or other liability (collectively, “Claims”) arising or resulting therefrom. We shall not have any liability for any Claims arising or resulting from reliance on any representation, warranty, agreement, instruction, notice or communication received from you whether on your own behalf or on behalf of such entity.

#### **19. Force Majeure**

We shall be excused from failing to act or delay in acting and shall not be in breach of this Agreement for failure to perform its obligations hereunder if such failure or delay is caused by legal constraint, interruption of telecommunications, telephone, telefacsimile, or other communication facilities; delay in transportation, equipment breakdown, or mechanical malfunction; electrical, power, or computer failure; accidents, fire, flood, explosion, theft, natural disaster, or other catastrophe; acts or failure to act by you or any third party; strikes or lockouts; emergency conditions; or riots, war, acts of government, or other circumstances which are unavoidable or beyond our control.

#### **20. Notices**

Any notice under this Agreement given by you to us will be deemed to be properly given if received by email sent to us at [info@kembacu.org](mailto:info@kembacu.org) except those that are related to cancellation or termination of the account. User is expected to login online the Site and go to ‘My Profile’, choose ‘Cancel Account’ and provide necessary information for cancellation. Sending an email to the Site’s support email address for cancellation is not considered as a cancellation notice for security reasons. Your user data files will be removed within five (5)-day period from cancellation date from main storage as well as archives.

#### **21. No Assignment**

You will not assign any of your rights, obligations or interests in this Agreement or your User Account. Without limiting the foregoing, this Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. We may assign this Agreement without your consent.

#### **22. Waiver**

None of the terms of this Agreement may be waived except as we may consent in writing, and no agreement with or representation made by any employee of ours that is in conflict with this Agreement will be binding on us unless contained in a written modification of this Agreement signed by an authorized officer of ours. No delay on our part in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power under this Agreement preclude further exercise thereof or the exercise of any other right or power.