

# EMPOWER APPALACHIA FOUNDATION TERMS AND CONDITIONS

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Welcome to empowerappalachia.org, (hereinafter referred to as the "Website", "We," "Us," or "Our"), owned and operated by Empower Appalachia Foundation (hereinafter referred to as "the Company") with its registered office located at 1873 Grafton Road Morgantown, WV 26508. The Website is offered to You conditioned on Your acceptance without modification of the Terms, Conditions, and notices contained herein (the "Terms").

## 1. INTRODUCTION

- 1.1 Our Website is a Platform (hereinafter referred to as "Platform") where Empower Appalachia Foundation describes their mission, provides applicable documentation for the public, and allows for donations. The Users of the Website shall be referred to as "You," "Your," or "Users."
- 1.2 By clicking on the "Accept" button at the end of the Agreement acceptance form, Users agree to be bound by the Terms and Conditions of this Agreement. Please read this entire Agreement carefully before accepting its Terms. When You undertake any activity on the Website, You agree to accept these Terms and Conditions.
- 1.3 In using this Website, You are deemed to have read and agreed to the following Terms and Conditions set forth herein. Any incidental documents and links mentioned shall be accepted jointly with these Terms. You agree to use the Website only in strict interpretation and acceptance of these Terms, and any actions or commitments made without regard to these Terms shall be at Your own risk. These Terms and Conditions form part of the Agreement between the Users and Us. By accessing this Website, and/or undertaking to perform a Service provided by Us indicates Your understanding, agreement to and acceptance of the disclaimer notice and the full Terms and Conditions contained herein.

## 2. ELIGIBILITY OF THE USER

- 2.1. You may use the Service only if You are at least eighteen (18) years of age and can form a binding contract with Us, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations.
- 2.2. Unauthorized Users are strictly prohibited from accessing or attempting to access, directly or indirectly, the Platform. Any such unauthorized use is strictly forbidden and shall constitute a violation of applicable state and local laws.
- 2.3. Our Website may, in its sole discretion, refuse to offer access to or use of the Platform to any person or entity, and change its eligibility criteria at any time. This provision is void where prohibited by law and the right to access the Website is revoked in such jurisdictions.

## 3. SERVICES OFFERED BY THE PLATFORM

- 3.1. We provide the Users with a Platform to educate themselves on the mission of Empower Appalachia Foundation and donate to the cause.

#### **4. YOU AGREE AND CONFIRM**

- 4.1. That You will use the Services provided by Our Platform, its affiliates and contracted companies, for lawful purposes only and comply with all applicable laws and regulations while using the Platform.
- 4.2. That You will provide authentic and true information in all instances where such information is requested of You. We reserve the right to confirm and validate the information and other details provided by You at any point in time. If upon confirmation Your details are found not to be true (wholly or partly), We have the right in Our sole discretion to reject the registration and debar You from using the Services of Our Platform and/or other affiliated websites without prior intimation whatsoever.
- 4.3. That You are accessing the Services available on this Website and transacting at Your sole risk and are using Your best and prudent judgment before entering into any dealings through this Platform.
- 4.4. It is possible that the other Users (including unauthorized/unregistered users or "hackers") may post or transmit offensive or obscene materials on the Platform and that You may be involuntarily exposed to such offensive and obscene materials. It also is possible for others to obtain personal information about You due to Your use of the Platform, and that the recipient may use such information to harass or injure You. We do not approve of such unauthorized uses, but by using the Platform, You acknowledge and agree that We are not responsible for the use of any personal information that You publicly disclose or share with others on the Platform. Please carefully select the type of information that You publicly disclose or share with others on the Platform.
- 4.5. You agree to not post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, pornographic, profane or indecent information or description/image/text/graphic of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national, or international law.
- 4.6. You agree to not post or transmit any information, software, or other material which violates or infringes the rights of others, including material which is an invasion of privacy or publicity rights or which is protected by copyright, trademark or other proprietary right, or derivative works with respect thereto, without first obtaining permission from the owner or right holder.
- 4.7. You agree to not alter, damage or delete any Content or other communications that are not Your own Content or to otherwise interfere with the ability of others to access Our Platform.
- 4.8. You agree to indemnify and keep indemnified the Company from all claims/losses (including advocates' fees for defending/prosecuting any case) that may arise against the Company due to acts/omission on the part of the User.

#### **5. WARRANTIES, REPRESENTATION AND UNDERTAKINGS OF USER**

- 5.1. The User warrants and represents that all obligations narrated under this Agreement are legal, valid, binding and enforceable in law against the User.

- 5.2. The User agrees that there are no proceedings pending against the User, which may have a material adverse effect on its ability to perform and meet the obligations under this Agreement.
- 5.3. The User agrees that it shall, at all times, ensure compliance with all the requirements applicable to its business and for the purposes of this Agreement including but not limited to intellectual property rights, value-added tax, excise and import duties, etc. It further declares and confirms that it has paid and shall continue to discharge all its obligations towards statutory authorities.
- 5.4. The User agrees that it has adequate rights under relevant laws including but not limited to various intellectual property legislation(s) to enter into this Agreement with the Company and perform the obligations contained herein and that it has not violated/infringed any intellectual property rights of any third party.
- 5.5. The User agrees that appropriate disclaimers and Terms of use on the Company's Website shall be placed by the Company.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. The User expressly authorizes the Company to use its trademarks/copyrights/designs/logos and other intellectual property owned and/or licensed by it for the purpose of reproduction on the Platform and at such other places as the Company may deem necessary. It is expressly agreed and clarified that, except as specified agreed in this Agreement, each Party shall retain all right, title and interest in their respective trademarks and logos and that nothing contained in this Agreement, nor the use of the trademarks/logos in the publicity, advertising, promotional or other material in relation to the Services shall be construed as giving to any Party any right, title or interest of any nature whatsoever to any of the other Party's trademarks and/or logos.
- 6.2. The Company's Website and other Platforms, and the information and materials that it contains, are the property of the Company and its licensors, and are protected from unauthorized copying and dissemination by copyright law, trademark law, international conventions, and other intellectual property laws. All the Company's product names and logos are trademarks or registered trademarks. Nothing contained on the Company's Website should be interpreted as granting, by implication, estoppel, or otherwise, any license or right to use the Company's Website or any materials displayed on the Company's Website, through the use of framing or otherwise, except: (a) as expressly permitted by these Terms and Conditions; or (b) with the prior written consent of the Company. The User shall not attempt to override or circumvent any of the usage rules or restrictions on the Website.
- 6.3. Except as otherwise expressly granted to You in writing, We do not grant You any other express or implied right or license to the Services, Our Content or Our intellectual property rights.
- 6.4. Proprietary Rights. Subject to the limited rights expressly granted in this Agreement, the Company reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to the User in this Agreement other than as expressly outlined in this Agreement.

## **7. DATA**

- 7.1. "Data" means any and all identifiable information about Users and their affiliates generated or collected by the Company or the User, including but not limited to the User's name, email addresses, Services availed, phone numbers, and the User's preferences and tendencies. The User agrees that it will only use the Data in complying with its obligations in this Agreement.

- 7.2. The User represents, warrants, and covenants that it will not resell or otherwise disclose any Data to any third party, in whole or in part, for any purpose whatsoever.
- 7.3. The User acknowledges that the Services may contain information which is designated as confidential by the Company and that You shall not disclose such information without the Company's prior written consent.
- 7.4. By submitting Content, the User hereby irrevocably grants Us a perpetual, irrevocable, nonexclusive, royalty-free right to use the Content for any purpose including API partnerships with third parties and in any media existing now or in future. The User irrevocably waives, and causes to be waived, any claims and assertions of moral rights or attribution with respect to the User's Content brought against Us by any third-party services or their users.
- 7.5. We may obtain business addresses, phone numbers, and other contact information from third-party vendors who obtain their Data from public sources. We have no control over, and make no representation or endorsement regarding the accuracy, relevancy, copyright compliance, legality, completeness, timeliness or quality of any products, services, advertisements and other Content appearing in or linked to the Services.

## **8. RELATIONSHIP**

- 8.1. Nothing in this Agreement will be construed as creating a relationship of partnership, joint venture, agency, or employment between the Parties. The Company shall not be responsible for the acts or omissions of the User, and the User shall not represent the Company, neither does it have any power or authority to speak for, represent, bind, or assume any obligation on behalf of the Company.

## **9. INDEMNITY**

- 9.1. The User indemnifies and shall hold indemnified the Company, its partners, officers, employees, representatives, and agents from and against all losses, damages, claims, suits, legal proceedings and otherwise howsoever arising from or in connection with any claim, including but not limited to claims for any infringement of any intellectual property rights or any other rights of any third party or of law, concerning quality, quantity and any claim in relation to the User's products, the breach of any of the User's warranties, representations or undertakings or in relation to the non-fulfillment of any of its obligations under this Agreement or Terms of use of Company's Website or any obligations arising out of the User infringing any applicable laws, regulations including but not limited to intellectual property rights, or taxes, etc. This clause shall survive the termination or expiration of this Agreement.

## **10. EXPRESS RELEASE**

- 10.1. You expressly hereby release and waive all claims against the Company, and its subsidiaries, affiliates, officers, agents, licensors, co-branders or other partners, and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising from or in any way related to Your use of the Company's Website. You understand that any fact relating to any matter covered by this release may be found to be other than now believed to be true and You accept and assume the risk of such possible differences in fact. In addition, You expressly waive and

relinquish any and all rights and benefits which You may have under any other state or federal statute or common law principle of similar effect, to the fullest extent permitted by law.

## **11. LIMITATION OF LIABILITY**

- 11.1. It is expressly agreed by the User that the Company shall under no circumstances be liable or responsible for any loss, injury or damage to the User or any other Party whomsoever, arising on account of any transaction under this Agreement.
- 11.2. The User agrees and acknowledges that it shall be solely liable for any claims, damages, or allegations arising out of the Services through the Platform and shall hold the Company harmless and indemnified against all such claims and damages. Further, the Company shall not be liable for any claims or damages arising out of any negligence, misconduct, or misrepresentation by the User or any of its representatives.
- 11.3. The Company under no circumstances shall be liable to the User for loss and/or anticipated loss of profits, or for any direct or indirect, incidental, consequential, special or exemplary damages arising from the subject matter of this Agreement, regardless of the type of claim and even if the User has been advised of the possibility of such damages, such as, but not limited to loss of revenue or anticipated profits or loss of business, unless such loss or damages is proven by the User to have been deliberately caused by the Company.

## **12. TERMINATION**

- 12.1. This Agreement may be terminated by the Company if the User commits a material breach of any representation, obligation, covenant, warranty or term of this Agreement and the same is not cured within 30 days after written notice given by the Company, if a petition for insolvency is filed against the User or if the User is in infringement of third-party rights, including intellectual property rights.
- 12.2. This Agreement may be terminated without reason by either Party after serving upon the other a written notice of thirty (30) days. The Agreement shall stand terminated after expiry of such period.

## **13. EFFECTS OF TERMINATION**

- 13.1. In the event of termination/expiry of this Agreement, the Company shall remove and shall discontinue the Services provided to the User on its Platform with immediate effect.
- 13.2. The Company shall not be liable for any loss or damages (direct, indirect or inconsequential) incurred by the User by virtue of termination of this Agreement.
- 13.3. During the period under notice, both the Parties shall be bound to perform their obligations incurred under this Agreement, and this sub-clause shall survive the termination of this Agreement.

## **14. GOVERNING LAW AND DISPUTE RESOLUTION:**

- 14.1. This Agreement shall be construed and enforced in accordance with the laws of WV without regard to the Company or the Website of its conflict of law provisions or the User's state or country of residence.
- 14.2. The User submits to the exclusive jurisdiction of the courts of WV for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement.
- 14.3. If there is a dispute between the User and other Users, the User understands and agrees that the Company is under no obligation with respect thereto, and the User, to the fullest extent permitted by law, hereby releases the Company and its affiliates, and each of their respective officers, directors, employees, service providers, affiliates, agents, and successors from, and agrees to indemnify each of the foregoing for any losses incurred in connection with any and all claims, demands and damages (actual and consequential) of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such disputes.
- 14.4. The User agrees that in case it is unable to resolve its disputes with other Users, then the Company has the right to remove the User from the Website and terminate this Agreement.

## **15. DISCLAIMER**

- 15.1. To the fullest extent permitted by law, the Company and its affiliates, and each of its respective officers, directors, members, employees, and agents disclaim all warranties, express or implied, in connection with this Agreement, the Website and any use thereof, including, without limitation, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. The Company makes no warranties or representations about the accuracy or completeness of the Website's Content or the Content of any other Websites linked to the Website, and assumes no liability or responsibility for any (a) errors, mistakes, or inaccuracies of Content and materials, (b) personal injury or property damage, of any nature whatsoever, resulting from the User's access to and use of the Website, (c) any unauthorized access to or use of the Company's servers and/or any and all personal information and/or financial information stored therein, (d) any interruption or cessation of transmission to or from the Website, (e) any bugs, viruses, trojan horses, or the like which may be transmitted to or through the Website by any third party, and/or (f) any errors or omissions in any Content and materials or for any loss or damage of any kind incurred as a result of the use of any Content posted, transmitted, or otherwise made available via the Website. The Company does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the internet or mobile devices.

## **16. NOTICES**

- 16.1. Except as explicitly stated otherwise, any notices given to the Company shall be given by email to [info@empowerappalachia.org](mailto:info@empowerappalachia.org) or at an address 1873 Grafton Road Morgantown, WV 26508. Any notices given to the User shall be to the email address provided by the User to the Company at the time of listing (or as such information may be updated via the Website by the User from time to time) or at the mailing address provided by the User to the Company.
- 16.2. Any notice, demand, or request with respect to this Agreement shall be in writing and shall be effective only if it is delivered by email, personal service, by air courier with receipt of delivery, or mailed, certified mail, return receipt requested, postage prepaid, to the address set forth above. Such communications shall be effective when they are received by the addressee, but if sent by certified mail in the manner set forth above, they shall be effective five (5) days after being

deposited in the mail. Any Party may change its address for such communications by giving notice to the other Party in conformity with this section.

## **17. AMENDMENT**

- 17.1. The Company may at any time at its sole discretion modify this Agreement from time to time, and any such changes will (i) be reflected on the Website, (ii) be effective thirty (30) calendar days after being so posted on the Website, (iii) not apply retroactively, and (iv) not apply to any disputes arising prior to the effective date of such change. The Company shall also post the amended Agreement to the address of the User. The User agrees to be bound to any such changes and understands the importance of regularly reviewing this Agreement as updated on the Website to keep the User's listing and contact information current.
- 17.2. Notwithstanding anything to the contrary herein, the Company reserves the right to, at any time and from time to time, change, alter, modify, or discontinue the Website (or any part thereof) with or without notice. The User agrees that the Company shall have no liability to the User or to any third party for any change, alteration, modification, suspension, discontinuance, or amendment of the Company's Website.

## **18. FORCE MAJEURE**

- 18.1. Except with regard to payment obligations, either Party shall be excused from delays in performing or from failing to perform its obligations under this contract to the extent the delays or failures resulting from causes beyond the reasonable control of the Party, including, but not limited to: failures or default of third-party software, Users, or products; acts of God or of a public enemy; foreign governmental actions; strikes; communications, network connection, or utility interruption or failure; fire; flood; epidemic; or freight embargoes.

## **19. CONTACT US:**

- 19.1. For any further clarification of Our Terms and Conditions, please write to Us at [info@empowerappalachia.org](mailto:info@empowerappalachia.org).