

KyMel, Inc.

Website Terms of Use

Last Updated: October 29, 2020

YOUR USE OF THE SITE IS SUBJECT TO AN ARBITRATION PROVISION IN SECTION 12, REQUIRING ALL CLAIMS TO BE RESOLVED VIA BINDING ARBITRATION PROVISION (INCLUDING A CLASS ACTION WAIVER).

Please carefully read these Terms of Use (this “**Agreement**”). This Agreement has been prepared as a legally binding agreement between you and KyMel, Inc. (“**KyMel**”, “**us**”, “**our**”, or “**we**”)(collectively the “**Parties**”).

This Agreement applies conditions to your use of any KyMel-operated website or application that links to this Agreement (collectively, the “**Site**”). KyMel makes the Site available for your use subject to the terms and conditions in this Agreement.

BY ACCESSING AND USING THE SITE, YOU AGREE TO BE BOUND BY THIS AGREEMENT. DO NOT ACCESS THE SITE OR USE THE SITE IN ANY WAY IF YOU DO NOT AGREE TO THIS AGREEMENT.

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1. Revisions to this Agreement

We may revise and update this Agreement from time to time, and will post the updated Agreement to the Site. Unless otherwise stated in the amended version of the Agreement, any changes to this Agreement will apply immediately upon posting. We are not obligated to provide you with notice of any changes. Your continued use of this Site will constitute your agreement to any new provisions within the revised Agreement.

2. Site Ownership; Your License to Access this Site

- A. Ownership.** All written content prepared and posted by KyMel, the Site design, layout, look, appearance, and graphics, as well as the trademarks, service marks, and logos contained on our Site (collectively, “**KyMel Content**”) are owned by or licensed to KyMel and are subject to copyright, trademark, and other intellectual property rights under the United States and foreign laws and international conventions. KyMel reserves all rights not expressly granted in, and to, the Site and the KyMel Content.
- B. License.** On the condition that you comply with all your obligations under this Agreement, KyMel grants you a limited, revocable, non-exclusive, non-transferable license to access the Site. Any use of the Site in excess of this license is strictly prohibited and constitutes a violation of this Agreement, which may result in the termination of your right to access and use this Site. Except as otherwise provided in this Agreement, no part of the Site and no KyMel Content may be copied, reproduced, uploaded, posted, publicly displayed, transmitted, or distributed in any way to any other computer, server, website, or other medium for publication or distribution or for any commercial use without KyMel’s prior express written consent. Your access to this Site is provided on a temporary basis with no guarantee for future availability. We reserve the right to withdraw or modify any content we provide on the Site without notice.
- C. Restrictions on Use of Site.** In addition to complying with other terms and conditions applicable to your use of the Site, you agree that when using the Site, you will not:
- Delete, modify, or attempt to change or alter any of the KyMel Content or notices on the Site;
 - Introduce into the Site any virus, rogue program, time bomb, drop dead device, back door, trojan horse, worm or other malicious or destructive code, software routines, denial of service attack, or equipment components designed to permit unauthorized access to the Site, or to otherwise harm other users, KyMel Content, or any third parties, or perform any such actions;
 - Use the Site to commit fraud or conduct other unlawful activities;
 - Copy, modify, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to learn the source code, structure, or ideas upon which the Site is based;
 - Use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Site for any reason;
 - Use any KyMel Content made available through the Site in any manner that misappropriates any trade secret or infringes any copyright, trademark, patent, rights of publicity, or other proprietary right of any party;
 - Decrypt, transfer, frame, display, or translate (except translations for personal use) any part of the Site; or
 - Connect to or access any KyMel computer system or network without authorization.

- D. Right to Suspend or Terminate Access.** KyMel, having sole discretion, may suspend or terminate, in whole or in part, your access to the Site at any time if you violate this Agreement.

3. Submitted Content

The Site may include features that allow you to upload, submit, or send content through the Site (e.g., the “Contact Us” form; the “Newsletter Signup” form) (“**Your Content**”). This Section provides the terms and conditions governing your use of such features.

- A. License to Your Content.** By submitting Your Content to the Site, you grant KyMel a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sub-licensable, and transferable license to use, reproduce, distribute, create derivative works of, adapt, display, and perform Your Content in all media now known or hereafter created without attribution. You hereby waive all moral rights to Your Content. You represent and warrant that you have the necessary rights to Your Content, including the right to grant a license to your rights in this Agreement. Prior to submitting Your Content, which includes picture(s), photograph(s), voice or video recording(s) of a minor, you must review and sign KyMel’s Media Consent and Authorization Form.
- B. Your Suggestions.** In addition to the license you grant to us, above, for Your Content, if you elect to provide or make available suggestions, comments, ideas, improvements, or other information or materials (collectively, “**Feedback**”) to us in connection with or related to the Site and KyMel’s products or services (including any related technology), whether you send such Feedback to us through the Site or through a separate communication channel, you grant us a worldwide, perpetual, irrevocable, non-exclusive, royalty-free, sub-licensable, and transferable license under any and all rights in and to the Feedback to use, reproduce, distribute, create derivative works of, adapt, display, perform, and otherwise exploit, and to make, have made, sell, offer to sell, and import any products and services incorporating or based on, Feedback in any manner.
- C. Prohibited Content.** You agree that you will not use the Site to send:
- Any content that is obscene, defamatory, threatening, harassing, abusive, slanderous, racially, or ethnically offensive, hateful, or embarrassing to any other person or entity or that infringes the intellectual property of a third party;
 - Any materials that violate, could cause us or a third party to violate, or encourage us or a third party to violate any applicable law, statute, ordinance, or regulation; or
 - Any content or communications intended to impersonate someone else.
- D. Your Responsibility for Your Content.** Your Content is your sole responsibility. Under no circumstances will we be liable in any way for Your Content or for any loss or damage of any kind incurred as a result of the use of any of Your Content. Although KyMel is under no obligation to monitor the Site or Your Content, KyMel further reserves the right to monitor, delete or modify any of Your Content that violates this Agreement.

4. Your Privacy

The KyMel Privacy Policy describes how we collect and use personal information about you through the Site.

5. Electronic Messaging

If you provide a mobile phone number or an email address (“**Contact Information**”), you agree that KyMel may send you promotional or informational content through text (SMS) messages or emails (collectively, “**Communications**”), including, as applicable, through the use of automated dialer or artificial voice technology. Standard message and data rates may apply. You acknowledge and agree that you are not required to consent to receiving promotional Communications as a condition for using the Site or receiving any other products or services from us. If you wish to opt out of receiving text messages, you may text “STOP” from the mobile device used to receive Communications; if you wish to opt out of receiving emails, please follow the instructions included at the bottom of the email. If you otherwise need assistance in opting out, please contact us as kymel@kymel.org.

6. Third Party Websites

The Site may include or provide links to other websites on the Internet that we do not control. These other websites may provide opinions, recommendations, or other information from various individuals, organizations, or companies. We are not responsible for the nature, quality, or accuracy of the content or opinions expressed on such websites and we do not investigate, monitor, or check them for quality, accuracy, or completeness. Inclusion of any linked website on the Site does not imply or express an approval or endorsement of the linked website by us or of any of the content, opinions, treatments, information, products, or services provided on these websites, even if we receive monetary gain in connection with your use of such third-party websites.

7. Donations through the Site

The Site enables KyMel’s customers to collect donations through branded, fundraising sites. Donations paid by you are final and non-refundable, unless otherwise provided by applicable law. Donations through the Site may be subject to payment processing fees, which are set and collected by a secure third-party payment processor. For additional terms applicable to your donations, please review the terms and policies provided on the applicable third-party payment processor’s site.

8. Disclaimer of Warranties

EXCEPT AS WE OTHERWISE EXPRESSLY PROVIDE IN THIS AGREEMENT, THE SITE IS PROVIDED “AS IS”. WE AND OUR THIRD-PARTY LICENSORS DO NOT WARRANT OR MAKE ANY PROMISES REGARDING THE CORRECTNESS, USEFULNESS, ACCURACY, AVAILABILITY, OR RELIABILITY OF: (i) YOUR USE OR THE RESULTS OF YOUR USE OF THE SITE; (ii) ANY ADVICE YOU GLEAN FROM THE SITE WHETHER PROVIDED BY US OR A THIRD PARTY; OR (iii) ANY OTHER CONTENT AVAILABLE THROUGH THE SITE. WE DO NOT PROMISE THAT THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES OR OTHER MALICIOUS SOFTWARE, OR THAT ANY DEFECTS WILL BE CORRECTED. THERE IS NO WARRANTY OF ANY KIND, INCLUDING ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WE AND OUR THIRD-PARTY LICENSORS HAVE NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION, OR CONTENT.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST. IN THE EVENT THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT SHALL BE DETERMINED BY A COURT TO BE INVALID OR UNENFORCEABLE, THEN SUCH PROVISIONS SHALL BE REFORMED TO THE MAXIMUM LIMITATION PERMITTED BY APPLICABLE LAW. TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED TO 90 DAYS FROM THE DATE OF ACCESS OF THE SITE, IF APPLICABLE.

9. Limitation of Liability

KYMEL AND ITS LICENSORS, PARENTS, OR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ASSIGNEES, OR SUCCESSORS-IN-INTEREST (“**KYMEL PARTIES**”) WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES, CLAIMS, DEMANDS, LOST PROFITS, OR CAUSES OF ACTION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE, RELATING TO THIS AGREEMENT, YOUR USE OF THE SITE OR ANY INFORMATION YOU OBTAIN ON IT, OR ANY OTHER INTERACTION WITH THE SITE AND **YOU VOLUNTARILY AND UNEQUIVOCALLY WAIVE ANY LIABILITY OF KYMEL.**

YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SITE WILL BE TO STOP USING THE SITE.

IN ANY EVENT, THE MAXIMUM TOTAL AGGREGATE LIABILITY OF KYMEL, ITS SUPPLIERS, LICENSORS, PARENT, OR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND ASSIGNEES OR SUCCESSORS-IN-INTEREST, FOR ALL CLAIMS, LOSSES, LIABILITIES, OR DAMAGES WHATSOEVER RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING CLAIMS FOR BREACH OF CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, REGARDLESS OF THEORY OF LIABILITY ASSERTED, **SHALL NOT EXCEED THE TOTAL AMOUNT OF ONE HUNDRED U.S. DOLLARS (\$100.00 USD) OR YOUR DIRECT PROVABLE DAMAGES.**

IF YOU ARE A CALIFORNIA RESIDENT OR COULD OTHERWISE CLAIM THE PROTECTIONS OF CALIFORNIA LAW, YOU FURTHER EXPRESSLY WAIVE THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO THE 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." YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND SECTION 1542 OF THE CALIFORNIA CIVIL CODE, AND YOU HEREBY EXPRESSLY WAIVE AND RELINQUISH ALL RIGHTS AND BENEFITS UNDER THAT SECTION AND ANY LAW OF ANY JURISDICTION OF SIMILAR EFFECT WITH RESPECT TO YOUR RELEASE OF ANY CLAIMS YOU MAY HAVE AGAINST KYMEL.

10. Indemnification

To the fullest extent permitted by applicable law, you agree to hold harmless, indemnify, and defend the KyMel Parties from and against any and all claims (including liabilities, damages, losses, costs, expenses, and reasonable attorneys’ fees): (a) alleging injury, damage, or loss resulting from your use of the Site; (b) relating to any act or omission by you which is a breach of your obligations under this Agreement or applicable law; or (c) otherwise relating to your use of the Site. You will have the right to defend and compromise such claim at your expense for the benefit of the KyMel Parties; provided, however, you will not have the right to obligate the KyMel Parties in any respect in connection with any settlement without the written consent of the indemnified party. Notwithstanding the foregoing, if you fail to assume your obligation to defend or if KyMel elects to defend such claims itself, the KyMel Parties may do so to protect their interests and you will reimburse all costs incurred by the KyMel Parties in connection with such defense.

11. Choice of Law

This Agreement and the rights of the Parties hereunder will be governed by and construed in accordance with the Laws of the State of Kansas, exclusive of conflict or choice of law rules. Notwithstanding the

provision in the preceding paragraph with respect to applicable substantive Law, any arbitration conducted pursuant to the terms of this Agreement will be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

12. Dispute Resolution

- A. Binding Mutual Arbitration.** Any dispute, claim or controversy in connection with, arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity of this Agreement, including, but not limited to, the determination of the scope or applicability of this agreement to arbitrate (a “**Dispute**”), will be determined by arbitration in Kansas City, Missouri or another mutually agreed upon location before a single arbitrator. The arbitration will be administered by the American Arbitration Association (“**AAA**”) in accordance with AAA Consumer Arbitration Rules. Judgment on the award may be entered in any court having jurisdiction. This provision will not preclude Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
- B. Conduct of Arbitration.** The arbitration will be commenced by the claimant party filing a demand for arbitration with the administrator of AAA and serving the demand on the opposing party. Within thirty (30) calendar days of the date the demand for arbitration is filed, the Parties will select an arbitrator by following the AAA Consumer Arbitration Rules’ appointment procedures. Except as may be required by law, neither Party nor the arbitrator may disclose the existence, content or results of any arbitration under this Agreement without the prior written consent of both Parties. The arbitrator’s award will be in writing accompanied by a reasoned opinion and a written statement of the essential findings and conclusions on which the award is based.
- C. Costs.** The arbitrator will determine how the costs and expenses of the arbitration will be allocated between the Parties, and may award attorneys’ fees.
- D. Limitation of Liability.** In any arbitration arising out of or related to this Agreement, the arbitrator may not award any incidental, indirect, or consequential damages, including damages for lost profits or any punitive or exemplary damages.
- E. Arbitration is on an Individual Basis Only; Class Action Waiver.** THE PARTIES AGREE TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS, AND THAT THIS AGREEMENT DOES NOT PERMIT CLASS ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. NOTWITHSTANDING THE ARBITRATOR’S POWER TO RULE ON HIS OR HER OWN JURISDICTION AND THE VALIDITY OR ENFORCEABILITY OF THE AGREEMENT TO ARBITRATE, THE ARBITRATOR HAS NO POWER TO RULE ON THE VALIDITY OR ENFORCEABILITY OF THE AGREEMENT TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS. IN THE EVENT THE PROHIBITION ON CLASS ARBITRATION IS DEEMED INVALID OR UNENFORCEABLE, THEN THE REMAINING PORTIONS OF THIS SECTION WILL REMAIN IN FORCE.

13. Miscellaneous Terms

- A. Complete Agreement.** This Agreement constitutes the entire agreement between you and KyMel relating to your use of, and access to, this Site and supersedes any prior or contemporaneous agreements or representations. This Agreement may not be amended except as set forth herein. For avoidance of doubt, notwithstanding this Section, this

Agreement does not modify, revise, or amend the terms of any other agreements you may have with KyMel.

- B. Severability.** If any portion of this Agreement is ruled invalid or otherwise unenforceable, it shall be deemed amended in order to achieve as closely as possible the same effect as originally drafted. Any invalid or unenforceable portion should be construed as narrowly as possible in order to give effect to as much of the Agreement as possible. If this Agreement is ruled invalid or otherwise unenforceable, Sections 2, 6, 8, 9, 10, 11 will remain in effect.
- C. No Waivers.** Our failure to enforce or exercise any provision of this Agreement or related right will not constitute a waiver of that right or provision. This Agreement shall not be modified by any course of performance or course of dealing.
- D. No Assignments and Transfers.** No rights or obligations under this Agreement may be assigned or transferred by you, either voluntarily or by operation of law, without our express prior written consent and in our sole discretion.
- E. No Third Party Beneficiaries.** Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.
- F. Notices.** You shall provide any notices to us under this Agreement by e-mail or mail using the contact information provided below. Unless you tell us otherwise, or the law requires otherwise, you agree to receive all communications from us by e-mail. You are responsible for providing KyMel with up-to-date contact information, which you may do by updating your account information through the Site or by sending a message to us via the contact information provided below. You agree that all communications that we send to you electronically satisfy any legal requirement that a communication be in writing. You may print the communications for your records.

14. Contact Us

If you have any questions or need to contact us for any reason relating to this Agreement, please e-mail: kymel@kymel.org.

You may also send us mail at the following address:

KyMel, Inc.
P.O. Box 1529
Great Bend, KS 67530