

## ETF ACTION TERMS OF SERVICE

These ETF Action Terms of Service (the “Terms of Service” or “Agreement”) set forth the terms and conditions governing the relationship between you (either as an individual or on behalf of the legal entity you represent) (“You” or “Customer”) and ETF Action LLC (“ETF Action”) relating to the services provided by ETF Action through the ETF Action Platform or otherwise (the “Services”).

### 1. Services

**1.1 Platform Terms of Use and Privacy Policy.** By entering into this Agreement, Provider agrees to the ETF Action Platform Terms of Use located at [www.etfaction.com/termsfuse](http://www.etfaction.com/termsfuse) (“Terms of Use”), and the ETF Action Privacy Policy located at [www.etfaction.com/privacypolicy](http://www.etfaction.com/privacypolicy) (“Privacy Policy”), which are incorporated herein by reference. To the extent the Terms of Use or Privacy Policy are inconsistent with the Terms of Service, the Terms of Service shall control.

**1.2 Changes to Services.** ETF Action reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of ETF Action's services to its customers or Customers, the competitive strength of or market for ETF Action's Services or the Services' cost efficiency or performance; or (b) to comply with applicable law.

**1.3 Third Party Services.** ETF Action may make certain third-party products or services (“Third-Party Services”) available to Customer for which ETF Action makes no representations, warranties or indemnities and will have no other liability hereunder, notwithstanding anything contained in this Agreement.

### 2. Access and Use, Customer Restrictions.

**2.1 Access and Use.** Subject to and conditioned on Customer's and its Authorized Users' compliance with these Terms of Service, ETF Action hereby grants Customer a non-exclusive, non-transferable right to access and use the Services during the term of this Agreement, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal non-commercial use. “Authorized User” means Customer and Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased.

**2.2 Reservation of Rights.** Nothing in this Agreement grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to, the Services, or third-party materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, and third-party materials are and will remain with ETF Action and the respective rights holders in the third-party materials.

**2.3 Authorization Limitations and Restrictions.** Customer shall not, and shall not permit any other person to, access or use the Services except as expressly permitted by this Agreement and, in the case of Third-Party Services, the applicable third-party license agreement, and that agrees to use reasonable efforts to protect the Services against inappropriate access or use. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services to any person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her own then valid access credentials;

(e) input, upload, transmit or otherwise provide to or through the Services or ETF Action systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;

(f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, ETF Action systems or ETF Action's provision of services to any third party, in whole or in part;

(g) remove, delete, alter or obscure any trademarks, specifications, documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, including any copy thereof;

(h) access or use the Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law;

(i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;

(j) send or store infringing, obscene, threatening, libelous, or otherwise unlawful, unsafe, malicious, abusive or tortious material, including material harmful to children or violative of third party privacy rights;

(k) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;

(l) attempt to gain unauthorized access to the Services or the related systems or networks;

(m) access or use the Services for purposes of competitive analysis of the Services, the development, provision or use of a competing service or product, or any other purpose that is to ETF Action's detriment or commercial disadvantage; or

(n) otherwise access or use the Services beyond the scope of the authorization granted under this Agreement.

**2.4 Suspension or Termination of Services.** ETF Action may, directly or indirectly, through disabling technology or other legal means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) ETF Action receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires ETF Action to do so; or (b) ETF Action believes, in its discretion, that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of ETF Action; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) the Agreement expires or is terminated. This Section does not limit any of ETF Action's other rights or remedies, whether at law, in equity, or under the Terms of Service.

**2.5 Customer Obligations.** Customer shall: (i) have responsibility for the accuracy, quality, legality, reliability, and appropriateness of all Customer Data and Customer Materials (as defined below); (ii) use commercially reasonable efforts to prevent unauthorized control or tampering or any other unauthorized access to, or use of, the Services; (iii) comply with all applicable laws (including laws regarding privacy and protection of consumer information) in using the Service; (iv) obtain and maintain all computer hardware, software and communications equipment needed to access the Services; (v) retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer computer systems, and sole responsibility for all access to and use of the Services; and (vi) otherwise comply with all obligations in the Agreement.

**3. Data Backup.** The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. ETF ACTION HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS,

ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

#### **4. Security.**

**4.1 Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' access credentials; and (e) all access to and use of the Services directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use. "Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the processing of such information, data, or content by or through the Services.

**4.2 Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

#### **5. Fees; Payment Terms.**

**5.1 Fees.** Customer shall pay ETF Action the fees and expenses set forth in the applicable order between Customer and ETF Action.

**5.2 Taxes.** All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on ETF Action's income.

**5.3 Payment.** Payment will be as set forth in the applicable order form, generally by credit card, Paypal or similar, on a monthly automatic and recurring basis.

#### **6. Intellectual Property Rights.**

**6.1 Services and ETF Action Materials/Customer-Specific Content.** All right, title and interest in and to the ETF Action Materials, including all Intellectual Property Rights therein, are and will remain with ETF Action and its licensors and, with respect to third-party materials included as part of Third-Party Services, the applicable Third-Party Providers own all right, title, and interest, including all Intellectual Property Rights, in and to the third-party materials. Customer acknowledges that the ETF Action Materials are protected by international copyright and other intellectual property laws, contain proprietary data and information of ETF action and its licensors. Customer has no right, license, or authorization with respect to any of the ETF Action Materials except as expressly set forth in this Agreement. All other rights in and to the ETF Action Materials are expressly reserved by ETF Action. "ETF Action Materials" means the Services, specifications, documentation, and ETF Action systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, work product, technical or functional descriptions, requirements, plans, or reports, that are provided, created or used in connection with the Services or otherwise comprise or relate to the Services. "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to

any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**6.2 Customer Materials License.** Customer grants to ETF Action a limited, non-exclusive, royalty-free right and license during the Term, to use the Customer Materials necessary to fulfill ETF Action's obligations under this Agreement, solely for the purpose of providing the Services. "Customer Materials" means all images, data and other materials provided by Customer to ETF Action for the purposes of the Agreement, and all content provided by Customer for posting on the ETF Action Platform.

**6.3 Feedback.** If Customer or any Authorized User transmits or provided any communications or materials to ETF Action by mail, email, telephone, or otherwise, suggesting or recommending changes to the ETF Action Services or ETF Action Platform ("Feedback"), ETF Action is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Customer hereby assigns to ETF Action on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and ETF Action is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although ETF Action is not required to use any Feedback.

## **7. Term and Termination.**

**7.1 Term.** Unless earlier terminated in accordance with this Agreement, this Agreement will continue in effect for the period set forth in the applicable Services order form. Unless written notice of termination is provided by Customer prior to the end of the then current term, the Agreement will automatically renew for an additional term equivalent to the expiring term (e.g. if the term was 30 days it will automatically renew for another 30 day term; if the term was 6 months, it will automatically renew for an additional 6 month term) at the then current rate for the applicable renewal term.

**7.2 Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

(a) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured ninety (90) days (ten (10) days for any failure to pay amounts due) after the non-breaching party provides the breaching party with written notice of such breach;

(b) either party may terminate this Agreement effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**7.3 Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

## **8. Representations and Warranties.**

**8.1 Customer Representations and Warranties.** Customer represents and warrants to ETF Action that: (a) Customer has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under the Agreement; (b) the Agreement will constitute the legal, valid and binding obligation of such party, enforceable against Customer in accordance with its terms; and (c) Customer has the necessary rights and consents in and relating to the Customer Materials and Customer Data so that, as received by ETF Action and processed in

accordance with the Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

**8.2 DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE TERMS OF SERVICE, ALL SERVICES, INCLUDING ALL ETF ACTION MATERIALS, ARE PROVIDED ON AN “AS IS” “WHERE IS” BASIS, AND ETF ACTION AND ITS LICENSORS DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES. ETF ACTION AND ITS LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, ETF ACTION AND ITS LICENSORS MAKE NO WARRANTY OF ANY KIND THAT THE SERVICES OR ETF ACTION MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, TIMELY, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**8.3 ADDITIONAL DISCLAIMERS.** THE SERVICES ARE NOT INTENDED AND SHOULD NOT BE CONSTRUED AS FINANCIAL OR INVESTMENT ADVICE, A RECOMMENDATION OR PROMOTION. NEITHER ETF ACTION NOR ITS LICENSORS SHALL BE RESPONSIBLE FOR INVESTMENT DECISIONS, DAMAGES, OR OTHER LOSSES RESULTING FROM USE OF THE SERVICES. PAST PERFORMANCE DOES NOT GUARANTEE FUTURE PERFORMANCE. NEITHER ETF ACTION NOR ITS LICENSORS SHALL BE CONSIDERED AN "EXPERT" UNDER THE SECURITIES ACT OF 1933. NEITHER ETF ACTION NOR ITS LICENSORS WARRANT THAT THE SERVICES COMPLY WITH THE REQUIREMENTS OF THE NASD OR ANY SIMILAR ORGANIZATION OR WITH THE SECURITIES LAWS OF ANY JURISDICTION. ANY INFORMATION CONTAINED IN CONTAINED IN THE SERVICES SHOULD NOT BE ACTED UPON WITHOUT OBTAINING SPECIFIC LEGAL, TAX, AND INVESTMENT ADVICE FROM A LICENSED PROFESSIONAL.

**9. Indemnification.** Customer shall indemnify, defend and hold harmless ETF Action and its officers, directors, employees, agents, stockholders, successors, assigns and licensors (each, an “ETF Action Indemnitee”) from and against any and all losses, damages, liabilities and costs (including reasonable attorneys’ fees) incurred by such ETF Action Indemnitee in connection with any action or claim by a third party that arises out of or relate to any: (a) Customer Materials or Customer Data; (b) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under the Agreement; (c) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with the Agreement; or (d) Customer’s or any Authorized User’s violation or alleged violation of applicable law.

## **10. Limitations of Liability.**

**10.1 EXCLUSION OF DAMAGES.** IN NO EVENT WILL ETF ACTION OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) IMPAIRMENT, INABILITY TO USE OR LOSS,

INTERRUPTION OR DELAY OF THE SERVICES, (b) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (c) RELIANCE BY CUSTOMER ON ANY ETF ACTION MATERIALS, OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**10.2 CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE AGGREGATE LIABILITY OF ETF ACTION UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO ETF ACTION IN THE 3 MONTHS IMMEDIATELY PRIOR TO THE ACTION OR CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN ADDITION, ETF ACTION'S LICENSORS SHALL HAVE NO LIABILITY AT ALL TO CUSTOMER ARISING OUT OF THIS AGREEMENT.

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

**11. Indemnification.** Customer agrees to indemnify, defend, and hold harmless ETF Action, its affiliates, officers, directors, employees, consultants, agents and representatives and its licensors, from and against any and all third-party claims, liabilities, losses, costs (including, but not limited to, reasonable attorneys' fees), and/or damages of any kind arising from or relating to: (i) Customer's use of the Services, ETF Action Materials or the ETF Action Platform; (ii) Customer's (and its Authorized User's) breach of this Agreement, negligence, willful misconduct or violation of any law; and (iii) any messages, information, or materials uploaded, posted, published, or transmitted by Customer in connection with the Services.

**12. Force Majeure.** ETF Action shall not be liable for any default or delay in the performance of any of its obligations under the Agreement if and to the extent such default or delay is caused, directly or indirectly, by (a) fire, flood, earthquake, elements of nature or acts of God; (b) wars (declared and undeclared), acts of terrorism, sabotage, riots, civil disorders, rebellions or revolutions; (c) extraordinary malfunction of third-party Internet infrastructure, data centers or related systems or (d) acts of any governmental authority with respect to any of the foregoing, and provided that such default or delay cannot reasonably be circumvented by the non-performing party through the use of commercially reasonable alternate sources, workaround plans or other commercially reasonable means.

### **13. Miscellaneous.**

**13.1 Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Terms of Service shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**13.2 Notices.** Any notice to be given under this Agreement shall be in writing and delivered by facsimile, U.S. mail or electronic mail to the address listed below:

If to ETF Action:

ETF Action LLC  
800 Englewood Parkway  
Englewood, Colorado 80110  
[support@ETFAction.com](mailto:support@ETFAction.com)

If to Customer, the email or mailing address set forth in the applicable services order form.

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3<sup>rd</sup> day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**13.3 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**13.4 Entire Agreement.** The Agreement, including the Terms of Service, ETF Action Platform Terms of Use and the Privacy Policy, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of the Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**13.5 Assignment** Customer may not assign the Agreement, whether voluntarily, involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without the prior written consent of ETF Action. Any purported assignment of rights in violation of this Section is void.

**13.6 No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

**13.7 Changes to Terms of Service.** ETF Action may revise and update these Terms of Service from time to time in its sole discretion. All changes are effective immediately when they are posted and apply to all access to and use of the Services thereafter. However, any changes to the dispute resolution provisions set forth in Governing Law and Jurisdiction will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted. Your continued use of the Services following the posting of revised Terms of Service means that you accept and agree to the changes. You are expected to check this page frequently, so you are aware of any changes, as they are binding on you.

**13.8 Severability.** If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**13.9 Governing Law; Forum; Jurisdiction.** The laws of the State of Colorado (without giving effect to its conflicts of law principles) shall govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance and enforcement. Any Party bringing a legal action or proceeding against other party arising out of or relating to this Agreement (a "Covered Proceeding") must bring such Covered Proceeding in the state or federal court sitting in the City and County of Denver, Colorado (the "Designated Courts"). The parties hereby irrevocably submit to the jurisdiction of the Designated Courts, and further irrevocably waive any objection which they may now or hereafter have to the laying of venue for a Covered Proceeding brought in a Designated Court or any defense of inconvenient forum for the maintenance of such dispute.

**13.10 Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement or the transactions contemplated hereby.

**13.11 Arbitration.** At ETF Action's sole discretion, it may require you to submit any disputes arising from the use of these Terms of Service or the ETF Action Platform, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association applying Colorado law.

**13.12 Attorneys' Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

**13.13 Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THE SERVICES OR THE ETF ACTION PLATFORM MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.