



## Platform Terms of Use

Last Modified: February 1, 2019

### 1. Acceptance of the Terms of Use

These Platform Terms of Use, together with any documents or other terms and conditions or agreements expressly incorporated by reference (collectively, the “Terms of Use”), constitute a legally binding agreement between you, or any company you represent (collectively, “You,” “you,” or “User”), and ETF Action LLC (“ETF Action”). The Terms of Use govern all User access to and use of [www.etfaction.com](http://www.etfaction.com) and any other ETF Action website or client portal (collectively, the “Websites”), any ETF Action mobile or desktop apps (the “Apps”), and any content, functionality, technology solutions and services offered on or through the Websites or Apps (collectively, the “Services”). The Website, Apps and Services are collectively referred to as the “ETF Action Platform”.

Please read the Terms of Use carefully before you start to use the ETF Action Platform. **By using the ETF Action Platform, or by clicking to accept or agree to the Terms of Use when this option is made available to you, you accept and agree to be bound and abide by these Terms of Use and the ETF Action Privacy Policy, found at <https://www.etfaction.com/privacypolicy> and incorporated herein by reference.**

This ETF Action Platform is offered and available to users who are 18 years of age or older and reside in the United States or any of its territories or possessions. By using this ETF Action Platform, you represent and warrant that you are of legal age to form a binding contract with ETF Action and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the ETF Action Platform.

### 2. Changes to the Terms of Use

ETF Action may revise and update these Terms of Use from time to time in its sole discretion. All changes are effective immediately when ETF Action posts them and apply to all access to and use of the ETF Action Platform thereafter. However, any changes to the dispute resolution provisions set forth in the Governing Law and Jurisdiction section will not apply to any disputes for which the parties have actual notice on or prior to the date the change is posted on the ETF Action Platform.

Your continued use of the ETF Action Platform following the posting of revised Terms of Use 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.

### 3. Accessing the ETF Action Platform and Account Security

ETF Action reserves the right to withdraw or amend the ETF Action Platform, and any service or material provided on the ETF Action Platform, in ETF Action’s sole discretion without notice. ETF Action will not be liable if for any reason all or any part of the ETF Action Platform is unavailable

at any time or for any period. From time to time, ETF Action may restrict access to some parts of the ETF Action Platform, or the entire ETF Action Platform, to users, including registered users.

You are responsible for:

- Making all arrangements necessary for you to have access to the ETF Action Platform.
- Ensuring that all persons who access the ETF Action Platform through your internet connection are aware of these Terms of Use and comply with them.

To access the ETF Action Platform or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the ETF Action Platform that all the information you provide on the ETF Action Platform is correct, current and complete. You agree that all information you provide to register with the ETF Action Platform, post on the ETF Action Platform, or otherwise, including but not limited to through the use of any interactive features on the ETF Action Platform, is governed by the ETF Action Privacy Policy, and you consent to all actions ETF Action takes with respect to your information consistent with the Privacy Policy.

If you choose, or are provided with, a user name, password or any other piece of information as part of ETF Action security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the ETF Action Platform or portions of it using your user name, password or other security information. You will be responsible for all activities that occur under that password. You agree to notify ETF Action immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

You also represent and warrant that: (i) you will not select or utilize a user name of another person with intent to impersonate that person; (ii) you will not select or utilize a user name in which another person has rights, if you do not have that person's authorization to use such name; and (iii) you will not select or utilize a user name that ETF Action in its sole discretion deems offensive.

ETF Action has the right to disable any user name, password or other identifier, whether chosen by you or provided by ETF Action, at any time in its sole discretion for any or no reason, including if, in ETF Action's opinion, you have violated any provision of these Terms of Use.

#### **4. Intellectual Property Rights**

The ETF Action Platform and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by ETF Action, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

These Terms of Use permit you to use the ETF Action Platform for your personal, non-commercial use only, or for legitimate business purposes relating to your role as a potential or current supplier or customer of ETF Action subject to any separate agreement with ETF Action. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on the ETF Action Platform, except as follows:

- Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the ETF Action Platform for your own personal, non-commercial use, or for legitimate business purposes relating to your role as a potential or current supplier or customer of ETF Action, and not for further reproduction, publication or distribution.
- If ETF Action provides desktop, mobile or other applications for download, you may download a single copy to your computer or mobile device solely for your own personal, non-commercial use, provided you agree to be bound by ETF Action's end user license agreement for such applications.

You must not:

- Modify copies of any materials from the ETF Action Platform.
- Use any illustrations, photographs, video or audio sequences or any graphics separately from the accompanying text.
- Delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from the ETF Action Platform.

Except as otherwise agreed to between you and ETF Action, you must not access or use for any commercial purposes any part of the ETF Action Platform or any services or materials available through the ETF Action Platform.

If you wish to make any use of material on the ETF Action Platform other than that set out in this section, please address your request to: [team@etfaction.com](mailto:team@etfaction.com).

If you print, copy, modify, download or otherwise use or provide any other person with access to any part of the ETF Action Platform in breach of the Terms of Use, your right to use the ETF Action Platform will cease immediately and you must, at ETF Action's option, return or destroy any copies of the materials you have made. No right, title or interest in or to the ETF Action Platform or any content on the ETF Action Platform is transferred to you, and all rights not expressly granted are reserved by ETF Action. Any use of the ETF Action Platform not expressly permitted by these Terms of Use is a breach of these Terms of Use and may violate copyright, trademark and other laws.

## **5. Trademarks**

The ETF Action name, ETF Action logo, and all related names, logos, product and service names, designs and slogans are trademarks of ETF Action or its affiliates or licensors. You must not use such marks without the prior written permission of ETF Action. All other names, logos, product and service names, designs and slogans on the ETF Action Platform are the trademarks of their respective owners.

## **6. Prohibited Uses**

You may use the ETF Action Platform only for lawful purposes and in accordance with these Terms of Use. You agree not to use the ETF Action Platform:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).
- For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise.
- To send, knowingly receive, upload, download, use or re-use any material which does not comply with the Content Standards set out in these Terms of Use.
- To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail”, “chain letter” or “spam” or any other similar solicitation.
- To impersonate or attempt to impersonate ETF Action, an ETF Action employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the ETF Action Platform, or which, as determined by ETF Action, may harm ETF Action or users of the ETF Action Platform or expose them to liability.

Additionally, you agree not to:

- Use the ETF Action Platform in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the ETF Action Platform, including their ability to engage in real time activities through the ETF Action Platform.
- Use any robot, spider or other automatic device, process or means to access the ETF Action Platform for any purpose, including monitoring or copying any of the material on the ETF Action Platform.
- Use any manual process to monitor or copy any of the material on the ETF Action Platform or for any other unauthorized purpose without ETF Action's prior written consent.
- Use any device, software or routine that interferes with the proper working of the ETF Action Platform.
- Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the ETF Action Platform, the server on which the ETF Action Platform is stored, or any server, computer or database connected to the ETF Action Platform.
- Attack the ETF Action Platform via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the ETF Action Platform.

## **7. User Contributions**

The ETF Action Platform may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin boards, blogs, community areas and other interactive features (collectively, “Interactive Services”) that allow users to post, submit, publish, display or transmit to other users or other persons (hereinafter, “post”) content or materials (collectively, “User Contributions”) on or through the ETF Action Platform.

All User Contributions must comply with the Content Standards set out in these Terms of Use.

Any User Contribution you post to the ETF Action Platform will be considered non-confidential and non-proprietary. By providing any User Contribution on the ETF Action Platform, you grant ETF Action and its affiliates and service providers, and each of their and ETF Action’s respective licensees, successors and assigns the right to use, reproduce, modify, perform, display, distribute and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to ETF Action and ETF Action’s affiliates and service providers, and each of their and ETF Action’s respective licensees, successors and assigns.
- All of your User Contributions are truthful, accurate, appropriate and comply with applicable law.
- All of your User Contributions do and will comply with these Terms of Use.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not ETF Action, has full responsibility for such content, including its legality, reliability, accuracy and appropriateness.

ETF Action is not responsible, or liable to any third party, for the content or accuracy of any User Contributions posted by you or any other user of the ETF Action Platform.

## **8. Monitoring and Enforcement; Termination**

ETF Action has the right to:

- Remove or refuse to post any User Contributions for any or no reason in its sole discretion. ETF Action may add, change, discontinue, remove, edit or suspend such User Contributions at any time for any reason without notice to you, without your permission, and without liability.
- Take any action with respect to any User Contribution that ETF Action deems necessary or appropriate in ETF Action’s sole discretion, including if ETF Action believes that such User Contribution violates the Terms of Use, including the Content Standards, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the ETF Action Platform or the public or could create liability for ETF Action.
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.

- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the ETF Action Platform.
- Terminate or suspend your access to all or part of the ETF Action Platform for any or no reason, including without limitation, any violation of these Terms of Use.

Without limiting the foregoing, ETF Action has the right to fully cooperate with any law enforcement authorities or court order requesting or directing ETF Action to disclose the identity or other information of anyone posting any materials on or through the ETF Action Platform. YOU WAIVE AND HOLD HARMLESS ETF ACTION AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, ETF Action cannot and does not undertake to review all material before it is posted on the ETF Action Platform and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, ETF Action assumes no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. ETF Action has no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

## **9. Content Standards**

These content standards (“Content Standards”) apply to any and all User Contributions and use of Interactive Services. User Contributions must in their entirety comply with all applicable federal, state, local and international laws and regulations. Without limiting the foregoing, User Contributions must not:

- Contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable.
- Promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person.
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Use and ETF Action’s Privacy Policy.
- Be likely to deceive any person.
- Promote any illegal activity, or advocate, promote or assist any unlawful act.
- Cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person.
- Impersonate any person or misrepresent your identity or affiliation with any person or organization.

- Involve commercial activities or sales, such as contests, sweepstakes and other sales promotions, barter or advertising.
- Give the impression that they emanate from or are endorsed by ETF Action or any other person or entity, if this is not the case.

#### **10. Copyright Infringement**

If you believe that any User Contributions violate your copyright, please see ETF Action's Copyright Policy set forth below for instructions on sending ETF Action a notice of copyright infringement. It is the policy of ETF Action to terminate the user accounts of repeat infringers.

#### **11. Reliance on Information Posted**

The information presented on or through the ETF Action Platform is made available solely for general information purposes. ETF Action does not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. ETF Action disclaims all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the ETF Action Platform, or by anyone who may be informed of any of its contents.

The ETF Action Platform may include content provided by third parties, including materials provided by other users, bloggers and third-party licensors, syndicators, aggregators and/or reporting services. All statements and/or opinions expressed in these materials, and all articles and responses to questions and other content, other than the content provided by ETF Action, are solely the opinions and the responsibility of the person or entity providing those materials. These materials do not necessarily reflect the opinion of ETF Action. ETF Action is not responsible, or liable to you or any third party, for the content or accuracy of any materials provided by any third parties.

#### **12. Changes to the ETF Action Platform**

ETF Action may update the content on the ETF Action Platform from time to time, but its content is not necessarily complete or up-to-date. Any of the material on the ETF Action Platform may be out of date at any given time, and ETF Action is under no obligation to update such material.

#### **13. Information About You and Your Visits to the ETF Action Platform**

All information ETF Action collects on the ETF Action Platform is subject to ETF Action's Privacy Policy. By using the ETF Action Platform, you consent to all actions taken by ETF Action with respect to your information in compliance with the Privacy Policy.

#### **14. Linking to the ETF Action Platform and Social Media Features**

You may link to ETF Action's homepage at [www.etfaction.com](http://www.etfaction.com), provided you do so in a way that is fair and legal and does not damage ETF Action's reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval or endorsement on ETF Action's part without ETF Action's express written consent.

The ETF Action Platform may provide certain social media features that enable you to:

- Link from your own or certain third-party websites to certain content on the ETF Action Platform.

- Send e-mails or other communications with certain content, or links to certain content, on the ETF Action Platform.
- Cause limited portions of content on the ETF Action Platform to be displayed or appear to be displayed on your own or certain third-party websites.

You may use these features solely as they are provided by ETF Action, and solely with respect to the content they are displayed with and otherwise in accordance with any additional terms and conditions ETF Action provides with respect to such features. Subject to the foregoing, you must not:

- Establish a link from any website that is not owned by you.
- Cause the ETF Action Platform or portions of it to be displayed, or appear to be displayed by, for example, framing, deep linking or in-line linking, on any other site.
- Link to any part of the Websites other than the homepage.
- Otherwise take any action with respect to the materials on the ETF Action Platform that is inconsistent with any other provision of these Terms of Use.

The website from which you are linking, or on which you make certain content accessible, must comply in all respects with the Content Standards set out in these Terms of Use.

You agree to cooperate with ETF Action in causing any unauthorized framing or linking immediately to cease. ETF Action reserves the right to withdraw linking permission without notice.

ETF Action may disable all or any social media features and any links at any time without notice in ETF Action's discretion.

#### **15. Links from the ETF Action Platform**

If the ETF Action Platform contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. ETF Action has no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to the ETF Action Platform, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

#### **16. Geographic Restrictions**

The owner of the ETF Action Platform, ETF Action, is based in the state of Colorado in the United States. ETF Action provides the ETF Action Platform for use only by persons located in the United States. ETF Action makes no claims that the ETF Action Platform or any of its content is accessible or appropriate outside of the United States. Access to the ETF Action Platform may not be legal by certain persons or in certain countries. If you access the ETF Action Platform from outside the United States, you do so on your own initiative and are responsible for compliance with local laws. If you are visiting the ETF Action Platform or using the Services from a country other than the country in which our servers are located, your communications with us may result in the transfer of information (including your registration or personal information) across international boundaries. By visiting the ETF Action Platform, using the Services, and/or communicating electronically with ETF Action, you consent to such transfers. If you access the ETF Action



Platform from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

**17. DISCLAIMER OF WARRANTIES**

YOU UNDERSTAND THAT ETF ACTION AND ITS LICENSORS CANNOT AND DO NOT GUARANTEE OR WARRANT THAT FILES AVAILABLE FOR DOWNLOADING FROM THE INTERNET OR THE ETF ACTION PLATFORM WILL BE FREE OF VIRUSES OR OTHER DESTRUCTIVE CODE. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND CHECKPOINTS TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR ANTI-VIRUS PROTECTION AND ACCURACY OF DATA INPUT AND OUTPUT, AND FOR MAINTAINING A MEANS EXTERNAL TO ETF ACTION'S SITE FOR ANY RECONSTRUCTION OF ANY LOST DATA. ETF ACTION WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE ETF ACTION PLATFORM OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.

YOUR USE OF THE ETF ACTION PLATFORM, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM, IS AT YOUR OWN RISK. THE ETF ACTION PLATFORM, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER ETF ACTION NOR ANY PERSON ASSOCIATED WITH ETF ACTION MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, TIMELINESS OR AVAILABILITY OF THE ETF ACTION PLATFORM. WITHOUT LIMITING THE FOREGOING, NEITHER ETF ACTION NOR ANYONE ASSOCIATED WITH ETF ACTION REPRESENTS OR WARRANTS THAT THE ETF ACTION PLATFORM, ITS CONTENT OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT ETF ACTION'S WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE ETF ACTION PLATFORM OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

ETF ACTION HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

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

**18. ADDITIONAL DISCLAIMERS.**

THE ETF ACTION PLATFORM IS 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 ETF ACTION PLATFORM. 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 ETF ACTION PLATFORM COMPLIES 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 ETF ACTION PLATFORM SHOULD NOT BE ACTED UPON WITHOUT OBTAINING SPECIFIC LEGAL, TAX, AND INVESTMENT ADVICE FROM A LICENSED PROFESSIONAL.

**19. Limitation on Liability**

EXCEPT AS OTHERWISE PROVIDED, IN NO EVENT WILL ETF ACTION, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE ETF ACTION PLATFORM, ANY WEBSITES LINKED TO IT, ANY CONTENT OR SERVICES ON THE ETF ACTION PLATFORM OR SUCH OTHER WEBSITES OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE ETF ACTION PLATFORM OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE.

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

**20. Indemnification**

You agree to defend, indemnify and hold harmless ETF Action, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Use or your use of the ETF Action Platform, including, but not limited to, your User Contributions, any use of the ETF Action Platform's content, Services and products other than as expressly authorized in these Terms of Use or your use of any information obtained from the ETF Action Platform.

**21. Governing Law and Jurisdiction**

All matters relating to the ETF Action Platform and these Terms of Use and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction).

Any legal suit, action or proceeding arising out of, or related to, these Terms of Use or the ETF Action Platform shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in the City and County of Denver, although ETF Action retains the right to bring any suit, action or proceeding against you for breach of these Terms of Use in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

**22. Arbitration**

At ETF Action's sole discretion, it may require you to submit any disputes arising from the use of these Terms of Use 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.

**23. Limitation on Time to File Claims**

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE 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.

**24. Waiver and Severability**

No waiver by ETF Action of any term or condition set forth in the Terms of Use shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of ETF Action to assert a right or provision under the Terms of Use shall not constitute a waiver of such right or provision.

If any provision of the Terms of Use is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Use will continue in full force and effect.

**25. Entire Agreement**

The Terms of Use, Privacy Policy, Terms of Service, and any other services agreement between You and ETF Action, and any other documents referenced in the Terms of Use, constitute the sole and entire agreement between you and ETF Action with respect to the ETF Action Platform and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the ETF Action Platform.

**26. Your Comments and Concerns**

The ETF Action Platform is operated by ETF Action LLC.

All notices of copyright infringement claims should be sent to the copyright agent designated in ETF Action's Copyright Policy as set forth below in the manner and by the means set forth therein.

All other feedback, comments, requests for technical support and other communications relating to the ETF Action Platform should be directed to: support@rebelai.com.

## Copyright Policy

### REPORTING CLAIMS OF COPYRIGHT INFRINGEMENT

ETF Action takes claims of copyright infringement seriously. ETF Action will respond to notices of alleged copyright infringement that comply with applicable law. If you believe any materials accessible on or from the ETF Action Platform infringe your copyright, you may request removal of those materials (or access to them) from the ETF Action Platform by submitting written notification to ETF Action's copyright agent designated below. In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ("DMCA"), the written notice (the "DMCA Notice") must include substantially the following:

- Your physical or electronic signature.
- Identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works on the ETF Action Platform, a representative list of such works.
- Identification of the material you believe to be infringing in a sufficiently precise manner to allow ETF Action to locate that material.
- Adequate information by which ETF Action can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement that you have a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the written notice is accurate.
- A statement, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

ETF Action's designated copyright agent to receive DMCA Notices is:

NAME: DMCA Agent  
ETF Action, LLC  
ADDRESS: 901 Front Street  
Suite 130  
Louisville, CO 80027  
EMAIL: support@rebelai.com  
PHONE: (720) 588-8669

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective.

Please be aware that if you knowingly materially misrepresent that material or activity on the ETF Action Platform is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

### COUNTER-NOTIFICATION PROCEDURES

If you believe that material you posted on the ETF Action Platform was removed or access to it was disabled by mistake or misidentification, you may file a counter-notification with ETF Action (a "Counter-Notice") by submitting written notification to ETF Action's copyright agent designated above. Pursuant to the DMCA, the Counter-Notice must include substantially the following:

- Your physical or electronic signature.
- An identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled.
- Adequate information by which ETF Action can contact you (including your name, postal address, telephone number, and, if available, email address).
- A statement under penalty of perjury by you that you have a good faith belief that the material identified above was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled.
- A statement that you will consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or if you reside outside the United States for any judicial district in which the ETF Action Platform may be found) and that you will accept service from the person (or an agent of that person) who provided the ETF Action Platform with the complaint at issue.

The DMCA allows ETF Action to restore the removed content if the party filing the original DMCA Notice does not file a court action against you within ten business days of receiving the copy of your Counter-Notice.

Please be aware that if you knowingly materially misrepresent that material or activity on the ETF Action Platform was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

### **REPEAT INFRINGERS**

It is ETF Action's policy in appropriate circumstances to disable and/or terminate the accounts of users who are repeat infringers.