

EveryAction Terms of Service

When we refer in this Agreement to:

“Affiliate” or “Affiliates,” we mean any other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, by a party. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a person, whether through ownership of more than fifty percent (50%) of the voting interests of a person or by written agreement.

“Confidential Information,” we mean information that a party (as the “Disclosing Party”) provides or makes available about its business affairs, products, pricing, confidential intellectual property, encryption keys, API keys, trade secrets, third-party confidential information, and other sensitive or proprietary information in written or electronic form or media, whether or not marked, designated or otherwise identified as “confidential” to the other party (as the “Receiving Party”) in connection with the Agreement. Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain, (b) known to the Receiving Party at the time of disclosure, (c) rightfully obtained by the Receiving Party on a non-confidential basis from a third-party, or (d) independently developed by the Receiving Party.

“Customer,” “you,” or “your,” we mean the person or entity identified in an Order Form.

“Customer Data,” we mean any information, data, and other content that is submitted, posted, or otherwise transmitted by or on behalf of you to a Platform. Customer Data does not include Usage Data, Volunteer Content, or information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags we incorporate into our Solutions or collected through Solutions described in Section 1.7.4 of this Agreement.

“Data Protection Claims,” we mean any claims arising from a party’s breach of Section 1.3 (Security of the Solutions); Section 1.8.3 (Customer Data); and Sections 1.8.1 (Use Restrictions), 1.8.2 (Compliance with Applicable Law), and 3 (Confidential Information), where such breach results in the unauthorized disclosure of Customer Data.

“EveryAction,” “we,” “us,” or “our,” we mean EveryAction, Inc., a District of Columbia corporation with offices at 655 15th St., NW, Suite 650, Washington, DC 20005.

“Excluded Claims,” we mean (a) a party’s breach of its obligations in Section 3 (Confidential Information) (not including Data Protection Claims or other similar obligations and/or claims relating to Customer Data); (b) either party’s express obligations under Section 5 (Indemnification); and (c) liability which, by law, cannot be limited.

“Fees,” we mean the charges, costs, and other amounts you pay to access, use, or receive our Solutions.

“Feedback,” we mean feedback, suggestions, or contributions regarding the Solutions provided to us by you or your Users.

“Personal Data,” we mean any information relating to an identified or identifiable individual and is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws (as defined in the DPA).

“Security Measures,” we mean the definition ascribed to the same as contained in our Data Processing Agreement.

“Solutions,” we mean (a) our web-based and mobile subscription-based, applications, tools, and offerings provided by or through us (including any upgrades and updates thereto made commercially available by us to similar customers at no charge) and ordered by you under an Order Form that are developed, operated, and maintained by us, accessible via <https://www.everyaction.com/> or another designated URL, and any ancillary products and services, including website hosting, that we provide to you (each a “Platform”); (b) our application programming interfaces made available by us to you or your Users at <https://docs.everyaction.com> (the “Developer Tools”); (c) any related technical or non-technical manuals, instructions, or other documents or materials made available by us to you describing the functionality, components, features, or requirements of the Platforms, including information pertaining to the installation, configuration, integration, operation, availability, or maintenance of such Platforms. Documentation, where applicable, includes our then-current service level agreement (not to include the Developer Tools) (the “Documentation”); (d) the professional services provided to you by us, which may include website design and development, customization or data or other integration, data analysis or optimization, or other consulting services specified under an Order Form (“Consulting Services”); and (e) any other materials or services offered by EveryAction and ordered by you under an Order Form. Solutions do not include Previews or Third-Party Products.

“Subscription Term,” we mean the initial term of your subscription to a Platform or other recurring Solutions, as specified on your Order Form(s), and each subsequent renewal term (if any). For Previews, the Subscription Term will be the period during which you have an account to access the Previews.

“Taxes,” we mean taxes, levies, duties or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of EveryAction.

“Third-Party Products,” we mean products, platforms-as-a-service or other managed instances, and professional services that are provided by third parties which host, interoperate, integrate, or otherwise work with or are used in connection with a Platform, including any information or data that is contained, developed, provided, or otherwise made available in the same.

“Usage Data,” we mean query logs, and any data (other than Customer Data) relating to the operation, support and/or about Customer’s use of the Solutions.

“User” or “Users,” we mean you and your employees, contractors, consultants, agents, representatives, or other persons authorized by you to access or use a Platform or Developer Tools for your benefit.

1. SOLUTIONS

1.1 Access and Use. We will, for the term set forth in your Order Form (the “Subscription Term”), make the Platforms available to you and your Users in accordance with this Agreement, the Documentation, and the Order Form. To the extent you provide access to the Platforms to your Affiliate or its users, you agree such access and use of the Platforms is subject to compliance with this Agreement and you remain liable for your and your Users’ compliance as well as any Affiliates and its users’ compliance with this Agreement.

1.2 Compliance with Applicable Laws. We will provide the Solutions in accordance with our obligations under laws and government regulations applicable to our provision of the Solutions to our customers generally; including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data, without regard to Customer’s particular use of the Solutions and subject to Customer’s use of the Solutions in accordance with this Agreement.

1.3 Security of the Solutions. We will maintain the commercially appropriate administrative, physical, and technical safeguards in relation to our Platforms described in Annex 2 of our DPA (e., Security Measures) to protect Personal Data from Security Incidents and to preserve the security and confidentiality of Personal Data.

1.4 Modifications and Deprecation of Platforms.

1.4.1 Changes. We may update, upgrade, or modify our Platforms to (a) improve or enhance the: (i) quality or delivery of a Solution; (ii) competitive strength of or market for a Solution; or (iii) cost efficiency or performance of a Solution; or (b) comply with applicable law (each a “Change”). Any Change made by us will apply to all Customers and their respective Users.

1.4.2 Legacy Platforms. If you have a legacy Platform or other product, the features and limits that apply to that Platform or product may be different than those that appear in this Agreement or the Documentation. Further, we may deprecate or degrade such legacy Platforms or products in our discretion. At our option and with notice to you, we may move you to our then-current Platform or comparable product at any time and any such move may require you to execute a new Order Form.

1.5 Developer Tools. We set and enforce limits on your use of the Developer Tools at our discretion and may change the limits at any time by revising the information contained in the Documentation. For example, we limit: (a) disk storage space, (b) the number of calls you or your Users are permitted to make against the Developer Tools, and (c) the number of page views by visitors to any public websites. We also may monitor our customers use of the Developer Tools for a variety of reasons, to include ensuring the quality and availability of the Developer Tools. Notwithstanding anything to the contrary in this Agreement, the Developer Tools are provided as-is and as-available, and EveryAction expressly disclaims any warranty, including any implied warranty of merchantability, fitness, title, or any other implied warranty available under applicable law.

1.6 Consulting Services.

1.6.1 We will perform the Consulting Services for Customer as set forth in each applicable Order Form, subject to the terms and conditions of the Agreement (i) in English; (ii) remotely; and (iii) using personnel that are professional and qualified in the performance of the applicable Consulting Services. You acknowledge and agree that (x) any Fees for such Consulting Services are non-cancellable, non-refundable, and are in addition to any Fees for the Platforms; (y) timely access to applicable Customer Materials (defined below), resources, personnel, equipment or facilities is necessary for the provision of Consulting Services; and (z) to provide such access and to cooperate with us during our provision of any

Consulting Services. We will have no liability for any delay or deficiency to the extent resulting from Customer's breach of its obligations under this Section 1.6.1.

1.6.2 Customer hereby grants EveryAction a limited right to use any materials provided to us in connection with Consulting Services (the "Customer Materials") solely for the purpose of providing Consulting Services to Customer. Customer will retain any of its rights (including all intellectual property rights) in and to the Customer Materials. We will treat Customer Materials subject to the confidentiality obligations under Section 5 (Confidentiality). Customer warrants that Customer has and will have sufficient rights in the Customer Materials to grant the rights to us under this Agreement and that the Customer Materials will not violate the rights of any third-party rights.

1.6.3 The Consulting Services (g., providing guidance on configuring a Platform) and the resulting code, guides, or other materials provided for use by Customer as well as the tools and knowledge used by EveryAction in performing the Consulting Services are applicable to EveryAction's business and are part of our Solutions. Subject to the terms and conditions of the Agreement, we grant you a limited, non-exclusive, royalty-free, non-transferable worldwide license to use the above internally solely in connection with your use of the Solutions during the applicable term.

1.7 Specific Platform Terms.

1.7.1 Previews. We may make available to Customer access to or use of a Solution or certain features therein that are free or on a trial or evaluation period or are not yet generally available that may be labeled as "private preview" or "beta" (collectively, "Previews"). Any Preview is provided (a) "as is" and "as available" without warranty of any kind; (b) on a confidential basis; and (c) subject to any additional terms and conditions that we provide to you before your access to a Preview. We may suspend, limit, or terminate a Preview for any reason at any time without notice and we are not liable to you for damages of any kind related to your use of a Preview.

1.7.2 Pipeline. Our Solutions include the capability for Customer to manage a SQL database instance hosted either by us or a third-party service provider ("Pipeline"). Pipeline mimics your Customer Data databases allowing you to perform a variety of SQL queries and other analyses of your entire or selected subsets of your Customer Data in a non-production environment, or you may provide access to and otherwise share Customer Data with your vendors and other authorized third parties (each a "Recipient") to perform these functions on your behalf using Pipeline. You acknowledge and agree that: (a) Recipients will have the access designated or authorized by you (including to view, download, and query the Customer Data) and that it is your responsibility to evaluate any risks related to your sharing of Customer Data with Recipients; and (b) EveryAction has no control over, and will have no liability for, any acts or omissions of any Recipient with respect to your sharing of Customer Data.

1.7.3 Mobilize. We may make one or more Solutions available to you and your Users branded under the Mobilize tradename, which facilitate the (i) hosting of webpages owned, branded, or published by or on behalf of our customers pertaining to customer-specific events (each a “Customer Page”) and (ii) registering of attendees of such customer-specific events (each a “Volunteer”). As part of registration through a Customer Page, a Volunteer (x) provides certain information (“Volunteer Content”); (y) agrees to our terms and conditions pertaining to their interactions with our Solutions and our or your use of any Volunteer Content (the “Volunteer Terms,” the current version is available at <https://mobilize.us>); and (z) may be tagged in our Solutions for inclusion in one or more customer’s databases.

1.7.4 FastAction, ActionID, and Other Comparable Solutions. Certain Platforms or features of a Platform are end user or consumer facing where we may act as a “controller” or similar term as used in various Data Protection Laws. Examples of these Platforms or features include FastAction, ActionID, and Social Matching. An end user or consumer provides certain contact and billing information, which is then used in accordance with end user terms and conditions pertaining to that particular Platform.

1.8 Customer Responsibilities.

1.8.1 Use Restrictions. You will not and will not permit your Users or any other person to access or use the Platforms in a manner that violates the terms of our AUP or for a purpose or in a manner that is unlawful or prohibited by this Agreement. If you become aware of any actual or threatened activity prohibited by this Section 1.8, you will, and will cause your Users to, without undue delay notify us of such activity and take reasonable and lawful measures asked of it by us to stop the activity or mitigate its effects.

1.8.2 Compliance with Applicable Law. Your use of the Solutions and all Customer Data will comply with applicable laws and government regulations including, without limitation, those related to data privacy and data transfer, federal and state election law, and online, telephonic, and digital advertising and marketing.

1.8.3 Customer Data.

a. Generally. You are responsible for: (i) the accuracy, integrity, and legality of all Customer Data; (ii) obtaining the necessary permissions or rights in the Customer Data to grant the rights and permissions to EveryAction under this Agreement; and (iii) ensuring that your use of the Customer Data does not violate any third-party rights.

b. Protection of Customer Data. Without diminishing our commitment in Section 1.3, you acknowledge and agree that: (i) we have no obligation to assess the content of Customer Data to identify information subject to any specific legal, regulatory, or other requirement; and (ii) you are responsible for (1) making appropriate use of the Solutions to ensure a level of security appropriate to the particular content of Customer Data, including, where appropriate, implementation of encryption functionality and multifactor authentication (as described in the Documentation) and configuration of the Solutions or your information technology infrastructure to back-up Customer Data; (2) appropriately configuring, managing, and protecting your User roles and credentials; (3) reporting to us any suspicious activities in your account or if a User credential has been compromised, and (4) appropriately managing and protecting any Customer-managed encryption keys to ensure the integrity, availability, and confidentiality of the key and Customer Data encrypted with such key.

c. Impermissible Data. Our Solutions are not designed, and you may not use our Solutions, to collect, manage, or process information or combinations of information that: (i) falls within the definition of “special categories of data” under various data protection and privacy laws (g., biometric information); (ii) pertains to minors or other individuals under the legal age of consent; or (iii) is subject to industry-specific laws or regulations such as the Health Insurance Portability and Accountability Act (HIPAA) or the Federal Information Security Management Act (FISMA).

c. Business Ethics. You, as a material part of this Agreement, acknowledge that we conduct our business based on a set of values and guidelines for action and behavior regarding people (including, without limitation, customers, employees, communities impacted by our business activities, and our shareholders), and you agree to similarly conduct your business by not focusing on (i) denying rights to the LGBTQ community; (ii) denying a woman’s right to reproductive choice, (iii) denying racial justice, or (iv) denying climate change. You also agree to make contributions or other payments to candidates for any political office, or government officials or other persons charged with similar authority only in accordance with applicable law.

2. INTELLECTUAL PROPERTY.

2.1 Customer Data. As between you and us, you own all right, title, and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Customer Data and, subject to any limitations imposed on such by any identified or identifiable individual, the Personal Data contained therein. You agree that we may use and disclose Customer Data as reasonably necessary to (a) provide you and your Users with a Platform, (b) make improvements and updates to the Platforms to enhance our provision of the Platforms for you and other customers, (c) detect, prevent, and investigate Security Incidents, fraud, spam, or unlawful use of the Platforms or other Solutions or Third-Party Products, and (d) respond to any technical or service-related problems or your queries and ensure the proper functioning of the Platforms.

2.2 Solutions and Other Intellectual Property. As between you and us, we exclusively own all right, title, and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Solutions, Usage Data, Volunteer Content, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be incorporated. Except for the express limited rights set forth in this Agreement, no right, title or interest in any of the above is granted to Customer.

2.3 Usage Data. Notwithstanding anything to the contrary in this Agreement, we may collect and use Usage Data to develop, improve, support, and operate our Solutions. We may not share any Usage Data that includes Customer's Confidential Information with a third party except (i) in accordance with Section 3 (Confidential Information) of this Agreement, or (ii) to the extent the Usage Data is aggregated and anonymized such that Customer, Customer's Users, and any other natural persons cannot be identified or reidentified.

2.4 Feedback. By submitting to us your Feedback you agree that: (a) our obligations under Section 3 do not apply to the Feedback, (b) we may use or disclose (or choose not to use or disclose) your Feedback for any purpose and in any manner, (c) we own the Feedback, and (d) to the extent useful by applicable law, you grant to us (for yourself and all of your Users) an unlimited, irrevocable, perpetual, sublicensable, transferable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to you or your Users.

2.5 Third-Party Products. Third-Party Products are not under our control and, as such, are not considered part of our Solutions. Such Third-Party Products are provided as a convenience and the availability of a Third-Party Product does not constitute an endorsement by us of the same. We make no representation or warranty regarding any Third-Party Product, including its availability, security, or suitability for use with or in conjunction with our Platforms or the Customer Data. Any proprietary right or interest to any such Third-Party Product and any content provided therein belongs to that third-party provider subject to any right or license Customer may hold as to such Third-Party Product.

3. CONFIDENTIAL INFORMATION.

As a condition to any disclosure of or access to Confidential Information, the Receiving Party will: (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, (b) not disclose the Disclosing Party's Confidential Information to any person, except to a person who has a need to know such Confidential Information and has been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Agreement, (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care, and (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and cooperate with Disclosing Party to prevent further

unauthorized use or disclosure. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 3 with respect to any Confidential Information that constitutes a trade secret under applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable law other than as a result of any act or omission of the Receiving Party. If the Receiving Party is compelled under applicable law to disclose Confidential Information, then, to the extent permitted by applicable law, the Receiving Party will prior to such disclosure, provide the Disclosing Party with sufficient notice of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights.

4. TERM AND TERMINATION; FEES AND PAYMENT.

4.1 Term and Termination.

4.1.1 Term. Your initial Subscription Term will be specified in your Order Form and, unless stated otherwise in the Order Form, it will automatically renew for successive additional terms of the same length to the initial Subscription Term.

4.1.2 Notice of Nonrenewal. Except where your Order Form provides otherwise, to prevent this Agreement from renewing automatically either party must provide the other party with at least ninety (90) days' written notice of its intent to not renew prior to the expiration of the then-current Subscription Term.

4.1.3 Termination. Either party may terminate this Agreement, effective on thirty (30) days' written notice to the other party, if such other party materially breaches this Agreement, and such breach is incapable of cure or if being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach or immediately by us upon written notice if you make an assignment for the benefit of creditors or you dissolve your entity, or you are more than five (5) days delinquent in payment of any Fees.

4.1.4 Effect of Expiration or Termination. Upon the expiration or earlier termination: (a) each party will return or, if requested, destroy any Confidential Information belonging to the other party in its possession; (b) you will immediately discontinue use of the Platforms, (c) all earned and unpaid Fees become immediately due; and (d) at your written request and instruction, we will: (i) provide you with (1) temporary access to the Platforms to retrieve Customer Data or (2) copies of all Customer Data then in our possession or control in a commonly accessible data format, or (ii) delete all Customer Data in our possession or otherwise in our control (1) unless we are legally prohibited or (2) except as (A) provided in our DPA, then such Customer Data shall be Processed in accordance with our DPA or (B) to the extent we created archived copies of the Customer Data during the course of performing our obligations under

this Agreement, then we will destroy such archived copies pursuant to our internal practices for record destruction.

4.2 Suspension. Your or your Users' access to or use of a Solution may be subject to suspension or otherwise denied if we reasonably determine that (a) you or any User has violated, are violating, or intend to violate any of the provisions contained in Section 1.8 (Customer Responsibilities) of this Agreement; (b) you have ceased to continue your business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (c) you are delinquent in your payment of Fees; or (d) the continued provision of a Solution to you or any User is prohibited by applicable law. We will use commercially reasonable efforts to: (x) provide you with notice and an opportunity to remedy such violation or threat prior to any such Suspension; (y) where practicable limit the Suspension based on the circumstances leading to the Suspension (e.g., to certain Users), and (z) provide updates regarding resumption of access following any Suspension and resume such access as soon as reasonably possible after the event giving rise to the Suspension is cured. We will have no liability to you, your Affiliates, or Users for any losses, damages, or any other consequences that may result because of a Suspension.

4.3 Surviving Provisions. Any defined term with this Agreement, and this Section 4.3 (Surviving Provisions) and Section 1.1 (Access and Use), Section 1.8.1 (Use Restrictions), Section 2 (Intellectual Property), Section 3 (Confidential Information), Section 4.4.3 (Payment), Section 4.4.5 (Taxes), Section 4.1.4 (Effect of Termination), Section 5 (Indemnification), Section 6 (Disclaimers; Limitation of Liability), Section 7 (Miscellaneous), and our DPA (to the extent we are Processing Personal Data as those terms are defined in the DPA) will survive the expiration or termination of this Agreement.

4.4 Fees and Payment.

4.4.1 Initial Fees. The Fees for the initial Subscription Term will remain fixed, subject to: (a) any usage or similar fees based on consumption (g., tier level fees) and (b) upgrades or additional features or products added by you during such Subscription Term.

4.4.2 Fee Adjustments at Renewal. As to the Platforms and other recurring Solutions, the Fees for any renewal Subscription Term will be at the then-current Fees as of the first day of the applicable Subscription Term or as reasonably determined by us but not to exceed an amount equal to a five percent (5%) annualized increase over the Fees charged for such Solutions on the last day of the just-ended Subscription Term.

4.4.3 Payment. Payment of Fees will be made in accordance with the applicable Order Form. On any outstanding Fees, we may impose interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law and will be entitled to recover from you all costs (including reasonable attorneys' fees) incurred by us in collecting any overdue payment or interest.

4.4.4 Payment Disputes. We will not exercise our rights under Section 4.1.3 (Termination) or Section 4.2 (Suspension) with respect to non-payment by Customer if Customer is disputing the applicable Fees reasonably and in good faith and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within thirty (30) days, each party will have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective of any terms that would limit remedies on account of a dispute. For clarity, any undisputed amounts must be paid in full.

4.4.5 Taxes. Fees do not include Taxes. Customer is responsible for paying all Taxes associated with its purchases hereunder including without limitation all use or access of the Solutions by its Users. If we have the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 4.4.5, we will invoice Customer and Customer will pay that amount unless Customer provides us with a valid tax exemption certificate authorized by the appropriate taxing authority. Taxes will not be deducted from payments to us, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, EveryAction receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon our request, Customer will provide to us its proof of withholding tax remittance to the respective tax authority and, where applicable, Customer will provide its the value added tax/GST registration number of the business location(s) where Customer is registered, and the ordered Solutions are used for business use.

5. INDEMNIFICATION.

5.1 Procedure. The party seeking indemnification hereunder ("Indemnified Party"): (a) will promptly notify the party from whom indemnification is sought (the "Indemnifying Party") in writing of any third-party claim, demand, lawsuit, notice of violation, or proceeding (collectively, a "Claim"); provided, however, that the failure to give such prompt notice of a Claim will not relieve the Indemnifying Party of its obligations hereunder except to the extent that the Indemnifying Party was actually and materially prejudiced by such failure, (b) will reasonably cooperate with the Indemnifying Party in connection with the Indemnifying Party's activities hereunder, at the Indemnifying Party's expense, and (c) may, at its own expense, participate in the defense of a Claim. An Indemnifying Party will have the sole and exclusive authority to defend or settle any such Claim; however, neither the Indemnifying Party nor an Indemnified Party may settle any Claim under this Agreement where such settlement includes: (x) admitting liability or fault on behalf of the other party or (y) creating any obligation or imposes an act or forbearance (including injunctive or other equitable relief) on the other party, without the other party's prior written consent.

5.2 EveryAction Indemnification. We will defend you and your officers, directors, employees, successors, and permitted assigns (each, a “Customer Indemnitee”) against a Claim (other than a Claim brought by an Affiliate of a Customer Indemnitee) (a “Customer Indemnity Claim”) arising out of or relating to an allegation that your use of the Platforms in accordance with this Agreement infringes or misappropriates a third-party's United States’ intellectual property rights and we will indemnify you from and against any damages, judgments, settlements, interest, fines, penalties, fines, or awards (including reasonable attorneys’ fees) resulting from such Claim. If EveryAction receives information about such a Claim, we may in our discretion and at no cost to you: (a) procure for you the right to continue to use the affected Platforms under this Agreement, (b) modify or replace the allegedly infringing Platforms so that it no longer infringes but remains functionally equivalent, or (c) terminate the allegedly infringing Platforms and refund the Fees paid in respect of such Platforms for the remainder of the relevant Subscription Term starting with the date Customer lost use of the Platforms due to the Claim. The above indemnification obligation does not apply if you: (x) use of the Platforms in combination with data, software, applications, hardware, equipment, products, services, or other technology where the Platforms would not by themselves, and without modification, be infringing or (y) fail to use the Platforms in accordance with the then-applicable Documentation. THIS SECTION SETS FORTH CUSTOMER INDEMNITEE’S SOLE AND EXCLUSIVE REMEDY AND EVERYACTION’S SOLE LIABILITY AND ENTIRE OBLIGATION FOR ANY CLAIM ALLEGING THAT THE PLATFORMS INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.

5.3 Customer Indemnification. Customer will defend EveryAction and its officers, directors, employees, successors, and assigns (each, an “EveryAction Indemnitee”) against a Claim (other than a Claim brought by an Affiliate of an EveryAction Indemnitee) (an “EveryAction Indemnity Claim”) arising out of or relating to any Customer Data or Customer Materials used in connection with the Solutions and you will indemnify us from and against any damages, judgments, settlements, interest, fines, penalties, fines, or awards (including reasonable attorneys’ fees) resulting from such Claim .

6. DISCLAIMERS; LIMITATION OF LIABILITY.

6.1 Third-Party Products. WE DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS THAT YOU USE.

6.2 Disclaimer of Warranties. EXCEPT PROVIDED ELSEWHERE IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, SECURITY OR ACCURACY OF THE SOLUTIONS FOR ANY PURPOSE. TO THE EXTENT PERMITTED BY LAW, THE SOLUTIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OR CONDITION OF ANY KIND AND WE DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH REGARD TO THE SOLUTIONS, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

6.3 No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE OR OUR AFFILIATES BE LIABLE FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, (b) IMPAIRMENT, INABILITY TO USE, OR INTERRUPTION OR DELAY OF THE SOLUTIONS, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS, 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 ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER.

6.4 Limitation of Liability and Damages.

6.4.1 General and Previews Claims. EXCEPT AS TO THE EXCLUDED CLAIMS, AND SUBJECT TO SECTION 6.5 BELOW, IF WE OR OUR AFFILIATES ARE DETERMINED TO HAVE ANY LIABILITY TO YOU, YOUR AFFILIATES, OR ANY THIRD PARTY (TO INCLUDE USERS OF THE SOLUTIONS), YOU AND US AGREE THAT OUR AND OUR AFFILIATES AGGREGATE AND TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ITS SUBJECT MATTER WILL BE LIMITED TO A SUM EQUAL TO THE TOTAL AMOUNTS PAID OR PAYABLE FOR THE SOLUTIONS IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM (“GENERAL LIABILITY CAP”); PROVIDED HOWEVER, THE GENERAL LIABILITY CAP WILL NOT APPLY TO YOU IF YOU ONLY USE THE PREVIEWS, AND IN THIS CASE, IF WE OR OUR AFFILIATES ARE DETERMINED TO HAVE ANY LIABILITY TO YOU, YOUR AFFILIATES OR ANY THIRD PARTY (TO INCLUDE ANY USERS) ARISING FROM THE USE OF THE PREVIEWS, THEN OUR AND OUR AFFILIATES AGGREGATE AND TOTAL LIABILITY WILL BE LIMITED TO ONE THOUSAND AND 00/100 (USD)(“PREVIEWS CAP”).

6.4.2 Data Protection Claims. IF WE OR OUR AFFILIATES ARE DETERMINED TO HAVE ANY LIABILITY TO YOU, YOUR AFFILIATES, OR ANY THIRD PARTY (TO INCLUDE USERS OF THE SOLUTIONS), YOU AND US AGREE THAT OUR AND OUR AFFILIATES TOTAL LIABILITY FOR ALL DATA PROTECTION CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) ARISING OUT OF OR RELATED TO ANY DATA PROTECTION CLAIMS WILL BE LIMITED TO A SUM EQUAL TO TWO TIMES (2X) THE GENERAL LIABILITY CAP (“DATA PROTECTION CLAIMS CAP”).

6.4.3 Applicability. YOU ACKNOWLEDGE AND AGREE THAT: (A) THIS SECTION 6.4 WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE; (B) THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS AGREEMENT (INCLUDING SECTION 6.4) (I) WILL APPLY EVEN IF A NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE; (II) WERE RELIED ON BY THE PARTIES IN ENTERING INTO THIS AGREEMENT; (III) REFLECT AN ALLOCATION OF RISK

BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND (IV) FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES; (C) (I) THE CAPS WILL NOT BE CUMULATIVE; (II) IN NO EVENT WILL OUR (OR OUR AFFILIATES) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA PROTECTION CLAIMS CAP; AND (III) IF YOU (AND/OR YOUR AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE DATA PROTECTION CLAIMS CAP; AND (D) THE APPLICABLE MONETARY CAPS SET FORTH IN THIS SECTION 6.4 WILL APPLY ACROSS THIS AGREEMENT AND ANY AND ALL SEPARATE AGREEMENT(S) ON AN AGGREGATED BASIS.

7. MISCELLANEOUS.

7.1 Amendment. Unless you have a separately negotiated and signed agreement stating otherwise, we may modify this Agreement by posting a revised version at <https://www.everyaction.com/termservice> and such revised version will become effective as to your use of the Solutions as of the next business day following its posting. Prior to such posting, we will provide you with notice of any material revision by contacting your designated administrator(s) at the contact information provided in the Platform. If you do not agree with a material modification to this Agreement, you must notify us in writing within thirty (30) days after we send notice of the revision. If you give us this notice, then your subscription will continue to be governed by the terms and conditions of the Agreement prior to modification until your next renewal date, after which the current terms posted at <https://www.everyaction.com/termservice> will apply. However, if we can no longer reasonably provide the Solutions to you under the terms prior to modification (for example, if the modifications are required by law or result from general product changes), then the Agreement and/or affected Solutions will terminate upon our notice to you and we will promptly refund any prepaid but unused fees covering use of the Solutions after termination.

7.2 Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving, including any time of the essence provisions as to a party's obligations. Except as otherwise set forth in this Agreement, (a) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (b) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

7.3 Interpretation; Entire Agreement. The parties intend that the construing of this Agreement is without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument. This Agreement constitutes the sole and entire agreement of the parties, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any conflict or inconsistency between the statements made in the body of this Agreement or an Order Form, unless

such inconsistency is expressly acknowledged as intended in a document, the following order of precedence governs: (a) first, this Agreement, and (b) second, the Order Form (but only as to that order).

7.4 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will 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 will negotiate in good faith to modify this Agreement so as to give effect to the original intent 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.

7.5 Electronic Signatures. Each party intends and agrees that the electronic signatures, whether digital or encrypted, of the parties included in an Order Form will authenticate this Agreement and Order Form and will have the same force and effect as manual signatures. An electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

7.6 Relationship of the Parties. The relationship between you and us is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither you nor us will have authority to contract for or bind the other party in any manner whatsoever.

7.7 No Third-Party Beneficiaries. Neither you nor we confer any right or remedy upon any party other than the parties to this Agreement and their respective successors and permitted assigns. However, our respective "indemnitees" as defined in Section 5 are intended as third-party beneficiaries solely to extent of having the right to enforce any indemnity rights they may have under Section 5.

7.8 Efforts. We will exercise reasonable efforts in meeting our obligations under this Agreement and in providing the Solutions. For purposes of meeting our obligations, reasonable efforts will mean the undertaking of ordinary and reasonable measures that a prudent business under similar circumstances desiring to provide equivalent products and services would use to provide such products and services knowing that such exercise of such efforts does not guarantee achieving the particular result. Such reasonable efforts do not require us to take every conceivable measure or to take any measures that sacrifice our own economic and business interests (e.g., incur substantial losses to perform, insolvency) or suffer any unreasonable and disproportionate detriment to our expected benefits under this Agreement.

7.9 Notices. All notices, requests, claims, demands, waivers, and other communications to a party (each, a “Notice”) must be in writing, addressed to the intended recipient at the address set forth on the most recent Order Form, and sent by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid).

7.10 Force Majeure. In no event will we be liable to you, or be deemed to have breached this Agreement, for any failure or delay in performing our obligations under this Agreement, if and to the extent such failure or delay is caused by any of the following events (each a “Force Majeure Event”): flood, fire, earthquake, explosion, pandemic, war, terrorism, cyber terrorism or other comparable criminal or willful acts (including third-party hackers or other third-party malicious acts), invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns, our suppliers failure to supply necessary goods or services to us, passage of applicable law, any action taken by a government authority or other public authority (such as imposing an embargo), or international, national, or regional shortage of adequate power, telecommunications capacity, or transportation. In allocating the risk of delay or failure of performance of a party’s respective obligations under this Agreement, the parties have not considered the possible occurrence of any of the events listed herein or any similar or dissimilar events beyond their control, irrespective of whether such listed, similar or dissimilar events were foreseeable as of the date of this Agreement.

7.11 Assignment and Delegation. Neither party will assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, we may assign our rights or delegate our obligations, in whole or in part and without such consent, to an entity that acquires all or substantially all of our business or assets, whether by merger, reorganization, acquisition, sale, or otherwise. Any assignment or delegation in violation of this Section 7.11 will be invalid. No assignment or delegation will relieve the assigning or delegating party of any of its obligations hereunder unless the non-assigning or non-delegating party agree to a novation releasing the assigning or delegating party of its obligation under this Agreement.

7.12 Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the District of Columbia without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the District of Columbia. Any Action arising out of or related to this Agreement or its subject matter will be instituted exclusively in the federal courts of the United States or the courts of the District of Columbia, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. 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 TERMS OR THE TRANSACTIONS CONTEMPLATED THEREIN.

7.13 Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any similar legislation as may be enacted, will not apply to this Agreement. If you are located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not govern this Agreement or the rights and obligations of the parties under this Agreement.

7.14 Actions Permitted. Except for actions for nonpayment of Fees or breach of a party's proprietary rights, no action, regardless of form, arising directly or indirectly out of this Agreement may be brought by either party more than one (1) year after the cause of action accrued.

7.15 Dispute Resolution. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it will provide written notice to the other party of the specific issue(s) in dispute (and reference the relevant provisions of this Agreement at issue). Within thirty (30) days after such notice, knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section 7.15 will not apply to claims subject to indemnification under Section 5 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets, or Confidential Information.

7.16 Export Controls; Government Terms. Customer will not download or otherwise export or re-export the Solutions or underlying information or technology in violation of the laws and regulations of the United States or other applicable jurisdictions. We provide the Solutions, including related software and technology, for ultimate federal government end use solely in accordance with this Agreement. If you (or any of your Users) are an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Solutions, or any related documentation of any kind, including technical data, software, and manuals, is restricted by this Agreement. All other use is prohibited and no rights other than those provided in this Agreement are conferred. The Solutions were developed fully at private expense.