

VoteEarlyNY, Inc. Terms of Service

Last Updated: **September 3, 2019**

Welcome, and thank you for your interest in VoteEarlyNY Inc., a not-for-profit non-partisan education effort (“**VoteEarlyNY**,” “**we**,” or “**us**”), and our website at www.voteearlyny.org, along with our related websites, networks, applications, mobile application(s), and other services provided by us (collectively, the “**Service**”). These Terms of Service are a legally binding contract between you and VoteEarlyNY regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY ACCESSING OR USING THE SERVICE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND, BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING VOTEEARLYNY’S [PRIVACY POLICY](#) (TOGETHER, THE “**TERMS**”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE.

1. **Agreement Overview.** As provided in greater detail in these Terms (and without limiting the express language of the Terms below), you agree and acknowledge that these Terms include the following provisions:
 - 1.1 **ARBITRATION** — disputes arising hereunder will be resolved by binding arbitration, and BY ACCEPTING THESE TERMS, YOU AND VOTEEARLYNY EACH WAIVE THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury (as set forth in Section 13);
 - 1.2 **LICENSE** — the Service is licensed, not sold to you, and you may use the Service only as set forth in these Terms (as set forth in Section 4);
 - 1.3 **PRIVACY** — you consent to the collection and use of certain of your personally identifiable information in accordance with VoteEarlyNY’s [Privacy Policy](#) (as set forth in Section 14.2);
 - 1.4 **NO WARRANTY** — the Service is provided “**AS IS**” and “**AS AVAILABLE**” without warranties of any kind and VoteEarlyNY’s liability to you is limited (as set forth in Sections 11 and 12);
2. **Service Overview.** The Service helps ensure all New Yorkers have access to clear information about their rights under New York’s new early voting program, wherever they may live and regardless of who is on the ballot. Part information clearinghouse, education, and issue-advocacy toolkit, the Service provides a bridge between antiquated single-day voting and the modern, pro-voter election period to come.
3. **Eligibility.** You must be at least 18 years old to use the Service. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Service; and (c) your registration and your use of the Service is in compliance with any and all applicable laws

and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.

4. **Licenses**

4.1 **Limited License.** Subject to your complete and ongoing compliance with all the Terms, VoteEarlyNY grants you permission to access and use the Service for your personal use.

4.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Service; (b) make modifications to the Service; or (c) interfere with or circumvent any feature of the Service, including any security or access control mechanism. If you are prohibited under applicable law from using the Service, you may not use it.

4.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Service (“**Feedback**”), then you grant VoteEarlyNY an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.

5. **Ownership; Proprietary Rights.** The Service is owned and operated by VoteEarlyNY. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (“**Materials**”) provided by VoteEarlyNY are protected by intellectual property and other laws. All Materials included in the Service are the property of VoteEarlyNY or our third-party licensors. Except as expressly authorized by VoteEarlyNY or as permitted by the intended functionality of the service, you may not make use of the Materials. VoteEarlyNY reserves all rights to the Materials not granted expressly in these Terms.

6. **Third-Party Terms**

6.1 **Carrier Service.** Your access to use the Service may be subject to separate third party terms of service and fees, including your mobile network operator’s terms of service and fees, including fees charged for data usage and overage, which are your sole responsibility.

6.2 **Third Party Services and Linked Websites.** VoteEarlyNY may provide tools through the Service that enable you to export information to third party services including through our implementation of third party buttons (such as “like” or “share” buttons). By using one of these tools, you agree that we may transfer that information to the applicable third-party service. Third party services are not under our control, and we are not responsible for any third party service’s use of your exported information. The Service may also contain links to third-party websites. Linked websites are not under our control, and we are not responsible for their content.

6.3 **Open Source Software.** The Service may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute such components (“**Open Source Components**”). Although the Service is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining such Open Source Components under the applicable third-party licenses or to limit your use of such Open Source Components thereunder.

7. **Prohibited Conduct.** YOU MAY NOT:

- a. use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- b. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- c. interfere with security-related features of the Service, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Service except to the extent that the activity is expressly permitted by applicable law;
- d. interfere with the operation of the Service or any user’s enjoyment of the Service, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Service; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Service;
- e. perform any fraudulent activity including impersonating any person or entity, or claiming a false affiliation;
- f. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 5) or any right or ability to view, access, or use any Materials; or
- g. attempt to do any of the acts described in this Section 7 or assist or permit any person in engaging in any of the acts described in this Section 7.

8. **Modification of these Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time, effective as of the time of publication. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, you may be required to accept the modified Terms in order to continue to use the Service. Except as expressly permitted in this Section 8, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

9. **Term, Termination and Modification of the Service**

9.1 **Term.** These Terms are effective beginning when you accept the Terms or access or use the Service, and ending when terminated as set for in Section 9.2.

9.2 **Termination.** If you violate any provision of these Terms, these Terms automatically terminate. In addition, VoteEarlyNY may, at its sole discretion, terminate these Terms, or suspend or terminate your access to the Service at any time for any reason or no reason, with or without notice.

9.3 **Effect of Termination.** Upon termination of these Terms: (i) your license rights will terminate and you must immediately cease all use of the Service; and (ii) and Sections 4.3, 5, 9.3, 10, 11, 12, 13 and 14 will survive.

9.4 **Modification of the Service.** VoteEarlyNY reserves the right to modify or discontinue the Service at any time (including by limiting or discontinuing certain features of the Service), temporarily or permanently, without notice to you. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service.

10. **Indemnity.** You are responsible for your use of the Service, and, to the fullest extent permitted by law, you will defend and indemnify VoteEarlyNY and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**VoteEarlyNY Entities**”) from and against every claim, liability, damage, loss, and expense, including reasonable attorneys’ fees and costs (“**Claims**”) brought by a third party arising out of or connected with: (a) your use of, or misuse of, the Service not in compliance with these Terms; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those Claims.

11. **Disclaimers; No Warranties**

To present the information included in the Service, VoteEarlyNY relies on publicly available information from New York State and County election authorities, applicable laws and regulations. VoteEarlyNY uses best efforts to ensure all information presented is accurate, timely, and clear. However, errors or omissions are possible and local authorities make changes from time to time without notifying VoteEarlyNY. Please report election-related information errors, omissions, suggestions, or changes to tips@VoteEarlyNY.org for prompt resolution.

TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, VOTEEARLYNY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING: (A)

ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. TO THE FULLEST EXTENT PERMITTED BY LAW, VOTEEARLYNY DOES NOT WARRANT THAT THE SERVICE OR ANY PORTION OF OR THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR VOTEEARLYNY ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE VOTEEARLYNY ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. TO THE FULLEST EXTENT PERMITTED BY LAW, WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE AND YOUR DEALING WITH ANY OTHER SERVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE, AND ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES, AT YOUR OWN DISCRETION AND RISK, AND THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE(S) USED IN CONNECTION WITH THE SERVICE), OR THE LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF THE MATERIALS OR CONTENT.

12. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE VOTEEARLYNY ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY VOTEEARLYNY ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 13.4(iii) AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE VOTEEARLYNY ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SERVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS

SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. **Dispute Resolution and Arbitration**

- 13.1 **Generally.** In the interest of resolving disputes between you and VoteEarlyNY in the most expedient and cost effective manner, you and VoteEarlyNY agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND VOTEEARLYNY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, AND THAT THIS AGREEMENT WILL BE SUBJECT TO AND GOVERNED BY THE FEDERAL ARBITRATION ACT.
- 13.2 **Exceptions.** Despite the provisions of Section 13.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in aid of arbitration from a court of competent jurisdiction; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 13.3 **Arbitrator.** Any arbitration between you and VoteEarlyNY will be settled under the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting VoteEarlyNY. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 13.4 **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or electronic mail (“**Notice**”). VoteEarlyNY’s address for Notice is: **VoteEarlyNY, 205 East 42nd Street, Floor 20, New York, NY 10017** or info@VoteEarlyNY.org The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or VoteEarlyNY may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or VoteEarlyNY must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is

finally resolved through arbitration in your favor, VoteEarlyNY will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by VoteEarlyNY in settlement of the dispute prior to the arbitrator's award; or (iii) \$10,000.

- 13.5 **Fees.** If you commence arbitration in accordance with these Terms, VoteEarlyNY will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000 or as set forth below, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in New York, New York, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse VoteEarlyNY for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. Each party agrees that such written decision, and information exchanged during arbitration, will be kept confidential except to the extent necessary to enforce or permit limited judicial review of the award. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- 13.6 **No Class Actions.** YOU AND VOTEEARLYNY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and VoteEarlyNY agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- 13.7 **Modifications to this Arbitration Provision.** If VoteEarlyNY makes any future change to this arbitration provision, other than a change to VoteEarlyNY's address for Notice, you may reject the change by sending us written notice within 30 days of the change to VoteEarlyNY's address for Notice, in which case your right to use the Service will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 13.8 **Enforceability.** If Section 13.6 is found to be unenforceable or if the entirety of this Section 13 is found to be unenforceable, then the entirety of this Section 13 will be null and void.
14. **General Terms.** These Terms, together with the [Privacy Policy](#) and any other agreements incorporated by reference into these Terms, are the entire agreement between you and VoteEarlyNY regarding your use of the Service. You may not assign or

transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to”. If any part of these Terms is held invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

- 14.1 **Governing Law.** These Terms are governed by New York law. You and VoteEarlyNY submit to the personal and exclusive jurisdiction of the state courts and federal courts located in New York, New York for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Service from our offices in New York, and we make no representation that Materials included in the Service are appropriate or available for use in other locations.
- 14.2 **Privacy Policy.** Please read the VoteEarlyNY [Privacy Policy](#) carefully for information relating to our collection, use, storage, disclosure of your personal information. The VoteEarlyNY Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 14.3 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to from the Service (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 14.4 **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 14.5 **Contact Information.** The Service is offered by VoteEarlyNY. You may contact us by emailing us at info@VoteEarlyNY.org. You can access a copy of these Terms by clicking here.
- 14.6 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Service or to receive further information regarding use of the Service.