

EVERYACTION LICENSE AGREEMENT AND STANDARD TERMS & CONDITIONS

EveryAction Database

This Subscription, License and Lease Agreement (the “Agreement”), consisting of the Order Form and Standard Terms and Conditions, is made and entered into between NGP VAN, Inc., operating under the name EveryAction (“EveryAction”), which serves nonprofits and other nonpartisan organizations, at 1445 New York Avenue NW, Suite 200, Washington, DC 20005, and the entity listed as the subscribing Organization listed on page one (1) of the Order Form (the “Licensee”).

1. License and Lease. Subject to the terms of this Agreement, EveryAction hereby grants Licensee a non-exclusive, non-transferable license to use the software (the “Software”) described on page one (1) of the Order Form and lease of capacity on EveryAction’s servers (collectively, the “Service”). During the term of the license to the Software, EveryAction shall provide Licensee all updates and enhancements (the “Updates”) to the Software that are made generally available to other licensees, at no additional cost to Licensee. The grant of rights hereunder to the Software is not a sale of the Software or any portion thereof. EveryAction reserves all rights not expressly granted by this License.
2. License Restrictions.
 - a. Licensee shall not sell, sublicense, lease, or rent the Service to any other party.
 - b. Licensee may allow its supporters to access and use the Service pursuant to terms Licensee deems appropriate. Under no circumstance will Licensee permit any other person to use the Service for profit-making or illegal purposes.
 - c. Licensee shall not use the Software to perform or provide services for the benefit of or on behalf of any other party.
 - d. Licensee shall not copy, modify, alter or change, reverse engineer or decompile the Software or any portion thereof. Licensee will execute contracts with any consultants, vendors or other third parties that Licensee authorizes to use the Software, which obligates such party (and its employees, agents and other working on its behalf) to the terms and conditions of this clause and all other applicable provisions of this Agreement.
 - e. Licensee shall not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of EveryAction, which consent shall not be unreasonably withheld, delayed or denied. Any such transfer or assignment without EveryAction written consent shall be void and of no force and effect.
3. Fees; Payment Terms. In exchange for the License and Lease, Licensee shall pay to EveryAction the fees set out in the Order Form. Licensee shall also pay to EveryAction any applicable sales taxes, exclusive of EveryAction’s net income or

corporate franchise taxes. All fees are due upon receipt of invoice, or on the first day of the first month of the service billing term, whichever is earlier; unless otherwise stated on the Order Form. Licensee shall pay a late charge of 1.5% per month on any fees not paid within 30 days of the due date.

4. Term, Renewal, & Termination.

- a. The license to the Software is effective upon activation of the Service and, unless earlier terminated as provided herein, shall remain in effect for the term specified on the Order Form. The activation date is the agreed upon date on which the Service is made available for use by the Licensee. Unless otherwise agreed to, activation of the Service shall be contingent upon EveryAction's receipt of the initial payment from the Licensee.
- b. The license fees are subject to change by EveryAction upon 30 days prior written notice to Licensee.
- c. At the end of the term specified on the Order Form, this Agreement will auto-renew monthly until it is explicitly cancelled by written notice from Licensee to EveryAction. It is the Licensee's sole responsibility to request termination of services, and to specify the date of termination. The Service may not be terminated retroactively. Failure to notify EveryAction of the Licensee's desire to terminate EveryAction services will result in the continuation of services, all monthly fees and the Licensee shall continue to be bound by all terms and conditions herein. Upon termination, EveryAction shall disable Licensee's access to the Service. Sections 3, 4, 7, 10, 11, and 14 shall survive termination of this Agreement indefinitely or to the extent set out therein.

5. Support. During the term of the License, EveryAction shall provide telephone or e-mail support, as defined by Licensee's agreement, to assist Licensee with the use of the Service and any Updates that are made available. Routine support shall be available between 9:00 AM and 6:00 PM (EST), Monday through Friday, excluding federal holidays and shall be provided in accordance with the EveryAction technical user and support documentation (the "Documentation"). Emergency after-hours support shall be available on a callback basis after 6:00 PM and on weekends and holidays. Routine support hours may be extended upon notice to Licensee. Notwithstanding the foregoing, EveryAction shall have the right to alter or limit its routine, no-cost support if it believes, in its sole discretion, that support demands by Licensee are excessive. Additional support for the Software may be available to the extent agreed to by the parties at EveryAction's standard hourly rates.

6. Terms of Service.

- a. EveryAction will provide the servers, equipment, and physical and telecommunications facilities needed to host and support the Service. EveryAction shall provide for connectivity with the Service via the Internet. When possible, EveryAction will advise Licensee of issues which may impact performance prior to occurrence.
- b. Licensee shall comply with all laws, rules and regulations regarding the use of the Service, including complying fully with any applicable campaign finance and fundraising laws, rules and regulations. EveryAction shall not be deemed an agent of Licensee in connection with Licensee's campaign finance or fundraising activities.
- c. EveryAction reserves the right to restrict access to the Service without notice upon Licensee's failure to pay fees by their due date. EveryAction shall have no liability from Licensee's subsequent inability to utilize the Software or Service.
- d. The Service is provided through an infrastructure which is shared by other customers of EveryAction. Licensee's use of the Service may be interrupted or suspended indefinitely, by EveryAction providing notice, if Licensee's use of the Service limits the ability of EveryAction to provide the Service to other customers, as determined in the sole discretion of EveryAction.
- e. EveryAction reserves the right to monitor any and all communications through or with its servers.
- f. Licensee shall not use the Service for any illegal purposes.
- g. Licensee acknowledges and agrees that any unauthorized use of EveryAction's or its contractors' computer systems (e.g., unsolicited email advertisements) is a violation of this Agreement and certain federal and state laws, including without limitation the Computer Fraud and Abuse Act (18 U.S.C. § 1030 et seq.). Such violations may subject the Licensee or its agents to civil and criminal penalties. Licensee agrees not to transmit unsolicited or prohibited advertising or other harassing or illegal materials through electronic mail, Usenet postings, or other Internet media. The use of the Service for unsolicited mass mailings, postings, or other activities considered an annoyance to others, commonly referred to as "spamming," is strictly prohibited and may cause the Service to be terminated immediately and without warning, and Licensee will be held fully responsible for any damages to EveryAction, or any other party or parties resulting from any such conduct. Specifically, Licensee shall not send e-mail messages to recipients who have not specifically requested or given express consent to receive those messages. Licensee shall not send e-mail to lists purchased from or gathered in any way by third parties not connected to Licensee's national network. Licensee shall honor immediately all requests from list members to be removed from the mailing list. Removal requests include but are not limited to unsubscribe or opt-out requests, bounces, and unsolicited e-mail complaints. In the event EveryAction is required to respond to ISPs or spam lists requests concerning the Licensee as a result of Licensee's use of the

Service, Software or other EveryAction products or services, Licensee agrees to reimburse EveryAction for its actual costs in responding to such issue. Such costs may include the cost of the EveryAction employee (at such employee's commercial hourly rate).

- h. Licensee's use of the Service is at Licensee's sole risk. EveryAction is not responsible for files and data residing on Licensee's account. While EveryAction will perform full back-ups of its servers and maintain data for rolling two-week periods to protect against loss of data due to system failure, Licensee agrees to take full responsibility for files and data stored on EveryAction servers. Licensee agrees that EveryAction shall not be responsible to restore from back up storage Licensee's files lost as a result of Licensee error.
- i. EveryAction shall have the right, by providing written notice to Licensee and allowing for 30 days to cure, to terminate this Agreement or restrict access to the Service for Licensee's violation of the terms of this Section.
- j. Licensee shall indemnify, defend and hold EveryAction harmless from all claims, legal actions, losses, costs and expenses (including attorneys' fees) arising out of or related to Licensee's violation of the terms of this Agreement or Licensee's violations of law. EveryAction shall indemnify, defend and hold Licensee harmless from all claims legal actions, losses, costs and expenses (including attorneys' fees), up to the maximum amount paid by Licensee to EveryAction, arising out of or related to EveryAction's violation of the terms of this Agreement, EveryAction's negligence, or EveryAction's violations of law.
- k. Except to the extent that an act or omission by EveryAction causes, leads to, or otherwise precipitates a dispute with a third party, Licensee agrees that EveryAction shall not be responsible or liable for any loss or damage of any sort incurred as the result of Licensee's dealings with third parties.

7. Intellectual Property & Confidentiality.

- a. The Software is protected to the maximum extent permitted by copyright laws and international treaties. EveryAction's content displayed on or through the Software is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions. Any reproduction, modification, creation of derivative works from or redistribution of the Software, any aspects of the Service, or the collective work of EveryAction is strictly prohibited. Copying or reproducing the Site or any portion thereof to any other server or location for further reproduction or redistribution is prohibited. Licensee agrees not to reproduce, duplicate or copy content from the Software, and agrees to abide by any and all copyright notices displayed on the Software.
- b. Any data placed in the Software by Licensee and any data specific to Licensee e-mail list or volunteer sign-ups or online contributions are the property of the Licensee and shall not be used by EveryAction for any purpose other than in connection with the performance of this Agreement. Except to the extent that

- Software or Service errors or omissions result in or contribute to errors or omissions in campaign finance reporting. Any data and/or content placed in the Service by Licensee shall be done so solely at the risk and responsibility of Licensee. Licensee is solely responsible for the accuracy of campaign finance reports created using the Service and filed with regulatory agencies. Licensee agrees to the EveryAction privacy policy, which is incorporated herein by reference, and can be read at <http://www.ngpvan.com/content/privacy-policy> . If Licensee uses the fastAction feature, Licensee acknowledges that their supporters may elect to store their information (including credit card information) with the gateway used by EveryAction, thereby allowing the supporters the convenience of not having to fill in online form data, either on Licensee's web site, or on the web sites of other EveryAction customers.
- c. EveryAction may, from time to time, aggregate service usage or site traffic statistics of our clients to analyze usage levels and patterns of usage, to improve the service for our customers, to describe our service to prospective business partners and other third parties, or for use in EveryAction's advertising and marketing media.
 - d. Upon written consent, Licensee hereby grants EveryAction a non-exclusive license to use its name, logos, trademarks and service marks in connection with the Service provided in this Agreement and to use its name in EveryAction's advertising and marketing media solely for the purpose of identifying Licensee as a client or licensee of EveryAction. Additionally, subject to Licensee's consent, which shall not be unreasonably delayed, denied or withheld, EveryAction may prepare a case study, white paper, press release or other similar document reviewing Licensee's use of the Software. The Software and other proprietary or confidential information of EveryAction, as defined herein, are the intellectual property or confidential information of EveryAction (collectively "Confidential Information"). Licensee shall maintain all Confidential Information disclosed by EveryAction under this Agreement in strict confidence. The Confidential Information shall be used in accordance with this Agreement and shall not be disclosed to any third party. Confidential Information shall include, but is not limited to: Software, Updates, Software documentation, technical support guides, customer lists, pricing proposals, research and development information, processes, designs, bug fixes, reported problems with the Software or services, and any other information identified as confidential or information that the Licensee knew or reasonably should have known was confidential.
 - e. EveryAction may be irreparably damaged if the obligations under this Section are not specifically enforced and EveryAction may not have an adequate remedy in the event of an actual or threatened violation by Licensee of its obligations under this Section. EveryAction may be entitled, in addition to other available remedies, to an injunction restraining any actual, threatened or further breaches by Licensee of its obligation under this Section or any other appropriate equitable order or decree.

Default. With the exception of breaches related to Intellectual Property, if Licensee is in breach of any provision of this Agreement, Licensee shall have thirty (90) days following written notice from EveryAction to cure such breach. If Licensee is unable to timely cure such breach, EveryAction shall have the right to terminate this Agreement and any rights granted hereunder and accelerate, as immediately due, all amounts due hereunder. The remedies set out herein shall be cumulative with respect to any other remedies which EveryAction may have under this Agreement or otherwise. Upon any early termination of this Agreement by EveryAction, Licensee shall forfeit the unused portion of any fees paid for the Service. If EveryAction is in breach of any provision of this Agreement, EveryAction shall have thirty (90) days following written notice from Licensee to cure such breach. If EveryAction is unable to timely cure such breach, Licensee shall have the right to terminate this Agreement and any rights or obligations herein created and to recover a pro rata portion of amounts paid hereunder. The remedies set out herein shall be cumulative with respect to any other remedies which Licensee may have under this Agreement or otherwise. Upon any early termination of this Agreement by Licensee, EveryAction shall forfeit the right to collect any unused remaining portion of fees or amounts owed hereunder.

8. Noninfringement.

- a. EveryAction warrants only that: (i) it has never had a claim of infringement or trade secret violation advance against it with respect to the Software; (ii) it is the owner of all right, title and interest in and to the Software; (iii) to the best of EveryAction's knowledge, use of the Software as contemplated by this Agreement will not infringe the rights of any third parties; and (iv) the United States Government did not provide any funding toward the development of the know-how or the Software and does not have any rights with respect thereto.
- b. In the event of an infringement claim, Licensee shall immediately notify EveryAction, and EveryAction shall have the right, at its sole discretion, to either: (i) replace the infringing Software with functionally equivalent software; (ii) modify such Software while retaining substantively equivalent functionality; (iii) procure at no cost to Licensee the right to continue to use such Software; or (iv) if none of the foregoing is commercially reasonable, immediately terminate the License and this Agreement upon notice to Licensee. Upon termination, EveryAction shall provide Licensee a pro-rata refund of the license fees paid for the remainder of the license term. The foregoing states the entire liability of EveryAction with respect to a claim of infringement or misappropriation of any third party intellectual property right.

9. Limited Warranty.

- a. EveryAction represents and warrants that for a period of ninety (90) days following initial activation of the Service for the Licensee, the Software shall operate in substantial accordance with its Documentation. If during this warranty period the Software fails to comply with this warranty, Licensee shall notify EveryAction in writing of any alleged defects.

- b. If any modifications are made to the Software by Licensee during the warranty period, this warranty shall immediately be terminated.

10. Limitations of Liability.

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS." EVERYACTION DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND SERVICES FURNISHED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

EXCEPT FOR LIABILITY ARISING UNDER SECTION 9 or 10, EVERYACTION'S TOTAL LIABILITY TO LICENSEE, IN TORT, CONTRACT OR OTHERWISE, SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000). IN NO EVENT SHALL EVERYACTION BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, EVEN IF EVERYACTION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. The rights and remedies set out in this Agreement allocate the risks between EveryAction and Licensee under this Agreement and the fees set out in the Order Form reflect the allocation of risks.

11. Exclusive Remedies for Unplanned Service Interruptions. Licensee agrees that any unplanned or unannounced interruptions in the Service shall not require a remedy unless such unplanned or unannounced interruptions exceed 12 hours in any 30 day period, in which case Licensee agrees that the exclusive remedy shall be a credit toward 12 hours of the Service for each 12 hour period of unplanned or unannounced interruptions, and that such credit shall exclusively be applied against the fees owed for Licensee's next license period, if any, or reimbursed to Licensee. Service interruptions, as outlined in the aforementioned, that occur during the 72 hours leading up to a Federal Election or end of a financial quarter, constitute as a breach and are subject to the termination rights stated within the Default Section.

12. Force Majeure.

Neither party shall be liable to the other for any delay or failure by such party to perform its obligations under this Agreement if and to the extent such delay or failure arises from network or electrical outages that occur outside EveryAction's hosting facilities, labor or industrial disturbances; floods; lightning; earthquakes; fire; war or acts of the public enemy; embargoes, blockages actions restriction regulation or orders of any government, agency or subdivision thereof or any natural disaster or act of god.

13. General.

- a. No course of dealing or failure to enforce any provision of this Agreement shall constitute a waiver of any rights under this Agreement. To be effective, any waiver to this Agreement must be in writing and signed by both parties.

- b. If any provision of this Agreement, or portion thereof, is held to be invalid under any applicable statute or rule of law, such provision shall be severed here from and the remaining provisions of the Agreement shall remain in full force and effect.
- c. Nothing contained herein shall be deemed or construed by the parties hereto or by any third person or entity to create the relationship of partnership, joint venture, agency or employment. At all times, each of the parties shall be deemed an independent contractor with respect to its rights and obligations under this Agreement.
- d. EveryAction shall have the right to assign this contract with notice but without consent of the Licensee.
- e. In the event EveryAction is required to respond to a subpoena or otherwise respond to legal requests concerning the Licensee as a result of Licensee's use of the Service, Software or other EveryAction products or services, Licensee agrees to reimburse EveryAction for its actual costs in responding to such subpoena or legal request. Such costs may include the cost of the EveryAction employee (at such employee's commercial hourly rate) responding to such subpoena or legal request plus the actual fees of EveryAction's outside counsel in assisting with the response to such subpoena or other legal request.

14. Choice of Law. This Agreement shall be governed by the laws of the District of Columbia. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be subject to the jurisdiction of a court of competent jurisdiction in the District of Columbia.

15. Entire Agreement. This Agreement together with the Order Form constitute the entire agreement between EveryAction and Licensee with respect to the license granted hereunder, and supersedes all understandings, representations, prior agreements or communications relevant to the license of the Software. This Agreement also supersedes any preprinted terms contained on any purchase order or similar document issued by Licensee subsequent to the execution of this License. Licensee has not been induced to enter into this License by any representations or promises not specifically stated herein.

16. Authority to Bind. The person agreeing to be bound by this Agreement on behalf of Licensee has the power and authority to bind Licensee to its obligations hereunder. This Agreement is a valid, legal and binding obligation of Licensee.

17. Changes. No modification of this Agreement shall be valid unless in writing and signed by each of the parties.