

EVEREST SOFTWARE, INC.

SERVICES POLICIES

The services policies (“Policies”) stated below shall govern the provision of services (“Services”) to you (“Customer”) by Everest Software, Inc. (“Everest”) as a licensee of Everest’s software (“Software”). Additionally, these Policies are incorporated into the applicable Software License and Services Agreement by reference.

1. CUSTOMER SUPPORT SERVICES

- 1.1 **Incidents.** Each instance in which Customer contacts Everest with a request for support services (“Customer Support Services”) in connection with its use of the Software shall be considered an “Incident” and shall be assigned a unique Incident number. Customer must either have an active Enhanced Maintenance Plan subscription or purchase an Incident to be eligible to register an Incident with Everest and receive Customer Support Services. If Customer fails to communicate with Everest in response to an Incident created at Customer’s request for a period of thirty (30) days or more, Everest reserves the right to close such Incident and any future communications with the Customer regarding the same Issue will be considered a new Incident.
- 1.2 **Description of Customer Support Services.** Customer Support Services in connection with Incidents shall include direct response to Customers with respect to specific reproducible issues (“Issues”) with the operation of existing features of the Software. Customer Support Services shall not include responses to any other issues including, but not limited to: (i) computer hardware support; (ii) computer software or driver support; (iii) operating system support; (iv) network support, including network connectivity issues; (v) assistance with configuring of firewalls or proxy servers; (vi) assistance with security, to include computers, servers, or the network in part or as a whole; (vii) assistance with the installation, implementation, or configuration of the Software or the installation of Maintenance Releases; (viii) consulting services; (ix) special assistance with databases such as data migration or data correction; (x) training assistance on the features and/or functionality of the Software; and (xi) custom programming and/or report development. In order to obtain such assistance, Customer must contact Everest to purchase Professional Services, if Everest provides the services Customer needs.
- 1.3 **Certification.** Customer must first be certified by Everest’s Customer Support Department as having successfully implemented the Software before Everest will provide Incident-based Customer Support Services to Customer. The process of obtaining an “Acceptance Certificate” requires the purchase of Services from Everest. This section shall only apply to Customers who purchased an initial Software license on or after July 1, 2004. If Customer has not obtained an Acceptance Certificate and is therefore not eligible to register an Incident, Everest will provide direct response to Customer’s issue on an hourly basis under a Professional Services Statement of Work pursuant to Section 5 below.
- 1.4 **Issue Response.** Everest shall use its reasonable commercial efforts to respond to and attempt to resolve Incidents reported by Customer. Notwithstanding anything herein to the contrary, Everest makes no guarantee that: (i) all Issues will be resolved or that any version of the Software will be error free; or (ii) it will correct or attempt to correct all Issues. The decision whether to correct any particular Issue shall be in Everest’s sole discretion. Any Issue shall be addressed solely on a “commercially reasonable efforts” basis and if Everest’s response includes a modification to the Software such as a Maintenance Release, such modification will only be made to the most recently-released version of the Software. The Software includes and is designed to work with certain third party software that has not been developed by Everest and Everest reserves the right to direct Customer to contact the licensor(s) of such software in certain instances when Everest cannot resolve a problem associated with such third party software.
- 1.5 **Resolution of Reproducible Issues.** Resolution of reproducible Issues may take the form of a written response, supplementary documentation, a Maintenance Release, or other correctional aids. Everest’s response efforts begin when Everest has received all information from Customer necessary for Everest to be able to reproduce the suspected Issue.
- 1.6 **Methods of Assistance.** Everest reserves the right in its sole discretion to determine the method, manner and means by which Customer Support Services will be delivered. Everest will make a reasonable amount of telephone support available to Customers in response to Incidents. Telephone support in the use of Everest products can be obtained from 8:30 a.m. to 8:30 p.m., U.S. Eastern Standard Time, Monday through Friday, excluding Everest’s seven (7) U.S. company holidays. Everest’s company holidays currently are New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, the day after Thanksgiving, and Christmas. Any changes to the hours and days of support will be posted to our support website <http://support.everestsoftwareinc.com>. If a company holiday falls on a weekend, Everest generally observes such holiday on the nearest regular business day.
- 1.7 **Remote Support.** If after reasonable commercial efforts, Everest is unable to diagnose or resolve an Incident reported by Customer, Everest may request access to Customer’s computer systems, data or networks through a remote connection in order to continue providing Customer Support Services. Customer shall be responsible for providing the necessary communications access as well as installing the necessary remote control software specified by Everest (e.g., Symantec PC Anywhere or Microsoft Terminal Server). In such event, Customer authorizes Everest to remotely access its systems and data solely for the purpose of providing Customer Support Services with respect to the Incident and Customer agrees to backup all of its data and verify the integrity of such backup prior to Everest gaining access to Customer’s applicable computer(s). Before each instance in which Everest provides remote support, Customer must have virus protection software installed on its systems, run a scan for viruses, and provide a report to Everest identifying any viruses present. If such remote access is not provided, Everest shall not be obligated to provide Customer Support Services with respect to the Incident.
- 1.8 **Customer’s Obligations.** Everest’s Customer Support Department staff relies on Customer’s cooperation to successfully resolve Incidents. Accordingly, Everest requires Customer to: (i) provide Everest a listing of output and any other data, including databases and backup systems, that Everest reasonably may request in order to reproduce operating conditions similar to those present when the Issue occurred; (ii) ensure that the use of the Software is in accordance with its documentation; (iii) use reasonable efforts to eliminate any hardware, operating system software and application software deficiencies or conflicts; (iv) capture all relevant data and document all operating conditions and other operating information and fully supply Everest’s Customer Support Department staff with requested diagnostic information necessary to reproduce the Issue; and (v) implement recommended remedial, corrective or Workaround procedure(s) and fully describe any limitations imposed by such corrections or Workarounds.
- 1.9 **Supported Versions.** Everest will provide Customer Support Services for: (i) the latest incremental decimal level release of the Software (the “Primary Release,” e.g. Version 2.0.1); and (ii) the immediately preceding incremental decimal level release of the Software (the “Secondary Release,” e.g. Version 2.0). The Secondary Release will generally be supported by Everest for six (6) months following the release of the Primary Release unless otherwise specified in a sunset policy released by Everest (see <http://support.everestsoftwareinc.com>). In the event that Everest decides, in its sole discretion, to provide a Maintenance Release such as a hotfix or a patch in response to an Issue (as defined in Section 3) as part of Customer Support Services, such Maintenance Release will: (a) only be made to the most recently-released version of the Software; and (b) not extend to any customizations to the Software (e.g. customizations to a web store template).
- Everest shall also offer Maintenance/Support Services on releases other than the Primary or Secondary Release (“Older Releases”) that have not been “sunsetting” by Everest. No Support Services will be available for Older Releases pursuant to a Maintenance Plan or an Incident. The Support Services that are available shall be offered at Everest’s special hourly support rates for such releases (i.e. typically 1.5 times the current hourly rate for consulting services).
- 1.10 **Software Modifications by or for Customer.** Everest reserves the right to not provide any assistance pursuant to an Incident if Customer has unilaterally modified the functionality of the Software by making changes or additions to portions of the Software including, but not limited to, ASP pages, stored procedures, triggers and reports or if Customer has integrated another application with the Software’s database. In order for Everest to diagnose Customer’s Issue and provide Customer Support Services related to such changes, Customer may be required to reverse or remove any changes Customer has made to the Software or Software environment.
- 1.11 **Service Limitations.** Everest shall not be required to correct any Issues or address any issues resulting from: (i) any improper treatment, use or operation of the Software; (ii) any failure to properly maintain the Software or to install a Maintenance Release previously made available, or any errors, defects, or damage to the Software resulting from causes other than those arising in the ordinary use of the Software; (iii) any use of third party software, hardware or data not supported by Everest, or the use of software, hardware, systems, or networks not meeting Everest’s minimum recommended configurations; (iv) any attempts by any party not authorized by Everest to

repair, maintain or modify the Software; (v) any accident, neglect, misuse, vandalism, lightning, failure or fluctuation of electrical power, failure of telephone equipment or communication lines; (vi) any failure of the Customer's hardware or network infrastructure which causes the Software to malfunction.

Additionally, Customer's abuse or misuse of Customer Support Services (e.g. excessive reporting of problems not caused by Everest or abuse of Everest staff) as determined by Everest, may result in termination of Customer's Maintenance Plan.

2. MAINTENANCE PLANS – GENERAL TERMS

2.1 Standard and Enhanced Maintenance Plans. Everest currently offers two maintenance plans ("Maintenance Plans"): Standard Maintenance and Enhanced Maintenance. Maintenance Plans are offered by Everest to any Software end user who has paid the applicable membership fee and who is not otherwise in default under the License and Services Agreement or the terms of these Policies.

Additional terms and conditions applicable to Standard Maintenance Plans are detailed in Section 3 below and additional terms and conditions applicable to Enhanced Maintenance Plans are detailed in Section 4 below.

2.2 Term; Renewal; Reinstatement. The term of either Maintenance Plan begins to run upon the date of the invoice ("Invoice") associated with Customer's purchase of the Maintenance Plan (the "Maintenance Plan Start Date"). Regardless of when any Acceptance Certificate may be issued, the Maintenance Plan Start Date will not be moved forward or otherwise changed. In the event that Customer is unable to obtain an Acceptance Certificate, Customer may either elect to receive a prorated refund of any sums paid for the Enhanced Maintenance Plan in excess of the fees then due for the Standard Maintenance Plan or Customer may continue to work with Everest's Professional Services Department to obtain an Acceptance Certificate and Everest reserves the right to charge additional fees for such assistance. Unless otherwise specified, the term of a Maintenance Plan is one (1) year. After the initial term, Customer's Maintenance Plan will automatically renew yearly at Everest's then-current fees unless terminated by either party upon written notice at least thirty (30) days prior to each successive anniversary of the Maintenance Plan Start Date. In the event of a lapse in a Maintenance Plan membership, Customer will be required to pay a reinstatement fee and any retroactive Maintenance Plan fees in order to obtain services under the plan. All Maintenance Plan payments are nonrefundable except as noted earlier in this Section. Customer must pay Maintenance Plan fees for the total number of licensed concurrent users of the Software, including upgrades and all add-ons or options purchased, otherwise, Customer will forfeit its license to use any users/seats, add-ons or options for which maintenance is not purchased or renewed. If Customer has purchased a maintenance plan membership from any party other than Everest, such as a certified Everest reseller, Everest shall have no obligation to provide any Maintenance Plan services to Customer.

3. STANDARD MAINTENANCE - TERMS AND CONDITIONS

3.1 Maintenance Releases. Software corrections and enhancements including hotfixes, patches, workarounds, updates and upgrades ("Maintenance Releases") are made available by Everest to active subscribers to a Standard Maintenance Plan if and when such Maintenance Releases are available. The Parties agree that Everest shall have no obligations to provide any Standard Maintenance services except as expressly set forth in this section. If Customer does not have an active Standard Maintenance Plan, Customer will not be entitled to receive any Maintenance Releases.

3.2 Effect of Maintenance Releases on Custom Programming. Installation of a Maintenance Release may cause custom programming that Everest's Professional Services Department delivered separately to Customer to no longer function as intended. In such event, additional services to resolve any issues may be available for purchase from Everest's Professional Services Department.

3.3 Online Resources. Standard Maintenance Services shall also include access to Everest's support knowledgebase, support forums, and the product suggestion system. Customer understands and acknowledges that information in the knowledgebase and support forums may have not been verified by Everest. Accordingly, Everest shall have no responsibility hereunder with respect to any inaccurate or incomplete information contained in the knowledgebase or support forums.

3.4 Other Products. Maintenance Releases do not include platform upgrades, new modules, and new products ("Other Products"). Other Products includes new versions of the Software that enable the Software to support or manage new operating systems or hardware environments as well as new capabilities that are added to the product. Customers who wish to obtain Other Products may do so by paying the applicable license and maintenance fees.

4. ENHANCED MAINTENANCE - TERMS AND CONDITIONS

The Enhanced Maintenance Plan includes all services and resources included in the Standard Maintenance Plan as well as the additional services described in this section.

4.1 Generally. Enhanced Maintenance services ("Enhanced Maintenance Services") are offered by Everest to any Software end user who has been accepted by the Customer Support Department and who has paid a fee directly to Everest for an Enhanced Maintenance Plan subscription. The Parties agree that Everest shall have no obligations to provide any Enhanced Maintenance Services except as expressly set forth in this section.

4.2 Incidents. A Customer with an active Enhanced Maintenance Plan shall be entitled to register Incidents with Everest at no additional charge. Everest shall provide Customer Support Services in connection with such Incidents as detailed in Section 1 above.

4.3 Customer Support Contacts. Customer must designate, in writing, the name of one (1) authorized support contact for Enhanced Maintenance Services (the "Support Contact") who is trained and knowledgeable in the use of the Software. Additional Support Contacts may be purchased separately. The identity of any Support Contact may be changed from time to time within reason upon written notice from Customer to Everest. In such event, Customer agrees that all Enhanced Maintenance Services inquiries from Customer's individual users will be directed to a Support Contact and Customer's communications with Everest for Enhanced Maintenance Services will be handled exclusively by such Support Contact.

5. PROFESSIONAL SERVICES

5.1 Services Defined. Everest agrees to provide professional services ("Professional Services") in connection with the Software licensed by Customer, provided that Customer has paid or pays the applicable fees for such services. The Parties agree that Everest shall have no obligations to provide any Professional Services except as expressly set forth in this section.

5.2 Description of the Services. Professional Services shall consist of services including, but not limited to: business process review; project planning; application setup and review; data loading and migration; testing; product training; go-live support; Acceptance Certificate review and issuance; and consulting services. Professional Services shall not include: computer hardware support; computer software or driver support; operating system support; network support, including network connectivity issues; assistance with configuring of firewalls or proxy servers; assistance with security, to include computers, servers, or the network in part or as a whole; and custom programming and/or report development.

5.3 Data Migration. This section shall apply to Historical Data migration services that Everest may provide to Customer. "Historical Data" is defined as data to be migrated from customer's existing software application into Everest. Data migration is a particularly uncertain process that depends on unique facts and circumstances; therefore, Everest accepts no responsibility for errors or other problems that may result during and after the migration of Customer's Historical Data. Everest cannot guarantee that all of Customer's Historical Data will be migrated. Loading Historical Data inherently poses a significant risk to data integrity and by engaging Everest to perform Historical Data migration services, Customer agrees that it understands and accepts the risk of data problems. Furthermore, Customer may encounter issues with its Historical Data after, in addition to during, data migration; therefore, it is Customer's responsibility to review any Historical Data that is imported for accuracy and content. Customer agrees that Everest may, but is not required to, enter into a Professional Services engagement with Customer to migrate its Historical Data into the Software and that if a Statement of Work is entered into pursuant to which Everest agrees to migrate Customer's Historical Data and Everest subsequently determines that the Historical Data migration project is not feasible in its sole discretion, Everest may terminate the Statement of Work and return any prepaid sums for such Services to Customer.

- 5.4 Service Fees and Payment Timing. All Professional Services shall be performed for the fees set forth in an Everest Sales Order, Sales Invoice or Statement of Work (collectively, a "Statement of Work"). Fees for hourly consulting services may include not only time spent in interactive discussions with Customer but also any research time associated with the question or issue for which Customer has purchased such Services. Customer shall pay for all Professional Services pursuant to the terms detailed in the applicable Statement of Work.
- 5.5 Overtime. If Customer requests an Everest representative to perform in excess of eight (8) hours of On-Site Professional Services in a day or to perform Professional Services on a weekend, the applicable hourly rates quoted shall be increased by fifty percent (50%) for the additional time worked by such representative. If Customer requests an Everest representative to perform Professional Services on a holiday, the applicable hourly rates quoted shall be increased by one hundred percent (100%) for the additional time worked by such representative. If services are provided on either a weekend or holiday, the minimum number of hours that may be purchased is four (4).
- 5.6 Session-Delivered Services. Customer may purchase Professional Services to be delivered by Everest according to the number of sessions ordered or the number of sessions in a package of Services. Each session shall last no more than sixty (60) minutes and no credits will be provided to Customer for unused portions of sessions or expired sessions.
- 5.7 Travel Fees. Customer will be billed for reasonable expenses incurred by Everest in connection with On-Site Professional Services in accordance with Everest's Travel and Expenses Policy. Customer will also be billed for a travel time fee ("Travel Time Fee") in connection with all Professional Services engagements. This Travel Time Fee will be assessed on an hourly basis based on door-to-door round-trip travel time.
- 5.8 Scheduling and Expiration. The dates, times and schedule for all Professional Services shall be as mutually and reasonably agreed by the parties. Any prepaid services or any credits issued to Customer that are not used within six (6) months of payment or issuance will be forfeited and no credits or refunds will be issued for forfeited services. Prepayments for Professional Services will be honored at the stated rates. Professional Services rates quoted in a Statement of Work or otherwise will be honored for a period of sixty (60) days and are subject to change thereafter.
- 5.9 Rescheduling or Cancellation of Scheduled On-Site Professional Services. If Customer requests Everest to reschedule or cancel any scheduled On-Site Professional Services, Everest reserves the right to charge or retain, as applicable, a percentage of the fees for such services. The applicable percentage depends on the number of weeks prior to the commencement date of such scheduled On-Site Professional Services that customer's written request is received as specified in the following chart:

Amount of Advanced Notice	Percentage Charge
Less than one (1) week	100%
At least one (1) week but less than two (2) weeks	75%
At least two (2) weeks but less than four (4) weeks	50%
Four (4) weeks or more	No charge

Payment of the Travel Time Fee or the Daily Expenses Fee shall not be required except to the extent that Everest has incurred any non-recoverable expenses in anticipation of performing the rescheduled On-Site Professional Services. Any non-recoverable airfare expenses incurred by Everest shall also be due to Everest.

- 5.10 Rescheduling or Cancellation of Scheduled Off-Site (Remote) Professional Services. Customer will be billed in full for any Off-Site (Remote) appointments which are missed or cancelled by the customer with less than two (2) full business days notice.

6. CUSTOMIZATION SERVICES

- 6.1 Manner of Performance. Everest will have sole discretion over the method and manner in which the custom programming services ("Customization Services") and the resulting deliverables ("Deliverables") are provided which shall include Customization Services being performed by its employees and/or qualified sub-contractors.
- 6.2 Contact Person. Each party will appoint an employee or agent of such party to act as the official contact person for all communications between the parties related to the Customization Services.
- 6.3 Customer Cooperation. Customer agrees to backup all Customer Data and verify the integrity of such backup prior to the performance of any Customization Services by Everest. Customer further agrees to test all subsequent versions, releases, revisions of the Product (each a "New Product") in a non-production environment to ensure compatibility of the deliverables with the New Product. For example, if a Deliverable is developed for Version 2.0.1 of the Product and Everest releases Version 2.1, Customer must first install this later revision in a test environment to ensure that the Deliverable functions properly with the New Product.
- 6.4 Ownership. Everest retains full ownership rights to all intellectual property in the Deliverables, including, but not limited to, any patents, trademarks, trade secrets, copyrights, and all related content, features, designs, discoveries, inventions, scripts, applets, procedures, improvements, developments, drawings, notes, documents, information and materials made, conceived, developed, generated, or that is otherwise created for Customer with or without the input, advice, suggestion or collaboration of Customer.
- 6.5 Operation of Deliverables with Maintenance Releases. Customer acknowledges that Deliverables developed for a particular version of the Product may not work properly with a subsequent version of the Product without the purchase of additional Customization Services pursuant to a subsequent Statement of Work and Everest is not responsible for providing patches, bug fixes, updates or upgrades of a Deliverable, consulting, or support services in relation to any Deliverables.
- 6.6 Prepaid Customization Services. Any prepaid amounts for Customization Services that are not used by Customer within six (6) months of payment will be forfeited and no credits or refunds will be issued for forfeited services. Prepayments for Customization Services will be honored at the stated rates. Customization Services rates quoted in a Statement of Work or otherwise will be honored for a period of sixty (60) days and are subject to change thereafter.

7. GENERAL TERMS AND CONDITIONS

The general terms and conditions in this section apply to all Services provided by Everest.

- 7.1 Data and Information. Customer will make available in a timely manner to Everest all technical data, programs, files, documentation, test data, sample output, or other information and resources ("Customer Data") necessary for the performance of the Services in Everest's judgment. Customer will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness and consistency of all Customer Data.
- 7.2 Non-Solicitation of Employees. Customer shall not solicit for employment, nor hire, nor aid any third party in hiring, any employee or consultant of Everest that is directly involved in or related to the Services provided hereunder for one (1) year after completion of the applicable Services, unless otherwise agreed to by Everest in writing. In the event of breach of this provision, Everest may recover from Customer liquidated damages equal to one hundred percent (100%) of the employee's gross income paid by Everest for the one-year period immediately preceding the breach.
- 7.3 Terms Subject To Change. Everest reserves the right to modify these Services Policies at any time, with or without notice, by posting a new version of these policies on its website (www.everestsoftwareinc.com/agreements.asp); however, no change will be applied to Customer unless it is applied to all similarly-situated customers.