

**EVEREST SOFTWARE, INC.**  
**LICENSE AND SERVICES AGREEMENT**

This LICENSE AND SERVICES AGREEMENT (“Agreement”) is made and entered into by and between you (“Customer” or “you”) and Everest Software, Inc., a Delaware corporation (“Everest” or the “Company”).

**IMPORTANT - READ THIS AGREEMENT AND THE DOCUMENTS INCORPORATED BY REFERENCE HEREIN CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING ANY PART OF THIS PRODUCT, AS APPLICABLE. THIS IS A LEGAL DOCUMENT THAT STATES THE TERMS AND CONDITIONS GOVERNING YOUR USE OF THE PRODUCT. EVEREST IS WILLING TO LICENSE THIS PRODUCT TO YOU ONLY IF YOU ACCEPT ALL OF THE TERMS OF THIS AGREEMENT. BY CLICKING YOUR ACCEPTANCE OF THIS AGREEMENT DURING DOWNLOAD, REGISTRATION AND/OR INSTALLATION OF THIS PRODUCT, OR BY USING ANY PART OF THIS PRODUCT, YOU CERTIFY THAT YOU ARE A DULY AUTHORIZED REPRESENTATIVE CAPABLE OF LEGALLY BINDING YOU AND YOUR COMPANY AND YOU AGREE TO BE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD, REGISTER, INSTALL OR USE THIS PRODUCT AND RETURN THIS PRODUCT, IN ITS ORIGINAL PACKAGING, TO THE PLACE OF PURCHASE WITHIN TEN (10) DAYS OF PURCHASE, FOR A FULL REFUND OF THE AMOUNT OF FEES YOU PAID FOR THE PRODUCT.**

In consideration of the representations and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

**1. Product**

1.1 Software Product. The license (the "License") granted herein extends to the software program (the "Software") licensed by you, including any upgrades, updates, patches, bug fixes or other additions to the Software that Everest may make available to you through membership in a maintenance plan or through the purchase of any Services from Everest, and the accompanying written documentation provided by Everest, including any new versions thereof (the "Documentation") (the Software and the Documentation collectively constituting the "Product"). Depending on the Product licensed, the Product may contain or utilize the following types of software: “Server Software” which means the applications that are installed on computer(s) acting as server(s) and that are configured to perform tasks requested by the Client Software; “Client Software” which means the applications that allow a computer, workstation, personal digital assistant, or other digital electronic device (as applicable) to access the Server Software and that are configured to run with a user-interface allowing a user to initiate a task; and “Database Software” which means the software used to respond to database requests made by the Product.

1.2 Grant of License. Subject to the terms of this Agreement, Everest hereby grants to you a non-exclusive, non-sublicensable, and non-transferable License to install and use the Product. This License shall be perpetual unless you have elected to license the Product on a periodic basis as specified in your Invoice (defined below). All rights not expressly granted to you herein are hereby reserved by Everest. The specific Product(s) licensed by you shall be set forth on an associated invoice or other document

associated with the purchase of your License (each, an “Invoice”). Neither this Agreement nor the Software may be sold, leased, assigned, sublicensed, or otherwise transferred by you, in whole or in part.

1.3 Special Limited Term Evaluation License. If you have been provided with a copy of the Product for evaluation purposes at no charge, Everest grants to you, subject to the terms of this Agreement (excluding Section 1.2 under which you have no rights) a non-exclusive, non-transferable License for evaluation purposes only. This License is for a period of thirty (30) calendar days (the “Evaluation Period”), commencing upon the initial installation of the Product, to evaluate the Product. At the end of the Evaluation Period, you agree to either: (i) promptly contact Everest to purchase a license if the Product is acceptable to you; or (ii) immediately cease any further use of the Product, and return all physical copies of the Product to Everest and delete all other copies of the Product.

1.4 Scope of Use. This is a License to use the Product in executable form in connection with the operating environments designated by Everest for use with, but not included with, the Product. Your Invoice for the Product will specify the number of concurrent users that are authorized under this License and you are required to purchase one (1) external seat for each concurrent external application that: (i) interacts with the Product’s database through its Software Development Kit; or (ii) otherwise alters, updates, or writes to the Product’s database by other means. You may only install one (1) copy of the Server Software in a production or “live” environment; however, you may install multiple copies of the Server Software for internal testing and training purposes (i.e. in a non-

production environment). Notwithstanding the foregoing, if you have purchased a single-user License, the Product may not be used concurrently on more than one (1) computer or processor unless you purchase additional licenses for each additional concurrent use. If you wish to run reports within the Product on a server (a computer that permits multiple users to connect to the Product either directly or indirectly through any middle tier applications), you are required to purchase the appropriate number of server licenses of Crystal Reports either from Everest or from Crystal Decisions, Inc. Licensees of the CRM Studio module are permitted to install the CRM Studio client on an unlimited number of computers or processors; however, the CRM Studio client may not be used concurrently on more than two (2) computers or processors unless you purchase additional client licenses for each additional concurrent use. Licensees of the Professional Edition of Dashboard Analytics shall not be permitted to reconfigure or create dashboard analytics that rely on data other than pre-built analytics data (e.g. data marts, data warehouses and cubes) shipped as part of the Product. Licensees of the Enterprise Edition of Dashboard Analytics shall have the right to use and configure dashboard analytics with only pre-built or customized analytics data (e.g. data marts, data warehouses and cubes) provided that the source of the data is the Product's database. Users of either edition of Dashboard Analytics are not authorized to use the application to access data contained in any database other than the Product's database.

1.5 Restrictions on Use. This License is subject to the following additional restrictions. You may only: (i) install the Database Software on a single database fileserver serving a single computer network; (ii) use the Product by up to the number of concurrent users or client instances, as the case may be, for which you have paid the applicable fees or are otherwise authorized; and (iii) use the Product for your internal business purposes. In addition, you shall not, nor permit any party to: (a) use the Product for the benefit of any third party, including without limitation, in an outsourcing, application service provider or timesharing arrangement or in the operation of a service bureau; (b) sell, lease, sublicense, distribute, or otherwise transfer the Product to any person, firm, or entity; (c) disable or circumvent any security mechanism contained in or associated with the Product (for example, a dongle); or (d) translate, decompile, create or attempt to create, by reverse engineering or otherwise, source code from any object code supplied hereunder. You shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary rights notice in the Product, and shall ensure that all such notices and identifying logos, icons or other markings are reproduced on all copies of the Product.

1.6 Express Product Warranty. Everest warrants that, for a period of ninety (90) days following the date of

receipt of the Product (the "Warranty Period"), the media containing the Product shall be free from defects in materials and workmanship under normal use. If a defect in such media appears during the Warranty Period, your sole and exclusive remedy and Everest's sole liability under this warranty is the replacement of the defective media. You must return the defective media during the Warranty Period to the place of purchase in order to receive a replacement copy of the media.

1.7 PRE-PRODUCTION CODE. THE PRODUCT LICENSED TO YOU HEREUNDER MAY INCLUDE CERTAIN FEATURES AND SOFTWARE CODE THAT IS PRE-PRODUCTION AND RELATES TO USE OF THE PRODUCT BY NON-U.S.-BASED LICENSEES. THESE PRE-PRODUCTION FEATURES AND CODE ARE ASSOCIATED WITH THE SPECIAL ACTIVATION OF A "LOCAL OPTION" THAT IS UNTESTED AND NOT SUPPORTED BY EVEREST. YOU ACKNOWLEDGE AND AGREE THAT IF YOU REQUEST SPECIAL CODES FROM EVEREST THAT ARE NECESSARY TO ACTIVATE THE LOCAL OPTION, EVEREST WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTIES FOR ANY LOSS OF DATA OR DAMAGE TO YOUR COMPUTERS, AND YOU AGREE TO RELEASE AND HOLD HARMLESS EVEREST AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND STOCKHOLDERS FROM ANY AND ALL LIABILITY CLAIMS YOU MAY HAVE, NOW OR IN THE FUTURE, RELATING IN ANY MANNER TO YOUR USE OF THE PRODUCT WITH THE LOCAL OPTION ACTIVATED.

1.8 Termination. Everest may immediately terminate this License upon the breach of any provision of this Agreement, including failure to pay any License fees when due, provided such breach is not cured within thirty (30) calendar days of Everest's notification of such breach. Upon termination, Customer shall immediately cease use of the Product and, at the option of Everest, either promptly return to Everest all copies of the Product in Customer's possession or destroy all such copies and certify in writing that all such copies have been returned or destroyed.

1.9 Export and Government Rights. Customer agrees that the Product will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other applicable export laws, restrictions or regulations, and Customer shall have sole responsibility and liability for compliance with all such laws. The Product is provided with restricted rights. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and

(c)(2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable.

## 2. Services

2.1 Services Generally. Any services (“Services”) you order from Everest shall be subject to the terms of this Agreement. This Agreement shall apply to Services ordered by you both at the time of and subsequent to initial Product purchase.

2.2 Maintenance Services. Upon payment of the applicable fee, either to the extent included in the License fee or as purchased separately, Licensee shall be entitled to receive the Product maintenance services described in Everest’s then-current “Terms and Conditions” that govern Everest’s maintenance plans and which are posted on Everest’s website (<http://www.everestsoftwareinc.com/agreements.asp>) or is available upon request. These policies shall be incorporated into and shall for all purposes be deemed a part of this Agreement.

2.3 Professional Services. Everest agrees to provide implementation, training, and other professional services (“Professional Services”) for the Product licensed by Customer, provided that Customer has paid the applicable fees for such Services. In addition, Customer agrees to be subject to the terms contained in Everest’s then-current “Professional Services Policy” which is posted on Everest’s website (<http://www.everestsoftwareinc.com/agreements.asp>) or is available upon request. This policy shall be incorporated into and shall for all purposes be deemed a part of this Agreement.

2.4 Customization Services. This subsection shall apply only if Customer has purchased certain custom programming services (“Customization Services”) in connection with Customer’s use of the Product. The Customization Services may result in deliverables such as utilities, reports or Product modifications being provided to Customer. In addition, Customer agrees to be subject to the terms contained in Everest’s then-current “Customization Services Policy” which is posted on Everest’s website (<http://www.everestsoftwareinc.com/agreements>) or is available on request. This policy shall be incorporated into and shall for all purposes be deemed a part of this Agreement.

2.5 Statements of Work. All Professional and Customization Services shall be outlined in mutually-signed statements of work (each, a “Statement of Work”) which shall be incorporated by reference as schedules to this Agreement, provided that Customer has paid or pays the applicable fees for such Services as detailed in the applicable Statement(s) of Work. Customer further understands and acknowledges that under any Statement of Work, Everest is required under the terms and conditions of this Agreement to

perform only those Services described in writing therein. All Customer requests for changes to any Statement of Work shall be mutually agreed upon for an additional fee in writing and signed by Everest and Customer and shall become schedules to this Agreement. Requests by Customer for additional services that are not within the scope of a previously agreed upon Statement of Work shall be mutually agreed to for an additional fee in a new Statement of Work.

3. Ownership. Everest retains full ownership rights to its intellectual property, including, but not limited to the Product, 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 pursuant to this Agreement with or without the input, advice, suggestion or collaboration of Customer (“Company Proprietary Materials”). All such Company Proprietary Materials shall belong exclusively to Everest, with Everest having the right to obtain and to hold in its own name, copyrights, patents, registrations or such other protection as may be appropriate to the subject matter. Customer agrees to give Everest reasonable assistance required to perfect the rights defined in this Section at Everest’s expense.

## 4. Fees and Payments

4.1 Payment. In the event Customer has failed to pay Everest any amounts due for thirty (30) days or more, in addition to other available remedies provided herein, Everest reserves the right to suspend performance of any Services until Customer’s account is brought current. All amounts owed by Customer to Everest under this Agreement and which are past due shall accrue interest at a simple rate of one percent (1%) per month. Customer will also be responsible for all costs incurred by Everest in connection with any claim made by Everest in order to recover payment of Customer’s account, including without limitation all professional fees and legal costs.

4.2 Taxes. Customer shall be liable for, pay and to the extent applicable, reimburse Everest for all Federal, state and local sales, use, value added, excise, duty and any other taxes or similar assessments or charges (other than taxes based on Everest’s net income) with respect to this Agreement, any License created pursuant to this Agreement, Customer’s purchase and use of the Services and the sale to Customer of hardware, software or equipment.

4.3 Customer Terms. No terms, provisions or conditions of any purchase order or other business form or written authorization used by Customer will have any effect on the rights, duties, or obligations of Everest

hereunder, regardless of any failure of Everest to object to such terms, provisions, or conditions.

**5. Disclaimer of Warranties and Limitation of Liability**

5.1 Notice Regarding Licensed Software. **THE PRODUCT IS COMPLEX COMPUTER SOFTWARE. ITS PERFORMANCE WILL VARY DEPENDING UPON YOUR HARDWARE PLATFORMS AND SOFTWARE CONFIGURATIONS. YOU ACKNOWLEDGE THAT THE PRODUCT IS NEITHER FAULT TOLERANT NOR FREE FROM ERRORS, CONFLICTS OR INTERRUPTIONS, THAT THE PRODUCT MAY NOT OPERATE IN COMBINATION WITH OTHER PRODUCTS NOT SPECIFIED BY EVEREST, AND THAT THE PRODUCT MAY NOT OPERATE OR FUNCTION PROPERLY ON YOUR COMPUTERS. YOU ALSO ACKNOWLEDGE THAT SOFTWARE ERRORS MAY BE IDENTIFIED UPON CUSTOMIZATION OR INSTALLATION OF THE PRODUCT. YOU THEREFORE ACCEPT THE RESPONSIBILITY OF DETERMINING THAT THE PRODUCT IS SUITABLE IN QUALITY AND PERFORMANCE FOR USE ON THE COMPUTER SYSTEMS ON WHICH THE PRODUCT MAY BE INSTALLED. THIS INCLUDES CONDUCTING SUFFICIENT TESTING OF YOUR CUSTOMIZATIONS AND INSTALLATIONS ON COMPUTER SYSTEMS ON WHICH THE PRODUCT MAY BE INSTALLED.**

5.2 Disclaimer of Warranties. **EXCEPT AS PROVIDED HEREIN, THE PRODUCT AND SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES WHATSOEVER. CUSTOMER ASSUMES THE RESPONSIBILITY FOR THE SELECTION OF THE PRODUCT AS BEING ADEQUATE AND APPROPRIATE FOR ITS PURPOSES. EVEREST MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING OR RELATING TO ANY PRODUCT OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. EVEREST EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF TITLE, INFRINGEMENT, MERCHANTABILITY, CUSTOM, TRADE, QUIET ENJOYMENT, OR ACCURACY OF INFORMATION CONTENT AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCT AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING. CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT: (1) EVEREST MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE SOFTWARE CAN ACCURATELY SUPPORT ALL TAX ASSESSMENT METHODOLOGIES; (2) IT IS SOLELY RESPONSIBLE FOR THE CONTENT,**

**CALCULATION, AND ACCURACY OF ALL REPORTS AND DOCUMENTS PREPARED IN WHOLE OR IN PART BY USING THE SOFTWARE; (3) USING THE SOFTWARE DOES NOT RELIEVE CUSTOMER OF ANY PROFESSIONAL OR STATUTORY OBLIGATIONS CONCERNING THE PREPARATION AND REVIEW OF SUCH REPORTS AND DOCUMENTS; (4) CUSTOMER CANNOT RELY UPON THE SOFTWARE FOR ANY ADVICE OR GUIDANCE REGARDING COMPLIANCE WITH FEDERAL AND STATE LAWS OR THE APPROPRIATE TAX TREATMENT OF ITEMS REFLECTED ON SUCH REPORTS OR DOCUMENTS; AND (5) CUSTOMER WILL INDEPENDENTLY VERIFY ANY CALCULATIONS MADE BY USING THE SOFTWARE AND SATISFY ITSELF THAT THOSE CALCULATIONS ARE CORRECT.**

5.3 Limitation of Liability. **IN NO EVENT WILL EVEREST BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS OR REVENUES, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, DAMAGE TO COMPUTER SYSTEMS, COST OF COVER, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF EVEREST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EVEREST WILL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN DELIVERY OR FURNISHING OF ANY SERVICES. EVEREST'S LIABILITY UNDER ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT, IN ANY EVENT, EXCEED THE GREATER OF THE FEES PAID BY CUSTOMER FOR THE PRODUCT OR SERVICES THAT ARE THE SUBJECT OF THE CLAIM OR ONE HUNDRED DOLLARS (US \$100.00).**

**CUSTOMER ACKNOWLEDGES THAT THE LICENSE FEES AND OTHER FEES PAID OR TO BE PAID REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT EVEREST WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT.**

5.4 Timing of Claims. **No action arising out of any breach or claimed breach of this Agreement or the transactions contemplated by this Agreement may be brought by you more than one (1) year after the cause of action has occurred.**

5.5 Effects of Termination. Termination of this Agreement will not affect Sections 3, 4.2, 5, 6, and 7 of this Agreement, each of which will survive termination of this Agreement, regardless of the reason for termination.

## 6. Confidentiality.

6.1 Generally. Each party acknowledges that Confidential Information, as defined below, constitutes valuable trade secrets and each party agrees that it shall use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and will not disclose, or permit to be disclosed, the same, directly or indirectly, to any third party without the other party's prior written consent. Each party agrees to exercise due care in protecting the other party's Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that is: (i) publicly available through no fault of the receiving party; (ii) obtained by the other party from third parties without restrictions on disclosure; or (iii) required to be disclosed by order of a court or other governmental entity. "Confidential Information" means the Product (including object code and source code provided to you as described above), this Agreement (including its negotiated terms), the Company Proprietary Materials, Customer's financial, employee and customer information and any information that would be considered Confidential Information as provided in Section 7.2 whether in tangible or intangible form, and whether or not stored, compiled or memorized physically, electronically, graphically, photographically or in writing.

6.2 Injunctive Relief. In the event of actual or threatened breach of the provisions of Section 6.1, the non-breaching party will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual damage.

6.3 Return of Confidential Information. Upon termination of this Agreement or upon request, Everest and Customer agree to immediately return all Confidential Information belonging to the other party, except any Deliverables.

## 7. General

7.1 Governing Law and Venue. This Agreement will be construed and controlled by the laws of the Commonwealth of Virginia (USA) without reference to its conflict of law principles. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

7.2 Dispute Resolution. In the event of a dispute between the Parties under this Agreement, the parties agree that arbitration shall be the sole and exclusive method

of determining unresolved controversies or claims between the parties. Either party may initiate binding arbitration proceedings which shall be conducted under the auspices of the American Arbitration Association's ("AAA") Commercial Arbitration Rules. Venue for any arbitration hearings conducted hereunder shall be in Fairfax County, Virginia by a single arbitrator selected through AAA procedures who is familiar with the computer software industry. The arbitrator shall have no power or authority to add to or detract from the agreements of the parties, or to award punitive, consequential, special, indirect or incidental damages. The decision of the arbitrator shall be binding and conclusive on all parties involved, and judgment upon the arbitrator's decision may be entered in any court having competent jurisdiction. Neither party nor the arbitrator may disclose the existence or results of any arbitration hereunder. Notwithstanding the foregoing, we reserve the right to use judicial or non-judicial relief to enforce any monetary obligation under this Agreement or to protect our intellectual property rights in the Product.

7.3 Assignment. Customer may not assign or transfer this Agreement or its rights and obligations hereunder without the prior written consent of Everest. Any assignment or attempted assignment by Customer without Everest's prior written consent shall be null and void. Everest may assign this Agreement without the consent of Customer and this Agreement shall inure to the benefit of Everest's successors and assigns.

7.4 Independent Contractors. With respect to any Services performed pursuant to this Agreement, each party will be and act as an independent contractor and not as an agent or partner of, or joint venture with, the other party for any purpose related to this Agreement. Further, neither party, by virtue of this Agreement will have any right, power or authority to act or create any obligation, expressed or implied, on behalf of the other party.

7.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

7.6 No Waiver. No waiver of any breach of any provision of the Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

7.7 Force Majeure. Neither party shall be liable for any delay or failure due to force majeure and other causes beyond its reasonable control. This provision shall not apply to any of Customer's payment obligations.

7.8 Section Headings. The section headings used in this Agreement are intended for convenience only and will

not be deemed to supersede or modify any provisions.

7.9 Language. This Agreement has been drafted and executed in the English language, which the parties agree shall control the construction of this Agreement in all respects.

7.10 Notices. Any notices under this Agreement will be sent by U.S. mail or by nationally recognized overnight express courier, to the other party's principal place of business and shall be sent to the attention of President.

7.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and will merge all prior and contemporaneous communications, both oral and in written form. This Agreement will not be modified except by a written agreement signed on behalf of Customer and Everest by their respective duly authorized representatives.