

**EVEREST SOFTWARE, INC.
ON-DEMAND TERMS OF SERVICE**

By Executing the On-Demand Service Agreement (the “Agreement”) and/or accessing or using Everest Software, Inc.’s (“Everest”) proprietary On-Demand Service, these On-Demand Terms of Service (“TOS”) are hereby set forth under and incorporated by reference into Agreement. Everest may modify these TOS at its sole discretion. Any such modification is effective upon the earlier of notice to you or the modifications being posted on Everest’s website. You accept any modification to these TOS by continuing to use the On-Demand Services. Capitalized terms not otherwise defined herein shall have the meanings ascribed them in the On-Demand Service Agreement.

Section 1. General Terms of On-Demand Service.

Customer agrees that any new augmentations or enhancements to the On-Demand Service, and/or any new service(s) subsequently purchased by the Customer, will be subject to these TOS and the Agreement.

- a) **Internet Access – Minimum Requirements.** In order to access the On-Demand Service, Customer must have or must obtain access to the World Wide Web (the “Internet”), either directly or through devices that access Web-based content. Customer’s use of the On-Demand Service is subject to Customer having in place and using the following minimum computer system configurations to access the On-Demand Service:

Hardware:

Computers connecting to Everest’s On-Demand Service must be Windows® based and the hardware must meet that operating system’s requirements. All accessories interfacing with the On-Demand Service must be listed on Everest’s website as supported hardware. All printers must be HP or HP Compatible, must be natively supported according to Everest’s then current technical specifications and requirements, and must function properly when running over terminal services. The most current Everest technical specifications and requirements, as well as certain specialized printers that are approved and supported by Everest may be found at:

(http://www.everestsoft.com/software/business_software/products/system_requirements/add_hard_req.pdf).

Software:

All workstations must be loaded with the operating systems and other software set forth in Everest’s then current technical specifications and requirements, and must meet any minimum requirements for these operating systems as set forth by the manufacturer (Microsoft® or otherwise). All Customer systems and networks must be actively protected from all computer viruses and spyware. The most current Everest technical specifications and requirements may be found at:

(http://www.everestsoft.com/software/business_software/products/system_requirements/add_hard_req.pdf).

Internet Access:

Customer must have a broadband Internet connection (no dialup connections) and the download and upload speeds must be a minimum of 64KB per user each way. A static IP address, on the Customer’s network, is highly recommended to provide enhanced security.

- b) Maintenance of Customer Systems:** Unless otherwise expressly agreed to in the Agreement or pursuant to a separate written agreement between the parties, Customer is responsible for (i) maintenance and management of its computer network(s), servers, software, Web site(s), and any services related to maintenance and management of the foregoing; and (ii) correctly configuring Customer's systems in accordance with the Access Protocols.
- c) Accuracy Of Customer's Registration Information.** Customer agrees to provide accurate, current and complete information ("Registration Data") about Customer in order to gain access to the On-Demand Service. Customer further agrees to use commercially reasonable efforts to maintain and promptly update the Registration Data to keep it accurate, current and complete. Customer acknowledges and agrees that if Customer provides information that is intentionally inaccurate, not current or incomplete in a material way, or Everest has reasonable grounds to believe that such information is untrue, inaccurate, not current or complete in a material way, Everest has the right to suspend Customer's access to the On-Demand Services.
- d) Email and Notices.** Customer agrees to provide Everest with Customer's e-mail address, to promptly provide Everest with any changes to Customer's e-mail address, and to accept emails (or other electronic communications) from Everest at the e-mail address Customer specifies. Except as otherwise provided in the Agreement, Customer further agrees that Everest may provide all notices (other than official notices of termination or dispute), statements, and other communications to Customer either through e-mail or by posting them on the On-Demand Service.
- e) Passwords, Access, and Notification.** Customer may designate up to the number of Authorized Users under Customer's account, and Customer may provide and assign unique passwords and user names to each Authorized User. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and/or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and user names. Customer will also be responsible for all electronic communications, including those containing business information, account registration, account holder information, financial information, Customer data, and all other data of any kind contained within emails or otherwise entered electronically through the On-Demand Service or under Customer's account.
- f) Terms of Use.** The On-Demand Service allows Customer to send electronic communications directly to Everest and to third-parties. Customer agrees to comply with Everest's Terms of Use as set forth on Schedule B hereto.
- g) Transmission of Data.** Customer understands that the technical processing and transmission of Customer's electronic communications is fundamentally necessary to Customer's use of the On-Demand Service. Customer expressly consents to Everest's interception and storage of electronic communications and/or Customer data, and Customer acknowledges and understands that Customer's electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Everest. Customer acknowledges and understands that changes to Customer's electronic communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that electronic communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means.

h) Everest's Support. Everest will make commercially reasonable efforts to promote Customer's successful access and utilization of the On-Demand Service, including but not limited to providing Customer with support under the terms of the Agreement.

i) Storage Limits. Everest currently limits the amount of database storage to 2GB for the On-Demand Service, provided, however, that an additional 2GB of storage will be provided to the Customer for other multimedia files the Customer wishes to warehouse. Any customers requiring storage in excess of this limit will be charged additional fees.

j) Modification to the Terms of Service. Everest reserves the right at any time and from time to time to modify these TOS by posting the revisions at (<http://www.everestsoftwareinc.com/agreements.asp>).

Section 2. Suspension, Termination and Indemnification.

a) Suspension for Delinquent Account. Everest reserves the right to suspend Customer's access to the On-Demand Service for any accounts for which any payment is due but unpaid but only after Everest has provided Customer notice and five (5) business days to cure the nonpayment. Customer agrees that Everest shall not be liable to Customer nor to any third party for any suspension of the On-Demand Service resulting from Customer's nonpayment of fees as described herein.

b) Suspension for Ongoing Harm. Customer agrees that Everest may with reasonably contemporaneous telephonic notice to Customer suspend Customer's access to the On-Demand Service if Everest reasonably concludes that Customer's use of the On-Demand Service is causing immediate and ongoing harm to Everest or others. In the extraordinary event that Everest suspends Customer's access to the On-Demand Service, Everest will use commercially reasonable efforts to resolve the issues causing the suspension of On-Demand Service. Customer agrees that Everest shall not be liable to Customer or to any third party for any suspension of the On-Demand Service under such circumstances as described herein.

c) Customer's Indemnity. Customer shall defend and hold Everest harmless from and against any and all losses arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Everest which arise out of or result from a claim by a third-party (i) alleging that any Customer data or trademarks, or any use thereof, infringes the intellectual property rights or other rights, or has caused harm to a third party, or (ii) arising out of Customer's material breach of the Agreement, this TOS or the SLA, provided that Everest (a) promptly provides Customer notice of the claim, suit, action, or proceeding; (b) gives Customer reasonable control of the defense and related settlement negotiations; and (c) provides Customer with all reasonably available information and assistance necessary to perform Customer's obligations under this paragraph.

Section 3. Modification to or Discontinuation of the On-Demand Service. Everest reserves the right at any time and from time to time to modify, temporarily or permanently, the On-Demand Service (or any part thereof). In the event that Everest modifies the On-Demand Service in a manner which removes or disables a module of the suite of offerings then being used by the Customer, and the Customer's business process is materially affected in an adverse manner that cannot be remedied by Everest in a commercially reasonable manner, Everest shall refund the pro rata portion of any On-Demand Service fees that may have been pre-paid by Customer for the portion of the On-Demand Services so removed or disabled. Notwithstanding anything to the contrary in the foregoing, Customer acknowledges that Everest reserves the right to discontinue offering the On-Demand Service at any time by giving Customer not less than one hundred and eighty (180) days written notice, provided however, that Everest shall refund any pro rata portion of any On-Demand Service fees that may have been pre-paid by Customer for the portion of the On-Demand Services not delivered to Customer as of such discontinuation date. Customer agrees that Everest shall not be liable to Customer or to any third party for any modification of the On-Demand Service as described in this Section 3.

Section 4. Upgrade to the On-Premise License. At any time during the Term, Customer may elect to upgrade from the On-Demand Service to Everest's "On-Premise License," which is an enterprise license for the Everest software, implemented on the Customer's own computer network systems and servers. In the event the Customer chooses to upgrade to the On-Premise License, all information and data contained in Customer's On-Demand Service database will be migrated to Customer's own computer network systems and servers for use with the new On-Premise License, and the pro rata portion of any On-Demand Service fees that may have been pre-paid by Customer for the portion of the On-Demand Services not used by Customer as of such conversion date shall be credited to the purchase price of the On-Premise License.