

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

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 Use (“Terms of Use”) are hereby set forth under and incorporated by reference into Agreement. Everest may modify these Terms of Use 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. Customer expressly accepts any modification to these Terms of Use 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.

The On-Demand Services include, among other things, certain email client and other outbound communication capabilities, credit card processing capabilities and certain Customer driven customization capabilities. All of the foregoing uses, as well as any other use of the On-Demand Services, shall governed by these Terms of Use.

**Section 1. Restrictions and Unauthorized Use**

The On-Demand Services shall be used for your internal business purposes only. Customer agrees to comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the On-Demand Service, including, without limitation, those related to privacy, electronic communications, and anti-spam legislation. Sending or solicitation of any material that violates any law is prohibited. This includes, but is not limited to, any material that is obscene, threatening, harassing, libelous, or in any way violates intellectual property laws or a third party’s intellectual property rights. You may not use the On-Demand Services in any way for sending Spam. “Spam” is unsolicited e-mail directed to people not personally known to you, including but not limited to junk mail, chain letters or other unsolicited bulk e-mail, commercial or otherwise or any e-mail sent that Everest reasonably believes constitutes Spam, based on applicable laws and industry practices. Where and when the applicable anti-spam or other laws require, every e-mail message sent using the On-Demand Services must contain an unsubscribe link that allows the recipients to remove themselves from the Customer’s mailing list and a link for recipients to report incidents of e-mail abuse. Further, you agree to comply with the Operating Rules of the National Automated Clearing House Association and the applicable Federal Regulations governing credit card transactions and processing.

Except as permitted by this Agreement, no part of the On-Demand Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the On-Demand Service by any means other than through the interfaces that are provided by Everest. Customer shall not license, rent, sell, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit or make the On-Demand Service available to any third party other than an authorized user, including but not limited to, creating Internet links to the On-Demand Service which include log-in information, including but not limited to, user names, passwords, secure cookies, and/or “mirroring” or “framing” any part of the On-Demand Service. Customer will not upload, post, reproduce or distribute any information, software or other material protected by copyright or any other intellectual property right (including rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Further, Customer shall not send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs which would interfere with or disrupt the integrity or performance of the On-Demand Services or the data contained therein; or attempt to gain unauthorized access to the On-Demand Services or its related systems or networks.

Customer will not in any way express or imply that any opinions contained in Customer’s electronic communications are endorsed by Everest. Neither Customer, nor someone acting on Customer’s behalf, will use the On-Demand Service to target for solicitation any Everest customers for purposes of providing any competitive product. Customer will ensure that any use of the On-Demand Service by Customer’s employees (or users) is in accordance with these Terms of Use.

**Section 2. Credit Card Processing**

Everest facilitates the processing of credit card information through the On-Demand Services. Everest is not a merchant processor and does not actually process credit card transactions. Everest only enables the initiation of the transactions by providing the user interface and accumulating certain information within the On-Demand Services. Credit card transactions initiated through the On-Demand Services are processed by third party merchant processors (each a “Merchant Processor”),

and those Merchant Processors, not Everest, are responsible for the completeness, accuracy and timeliness of all credit card transactions initiated by you through the On-Demand Services. You agree to enter into an agreement with a Merchant Processor if you are going to use the On-Demand Services to process credit card information, provided, however, you understand that any such Merchant Processor, and not Everest, is your provider for processing credit card transactions initiated through the On-Demand Services. You agree to contact your Merchant Processor regarding all inquiries with respect to resolving and correcting errors, problems, or any issues associated with the processing of your credit card transactions.

Because Everest is only providing a user interface to facilitate the processing of credit card information for use by your Merchant Processor, if you have a dispute with your Merchant Processor associated with the processing of credit card transactions, you release Everest from all claims, demands, and damages of every kind, suspected and unsuspected, known and unknown, disclosed and undisclosed, arising out of or in any way related to such dispute. Further, California Customers agree to waive California Civil Code Section 1542 which states, in part, "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

### **Section 3. Customer Customization**

Everest provides the Customer certain integration and data import capabilities with the On-Demand Services which allow the Customer to integrate with and import certain data into the Customer's account (i.e. a CSV file import) for customization purposes. If the Customer uses any of these customization capabilities offered with the On-Demand Services, Everest shall not be responsible for Customer's accidental deletion of data through Customer's use thereof. In addition, except as expressly provided in the Agreement, Everest is not responsible for the data transmitted or submitted to Everest by the Customer. Additionally, any use of third-party development tools or software is subject to terms and conditions solely between Customer and such third party entity. Except where otherwise stated, Everest does not guarantee compatibility with any third party software or system, and Everest shall not be responsible for any changes or new development in third-party tools which might result in inhibiting or prohibiting Customer's current or future use or interaction with the On-Demand Services.

### **Section 4. Disclaimer of Warranties**

IN ADDITION TO THE DISCLAIMER OF WARRANTIES IN THE AGREEMENT, BY USING THE ON-DEMAND SERVICES TO PROCESS CREDIT CARD INFORMATION, CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT EVEREST MAKES NO WARRANTIES OF ANY KIND, WHATSOEVER, ASSOCIATED WITH THE PROCESSING OR OMISSION OF ANY CREDIT CARD TRANSACTIONS BY YOUR MERCHANT PROCESSOR.

### **Section 5. Termination of On-Demand Services**

In addition to Everest rights and obligations associated with terminations of the On-Demand Services as provided for in the Agreement and the TOS, Everest may immediately terminate your access to and use of the On-Demand Services (or any part thereof): i) based on any known or reported occurrence of improper conduct, fraud, or abuse in connection with your use of the On-Demand Services, including, but not limited to, any credit card fraud; ii) if Everest believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Use, including, but not limited to, improper use of the On-Demand Services (or and part thereof); or iii) based on any known or reported occurrence of e-mail marketing abuse in connection with your use of the On-Demand Services including, but not limited, to Spam. Everest may also, in its sole discretion and at any time, discontinue providing the On-Demand Services, or any part thereof. You agree that any termination of your access to the On-Demand Services under any provision of these Terms of Use may be effected without notice to you. Further, you agree that Everest shall not be liable to you or any third party for any termination of your access to the On-Demand Services; provided, however, that if the termination is unrelated to your acts or omissions, Everest will refund the pro rata portion of any fees that may have been paid by you for the portion of the On-Demand Services not furnished to you as of the date of such termination.