

EVEREST SOFTWARE, INC.
REFERRAL PARTNER AGREEMENT

This Referral Partner Agreement (the "Agreement") is between Everest Software, Inc., a Delaware corporation, with principal offices at 21631 Ridgetop Circle, Suite 100, Dulles, VA 20166 ("Everest"), and the partner whose name and address is set forth below ("Referral Partner").

1. **Products.** As used in this Agreement, "Product(s)" means the object code versions of computer software developed by Everest.
2. **Appointment.** Conditioned upon Referral Partner's continued satisfaction of the terms and conditions of this Agreement, Everest hereby appoints Referral Partner, and Referral Partner hereby accepts such appointment, as a non-exclusive referral partner for the Products. Referral Partner's sole authority shall be to generate prospective customers ("Leads") for the Products. Referral Partner shall have no power or authority, express or implied, to: (i) make any commitment or incur any obligations on behalf of Everest; or (ii) collect any monies or to give receipts on behalf of Everest.
3. **Commissions and Program Benefits.** Everest shall pay Referral Partner a commission for the license by Everest of a copy of a Product to an end user other than Referral Partner ("Customer") if: (i) Referral Partner has submitted to Everest a completed "Commission Application Form" (attached hereto as Exhibit A) prior to Everest transacting a sale with the Customer; (ii) the Customer has not been previously identified by Everest as a prospective customer prior to Everest's receipt of a Commission Application Form; (iii) such Commission Application Form has been approved in writing by Everest and returned to Referral Partner; and (iv) Everest successfully completes the sale of a license to use a Product to the Customer identified in the Commission Application Form. The commission shall be up to ten percent (10%) of the initial sales invoice as outlined in the Commission schedule attached as Exhibit B.

Referral Partner is also eligible to receive a five percent (5%) discount on initial purchase of Everest License Products purchased within the current one-year term. Provided that Referral Partner has submitted a minimum of three (3) bona fide Leads to Everest, Referral Partner will continue to receive five percent (5%) on Everest License Products for the remainder of the current one-year term. This discount specifically does not extend to purchases of Everest support, maintenance and other services by Referral Partner.

4. **Referral Partner Covenants.** Referral Partner agrees to: (i) make no false or misleading representations with regard to Everest or the Products including, but not limited to, making any representations that it is an agent or an employee of Everest; (ii) make no representations, warranties or guarantees to customers with respect to the specifications, features or capabilities of the Products that are inconsistent with Everest's marketing collateral; and (iii) submit a minimum of three (3) bona fide Leads in each one (1) year

term beginning on the date of Referral Partner submits a signed version of this Agreement ("Start Date"). Referral Partner further agrees that all transactions will be entered into directly between Everest and any referred Customer. Referral Partner shall indemnify, defend (with counsel selected by Everest), and hold harmless Everest, its directors, officers, employees, agents, and affiliates against any liability, loss, costs, or damages arising out of or related to Referral Partner's warranties or representations concerning the Products other than those warranties expressly authorized in writing by Everest.

5. Term and Termination

- 5.1 **Term.** This Agreement is effective on the date of execution of this Agreement by Everest until the one-year anniversary of the Start Date. Thereafter, this Agreement shall automatically renew for subsequent one (1) year terms unless either party gives the other no less than thirty (30) days prior written notification of its intent to let this Agreement expire at the end of such renewal term. This Agreement shall automatically terminate in the event Referral Partner fails to submit a minimum of three (3) bona fide Leads by the end of any one (1) year term.

- 5.2 **Termination.** Either party may terminate this Agreement at will, at any time during its term, with or without cause, by written notice given to the other party not less than ten (10) days prior to the effective date of such termination.

- 5.3 **Effect of Termination.** Upon termination or expiration of this Agreement, all rights granted to Referral Partner hereunder will automatically terminate and Referral Partner will immediately cease soliciting orders for Products.

6. **Liability Limitations.** **EVEREST SHALL NOT BE LIABLE TO REFERRAL PARTNER, ANY CUSTOMER, OR ANY THIRD PARTY FOR ANY DAMAGES ARISING FROM THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES (SUCH AS LOSS OF DATA, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFITS OR DELAY DAMAGES) EVEN IF EVEREST WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO EVENT SHALL THE LIABILITY OF EVEREST FOR DAMAGES UNDER THIS AGREEMENT EXCEED THE COMMISSIONS PAID TO REFERRAL PARTNER UNDER THIS AGREEMENT WITHIN THE PRIOR THREE (3) MONTHS.**

7. **Assignment.** Referral Partner may not assign this Agreement, in whole or in part, without Everest's written consent. Any attempt to assign this Agreement without such consent will be null and void. Everest may assign this Agreement without the consent Referral Partner and this Agreement shall inure to the benefit of Everest's successors and assigns.
8. **Miscellaneous.**
- 8.1 **Governing Law; Venue.** This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding that body of law known as conflicts of laws. Any suit hereunder may be brought in the Federal or a state court of the Commonwealth of Virginia, and Referral Partner hereby submits to the personal jurisdiction thereof.
- 8.2 **Revised Terms.** Everest shall have the right, in its sole discretion, to amend this Agreement at any time. Any amendments to this Agreement will be referred to specifically as amendments to this Agreement and sent via e-mail and/or postal mail to Referral Partner. Referral Partner shall have the right to terminate this Agreement and withdraw from the Program upon ten (10) days written notice to Everest if Referral Partner objects to any such amendment(s).
- 8.3 **Survival.** The rights and obligations of the parties contained in Sections 6 and 8 shall survive the termination or expiration of this Agreement.
- 8.4 **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.
- 8.5 **Notices.** All notices under this Agreement will be deemed given when delivered personally, sent by confirmed facsimile transmission, sent by email, or sent by U.S. mail or nationally-recognized express courier, to the other party's address.
- 8.6 **Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 8.7 **Waiver.** No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- 8.8 **Entire Agreement.** This Agreement and its exhibits are the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

IN WITNESS WHEREOF, the Referral Partner has executed this Agreement effective as of the date listed below.

REFERRAL PARTNER

Signed: _____

(print name)

Social Security Number (for tax reporting purposes only)

Date: _____

Address: _____

(City) (State) (Zip)

Exhibit A

**EVEREST SOFTWARE, INC.
REFERRAL PARTNER COMMISSION APPLICATION FORM**

The Referral Partner Commission Application form is located at
http://www.everestsoftwareinc.com/referral_program/lead_submission.asp

Exhibit B

TRANSACTION VALUE COMMISSION STRUCTURE

Value of Transaction	Percentage of Commission Based on Total Amount of Initial Sales Invoice
US \$5,000 - \$50,000	5%
US \$50,001 - \$100,000	7.5%
US \$100,001 and above	10%

- Commissions are calculated based on the total amount of a Customer's initial sales order (including license and services fees).
- In order to generate a Commission, a Customer must make its initial purchase within six (6) months of the referral date based on a Web form to be completed by Referral Partner.
- Commissions will be paid thirty (30) days from date of receipt of cash from the Customer.