



# SIGMA ESTIMATES REFERRAL PARTNER

Terms and Conditions

**Sigma Estimates**

1-1-2019

## Sigma Estimates Referral Partner Terms and Conditions

By completing and submitting the sign-up application (the “Application”) you (hereinafter referred to as “you” or “Referral Partner”) acknowledge that you have read these terms and conditions (the “Terms and Conditions”) and that you understand and agree with them. Your acknowledgment and agreement to the Terms and Conditions is effective upon acceptance by Sigma Estimates A/S (“SE”) of the Application.

### 1. Appointment

(a) Referral Services. Upon acceptance of the Application by SE, you will become a Referral Partner and be authorized, on a nonexclusive basis, to refer or introduce to End Users as defined in SE’s End User License Agreement (“EULA”) in force from time to time SE’s standard publicly sold software (“SE Software”), through any means permitted by SE in advance, including without limitation, an in-person introduction, a telephone introduction, a written introduction (including email), a joint sales call, or a hypertext reference link from your website to SE’s website, for the End Users’ internal use and not for their resale, redistribution or other transfer of the SE Software to any other person or entity. SE reserves the right to add, modify, or otherwise change approved advertising strategies or methods at any time, for any reason and without notice to you.

(b) Rights to Use Trademarks. During the time you are authorized by SE, you shall be authorized by SE to use the trademarks and logos of SE relating to the SE Software (the “SE Marks”) solely in connection with the advertisement and promotion of the SE Software. Use of any SE Marks by Referral Partner will be allowed only in accordance with SE’s trademark policies as determined by SE from time to time. Nothing contained in these Terms and Conditions shall give Referral Partner or any End User any interest in any of the SE Marks or other intellectual property rights. Referral Partner shall not: (i) represent that it possesses any proprietary interest in the SE Software; (ii) register, or have registered, any trademarks, trade names or symbols of SE (or which are similar to the SE Marks); (iii) register any domain name using any of the SE Marks without SE’s prior written consent; (iv) use “Sigma Estimates”, or any term that can be misconstrued as “Sigma Estimates” in online adword placement within internet search engines or within any URL web addresses, including text manipulation, or the separation of terms; or (v) except for the specific purposes described in herein, use the SE Marks in any manner whatsoever.

(c) Restrictions. Referral Partner shall not: (i) sell or otherwise provide the SE Software or purport to represent SE to any potential End Users not using Referral Partner’s ID; (ii) purport to provide or distribute the SE Software via online marketplaces like Amazon.com and auction sites like eBay; (iii) use unsolicited email (e.g., spam) as a means of marketing the SE Software or associate SE in any way with unsolicited email; (iv) market the SE Software by unsolicited mass mail or telesales; (v) make any representations, warranties or guaranties on SE’s behalf or with respect to the specifications, features or functionality of the SE Software that are inconsistent with the literature, manuals and data sheets distributed by SE; (vi) make any false or misleading

representations with regard to SE or the SE Software; or (vii) participate or engage in any illegal, deceptive, misleading, unethical, or improper practices.

(d) SE Reservation. SE reserves the unrestricted right (i) to market, license, distribute, and support the SE Software worldwide in any location, directly to End Users or through any other channel, including, but not limited to value added resellers, distributors, resellers or retail outlets, or other referrers and (ii) to modify, augment, or otherwise change the methods in which SE markets, distributes, or supports the SE Software, without notice or any liability to Referral Partner.

## 2. Continuing Responsibilities

(a) License Fees for SE Software. SE shall set the price of the SE Software and maintenance in its sole discretion.

(b) Cost of Promotion. All costs relating to the reference of the SE Software by Referral Partner, including, without limitation, costs of promotion, advertising or other business expenses (including credit card processing fees and sales or similar taxes), shall be borne by Referral Partner.

(c) Business Practices. Referral Partner will not: (i) conduct business in any manner that would reflect unfavorably on the SE Software or the name, goodwill and reputation of SE; (ii) make any false or misleading representation with respect to SE or the SE Software; or (iii) publish or use any misleading or deceptive advertising material relating to SE or the SE Software.

(d) Compliance with Law. Referral Partner shall insure at all times that its performance under these Terms and Conditions shall comply with all applicable laws, including without limitation, laws governing telesales, email marketing and anti-spam.

## 3. Compensation

(a) Referral Fees. Subject to these Terms and Conditions Referral Partner shall receive, as compensation for the referral services hereunder, a fee in an amount equal to thirty percent (30%) of Gross Proceeds received from sales of software referred by Referral Partner to End Users (the "Referral Fee"). The Referral Fee shall be limited to all purchases paid by an End User (as confirmed by Sigma Estimates ) during the twelve (12) month period following the first purchase by such End User (the "End User Fee Period"). Any purchases and fees paid by an End User after such End User's Fee Period shall not accrue Referral Fees. Referral Fees will not be paid to Referral Partner, or organizations, who use the Partner Program as a means to obtain licenses at a discounted rate for their own or company use. SE will not honor transactions that are believed to be manipulative or otherwise deceitful in nature.

(i) "Gross Proceeds" means the cash proceeds actually received by SE for all sales of licenses of the SE Software to End Users referred by Referral Partner (as confirmed by Sigma Estimates) less returns and credit card processing fees and sales or similar taxes. Gross Proceeds shall include initial sales, license or subscription fees and any renewal, re-subscription or re-sale amounts received during the 12-month period

from the Effective Date from End Users who are introduced by Referral Partner. Gross Proceeds does not include third-party “plug-ins”.

(b) Payment. SE shall collect payments directly from End Users and shall pay to Referral Partner the applicable Referral Fee in accordance with SE’s then-standard payment schedule (currently no later than 30 business days after the conclusion of every calendar quarter, but subject to change in SE’s sole discretion).

(c) Tracking Records and Inspection Rights. SE only tracks leads when a contact goes through your Referral Partner ID, which is supplied to you upon approval of your Application. SE is not obligated to pay Referral Fees on a sale that is not electronically tracked to your referral identification number (Partner ID). If disputes arise regarding attribution of sales generated through the SE Software or calculation of the Referral Fee the Parties agree to first resolve any such dispute mutually and second through other methods (i.e. litigation, mediation or arbitration).

#### 4. Maintenance and Service Obligations

Referral Partner shall remain responsible for servicing and maintaining its own products and services and SE have no obligation to provide any such service to Referral Partner. SE will provide servicing and maintenance for the SE Software.

### 5. Proprietary Information and Non-Disclosure

(a) Ownership. All right, title and interest in and to the SE Software, including without limitation intellectual property embodied in the SE Software and any improvements thereto, are and shall at all times remain the property of SE or SE’s licensors as the case may be. Referral Partner shall do nothing inconsistent with SE’s ownership of the SE Software, including any attack on the validity of the intellectual property or SE’s title thereto. All goodwill accrued through use of the SE Software by Referral Partner and its employees and agents shall inure to the benefit of SE. Referral Partner acknowledges that nothing in these Terms and Conditions shall give Referral Partner any right, title or interest in the SE Software or any other intellectual property of SE. SE reserves all rights not specifically granted in these Terms and Conditions.

(b) Confidential Information. Referral Partner acknowledges that, from time to time, it may be exposed to certain information concerning SE, and the SE Software, that may be SE’s confidential and proprietary information and that are not generally known to the public (“Confidential Information”). Referral Partner agrees that it will take appropriate steps to protect such Confidential Information from any unauthorized disclosure, that it will not disclose such Confidential Information to any third party, and that it will not use any Confidential Information (other than as authorized by these Terms and Conditions) without the prior written consent of SE. Referral Partner’s obligations with respect to Confidential Information shall continue indefinitely regardless of any termination of Referral Partner’s participation in the referral program. Referral Partner will only disclose such Confidential Information to its employees who have a need to know such Confidential Information and acknowledges that it shall be solely responsible to ensure that all of its employees and agents abide by its duties of confidentiality and limitations of use as set forth herein.

### 6. Indemnification

Referral Partner will defend and indemnify SE and its managers, members, officers, directors, equity owners, affiliates, employees, representatives and agents (the “SE Indemnified Parties”) against and hold the SE Indemnified Parties harmless from any and all losses incurred by the SE Indemnified Parties and arising out of (i) the services provided by Referral Partner to any third-party, (ii) any breach by Referral Partner of these Terms and Conditions, (iii) any misrepresentation to any third party regarding SE or the SE Software, or (iv) the gross negligence or willful misconduct of Referral Partner.

## 7. Term and Termination

(a) Termination. SE may terminate Referral Partner’s participation in the referral program at will, at any time, with or without cause upon notice (oral or written) to Referral Partner.

(b) Consequences. Upon termination of Referral Partner’s participation in the referral program, Referral Partner shall: (i) cease all display, advertising, and use of all materials relating to the SE Software; (ii) promptly return to SE all business and marketing information and other tangible property representing SE’s Confidential Information or intellectual property rights and all copies thereof; and (iii) erase or delete any such Confidential Information held by Referral Partner in electronic form. Upon termination, only accrued and earned Referral Fees shall be payable and all other payment or compensation obligations shall immediately cease. SE shall have the right to offset and/or withhold amounts owed to Referral Partner in the event Referral Partner fails to comply with these Terms and Conditions.

## 8. General Provisions

(a) Assignment. Referral Partner’s participation in the referral program, or any part thereof, may not be assigned or subcontracted or by operation of law to any third party whatsoever without the express written approval of SE.

(b) Governing Law. These Terms and Conditions shall be governed by and construed and interpreted only in accordance with the laws of Denmark, without giving effect to any choice or conflict of law provision.

(c) Relationship of the Parties. Each Party is acting as an independent contractor and not as an agent, partner, or joint venturer of the other for any purpose. Nothing contained herein shall be deemed to create any relationship between the Parties other than that of principal and independent contractor.

(d) Survival. Notwithstanding any termination of Referral Partner’s participation in the referral program, Sections 5 (Proprietary Information and Nondisclosure), 6 (Indemnification), 7(b) (Consequences) and 8 (General Provisions) shall survive and continue to be in effect in accordance with their terms.

(e) Amendments. SE reserves the sole right to amend these Standard Terms and/or the referral program at any time and from time to time in its sole discretion. Your continuing participation in the program will constitute your acceptance of any changes.

(f) Entire Agreement. Referral Partner has read these Terms and Conditions and agrees to be bound hereby and further agrees that it constitutes the complete and entire agreement with respect to the subject matter hereof and supersedes all previous communications, oral or written, between them relating to the subject

matter hereof. No representations or statements of any kind made by SE that are not expressly stated herein shall be binding on SE.

(g) Notices. All notices required or permitted under these Terms and Conditions will be in writing and delivered by courier or overnight delivery services, or by certified mail, and will be deemed given upon receipt. Notice given by email will be valid only upon acknowledgement of receipt by recipient in writing or by email. Notices to Referral Partner shall be delivered to the address set forth on Application and Notice to SE shall be delivered to the address set forth on SE's website.

(h) Remedies; Waiver. SE shall not be liable for indirect, consequential or accidental damages (loss of revenue, commissions, etc.) due to referral tracking failures, loss of database files, and any results of "intents of harm" to the program or SE's website. SE does not make any expressed or implied warranties with respect to the Referral program and/or products sold at SE's website. SE makes no claim that the operation of the Referral program and its website will be error-free and SE will not be liable for any interruptions or errors.

(i) Headings. Headings and section numbers are for convenience and should not be used to interpret these Terms and Conditions.