

## 1. Introduction

Twin Dolphin Software, Inc., a California corporation with its headquarters located at 303 Twin Dolphin Drive, Suite 600, Redwood City, CA 94065 (“**TDS**”), owns and operates the Twin Dolphin Software™ website (“**Site**”, located at <http://twindolphinsoftware.com>), at which individuals (“**Users**”) can access various databases and applications (each a “**Service**”). This TDS Website Terms of Service Agreement (“**TOS Agreement**”) sets forth the terms and conditions governing your access to and use of the Site and the Service. Your use of the Site constitutes your agreement to comply with it and be bound by the TOS Agreement.

If an individual is using the Site on behalf of a company that has registered and paid a Service fee (“**Company**”), the individual’s use of the Site additionally constitutes the individual’s confirmation that she/he is authorized by the Company to use the Site and the Service. Company’s authorized representative’s use of the Site after reading this TOS Agreement obligates Company to comply with it and be bound by it.

Each User or Company is solely responsible for the selection of, use of, and payment for any telecommunications, internet access, and other systems and services required to access the Site.

A Company is responsible for all actions of Users who are its employees, independent contractors, or are otherwise authorized by Company to access the Site.

TDS reserves the right, in its sole discretion, to supplement, modify or discontinue any aspect of the Site and the Service, including, but not limited to, restricting the times or means of access to the Site. Each User, Company, and TDS sometimes is referred to herein individually as a “**Party**” or collectively as “**the Parties**”.

## 2. Ownership and Intellectual Property Rights

All information, materials, and data on the Site (“**Content**”), including the logo, site design, text, graphics, icons, interfaces, and the selection, arrangement, and organization thereof are either owned by TDS or are owned by TDS’s suppliers or licensors. All page headers, custom graphics, and button icons are trademarks or trade dress of TDS. Elements of the Site are protected by United States copyright, trademark, and/or patent laws, international treaties, and other intellectual property laws. Neither User nor Company will have any right to use, copy, display, perform, create derivative works based upon, distribute, have distributed, transmit, or sublicense any of the Content, except as expressly permitted by this TOS Agreement.

## 3. Permitted Uses

**3.1. General.** TDS hereby grants each User and Company permission to electronically copy and to print hard copies of portions of the Content only as described in this TOS Agreement. Any other use of any Content on this site, including but not limited to, reproduction for purposes other than those expressly permitted by this TOS Agreement, without prior written permission signed by an officer of TDS, is prohibited. User and Company are prohibited from using “web crawlers”, or bots or other intelligent agent software or other types of software or hardware technology to automatically download information or materials from the Site or include information from the Site in a search engine.

**3.2. Limited Commercial Use; No Bulk Downloads.** User and Company are permitted to make only limited commercial use of the Content on the Site, such as incorporating Content from the Site into other products or services provided by the User or Company and in which the User or Company provides added value. For example, a law firm or intellectual property consulting firm is permitted to make use of patent information from the Site as part of its provision of intellectual property products or services to its clients or customers. However, such a firm is not permitted to use the Site or Content to operate an intellectual property research service that competes with the Site, or to enable third parties to do so, except with prior written permission from TDS. User and Company are prohibited from downloading the data and using such data to set up the User’s or Company’s own service that sells the data, and are prohibited from enabling third parties to do so. This does not, however, prohibit a patent search firm from using the website applications on behalf of a client, provided that the patent search firm delivers the results to the client.

#### 4. Website Content

**4.1. Third-Party Content.** Some of the Content on the Site is provided by third parties. TDS is not responsible for any of this third-party Content, including the completeness or accuracy of any such Content.

**4.2. User-Generated Material.** In certain instances, a User may add his or her own material to the Site, such as adding notes to documents or categories. Such User-generated material is solely the responsibility of the User providing the material. TDS is not responsible in any way for such User-generated material, and TDS does not review such User-generated material. By posting User-generated material, User represents and warrants that User or the Company on whose behalf User is using the Site or Service owns the rights to such material or that User or Company has obtained written permission from the owner of such material to post it in the TDS website. User or Company shall retain ownership of the copyrights in any original material that User posts at this site (to the extent such material may be entitled to copyright protection). User agrees not to post on the Site any information or material which violates or infringes anyone's intellectual property rights, or which is obscene, defamatory, racist, lewd, violent, harassing, or otherwise objectionable. User or the Company on whose behalf User is using the Site or Service hereby grants TDS an irrevocable, perpetual, non-exclusive, royalty-free worldwide license to reproduce, adapt, distribute, display, and perform, all of any portion of the User-generated material on the Site. User or the Company on whose behalf User is using the Site or Service hereby grants to other Users of the Site an irrevocable, perpetual, non-exclusive, royalty-free worldwide license to reproduce, adapt, distribute, display and perform all or any portion of such User-generated material, provided such licensed reproduction occurs only at the Site (or in the temporary memory of the computer which a User uses to access the Site). Each User agrees to limit its use of the User-generated material provided by other Users to the license granted in the immediately preceding sentence.

#### 5. Additional Provisions Applicable to Beta Services

**5.1. Beta Version.** The Beta version of a service ("**Beta Service**") may not be completely functional, may be changed substantially prior to commercial release, and may not be compatible with a subsequent commercial release. A Beta Service utilizes pre-release software and data, is experimental, has not been fully tested, is not ready for commercial deployment, is not fault-tolerant, should not be used with data that has not been backed up, and should not be used in a production environment or on critical systems. The Beta Service may contain errors, bugs or other problems not usually associated with generally available Services. User and Company are prohibited from disclosing or publishing information regarding the Beta Service without the prior written consent of an officer of TDS. By using the Beta Service, User agrees that TDS may contact the User by telephone, electronic mail or otherwise in order to obtain feedback and comments concerning User's experience with the Beta Service. User and Company agree that TDS is free to use and incorporate in TDS products and Service any suggestions, ideas, recommendations, bug reports, or other feedback that User or Company provides to TDS regarding the Beta Service, without payment of any compensation to User or Company and without providing any acknowledgment of User's or Company's input. In addition to the exclusions and limitations of liability stated in **Section 15** below, User and Company each agree that TDS will not have any liability whatsoever for any failure of Beta Service.

#### 6. Digital Millennium Copyright Act Compliance.

TDS may disable access to or remove from the Site any User-generated material that TDS believes to be infringing (whether or not TDS is in fact correct in its assessment) or which is the subject of a notification duly sent to TDS's Copyright Agent pursuant to the Digital Millennium Copyright Act. If you believe that the User-generated material posted by another User infringes your United States copyright, please notify TDS Management and provide the following information:

- (a) A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright.
- (b) An identification of the copyrighted material claimed to have been infringed.
- (c) A detailed description of the material that you claim is infringing, including the URL where the allegedly infringing material appears, so that TDS will be able to locate it.
- (d) Your address, telephone number, and e-mail address.
- (e) A statement by you that you have a good faith belief that the allegedly infringing use is not authorized by the owner of the copyright, the owner's agent, or the law.

- (f) A statement, made under penalty of perjury, by you that the above information is accurate and that you are authorized to act on behalf of the owner of the copyrighted material claimed to have been infringed.

TDS Management can be reached at:

TDS Management  
303 Twin Dolphin Drive, Suite 600  
Redwood City, CA 94065  
Telephone: (650) 352-5700  
Fax: (650) 492-7707  
e-mail: info@twindolphinsoftware.com

It is the policy of TDS to terminate, in appropriate circumstances, the rights of any User who is a repeat infringer to access or use the Site. If you believe that TDS has mistakenly disabled access to or removed your User-generated material that is non-infringing, you may contact TDS's Management, in which case TDS will provide you with a copy of the notification or the basis for TDS's action to help you resolve the matter directly with the copyright owner. Under no circumstances may TDS be held liable for removing or disabling access to any User-generated material.

### 7. Links to Other Websites

When you use the Site, you might be given the opportunity to link to third-party website(s). These third-party websites are not operated by TDS, and TDS does not have any control over any of the information or programs or any other materials included on such websites, and makes no representations about the accuracy or contents of any material available there. Links are not intended to imply sponsorship, affiliation, or endorsement. You may be required to agree to additional terms and conditions in order to access information or services from these third-party websites.

### 8. Linking to TDS Website

User may create a plain text hyperlink to the Home Page of the Site, provided that neither you nor the link portrays the Site or any or the Service provided on the Site in a false or disparaging matter. The context for and link itself may not, in any way, suggest sponsorship, affiliation, or endorsement by or with TDS or the Site, except with prior written permission by TDS. TDS may revoke this permission at any time for any reason or no reason upon written notice to you. You may not "frame", inline link, hotlink, or use any other form of linking that would make any of the Content from the Site appear to be available on the linking site.

### 9. Registration

**9.1. General.** In order to access the Site and utilize the Service available on the Site, the User or Company must register with TDS by completing the applicable registration form. As part of the registration process, the User or Company will have the opportunity to opt out of receiving newsletters and other communications from TDS.

**9.2. Eligibility to Register.** Registration for the Site is limited to persons who have the legal capacity to enter into contracts under both California law and the law that applies in his/her place of residence, and to entities that have the legal capacity to enter into contracts. A User must be at least eighteen (18) years of age to register. If you do not meet these requirements, you are prohibited from registering to use the Site and TDS reserves the right to reject any attempted registration.

**9.3. User ID.** A User who accesses the Site or Service on behalf of a Company will be assigned his/her own unique User name ("**User ID**"), which the User will need in order to access the Site and the Service. A User who is registering will be asked to create his/her own unique password which the User will need in order to access the Site and the Service. Each User agrees that his/her User ID is only for his/her individual use, and the User will not permit anyone else to use his/her User ID for any purpose. User is prohibited from transferring the User ID to anyone else for any purpose. User is advised to closely safeguard his/her User ID and User must immediately notify TDS if it becomes compromised in any way or User becomes aware of any unauthorized use of his/her User ID.

**9.4. Complete and Accurate Information.** Each User and Company certifies to TDS that the information each provides to TDS is complete and accurate.

**9.4.1.** Each User and Company is responsible to keep registration information current.

**9.4.2.** TDS reserves the right to terminate access to Users or Companies that, in its sole judgment, have intentionally provided inaccurate or misleading information. For such a termination TDS shall not refund any payments made previously by such User or Company to TDS.

### 10. Subscription Fees and Payment

**10.1. Subscription Fees.** TDS charges a **Subscription Fee or a Per Use Fee** (collectively “**Fees**”) for the use of the Site and the Service. The Fees and payment process will be agreed upon in advance in writing by the Company or User and TDS. For a User, the applicable Fee may be charged to a credit card. If a User requests a Service that is not covered by the Fee that has been paid, the User will be notified what the additional Fee will be before the User is permitted to access that Service. The Fees do not include applicable taxes, if any. The Company or Company is solely responsible for tracking and paying all taxes arising from or relating to the User’s uses of the Site and the Service.

**10.2. Payments.** Payment is required to be made in advance, whether to establish a balance for per-transaction charges, or for a subscription, if any, per the terms of the subscription agreement. All payments are non-refundable, except that a pro-rata refund for the unexpired portion of a Service Fee will be given (i) if TDS shuts down the Site or terminates the Service; or (ii) TDS terminates a subscription as stated in Section 11.2 “Termination by TDS”. The Company or User agrees to pay all charges for usage that is not covered by the Fees, provided that TDS notifies the User of what the additional fee will be before the User is permitted to access the Service that is not covered. The Company or User agrees to pay any invoice in full, unless the person or entity to which the invoice is addressed notifies TDS within thirty (30) days that it is disputing a charge, and the reasons for such dispute. To dispute an invoice, please contact TDS Customer Service in accordance with the Notices provision below.

**10.3. Late Fee.** The Company or User agrees to pay a late fee of one and one-half percent (1.5%) per month (or the highest amount allowed by law, whichever is lower) if payment is not received by the due date stated in the invoice.

### 11. Termination

**11.1. By User.** For subscriptions, if any, the Company or User may terminate a subscription if a new version of the TOS Agreement contains a significant, material, change that is not acceptable. In that situation, a refund will be given, as described in Section 10.2 “Payments”.

**11.2. By TDS.** TDS may terminate Company’s or User’s subscription or registration, or terminate a User’s access to this website or the Service, with or without cause, immediately upon written notice and without any liability to Company, User, or User.

**11.3. Effect of Termination.** Upon expiration or termination of a subscription, if any, or this TOS Agreement, the Company or User must pay any outstanding fees to TDS in full within thirty (30) days.

**11.4. Survival.** Any obligations and duties which by their nature extend beyond the expiration or termination of a subscription or this TOS Agreement shall survive its termination or expiration.

### 12. Privacy

TDS shall maintain all personal information provided by User to TDS and all transaction information collected from User’s use of the Site in accordance with the TDS Privacy Policy.

### 13. Indemnification

Each Company and each User (each an “**Indemnitor**”) agrees to hold harmless TDS and its directors, officers, agents and employees (each an “**Indemnified Party**” and collectively “**Indemnified Parties**”) from and against any liability, damage, loss, cost or expense (including legal expenses and the expenses of other professionals) as incurred, in connection with any third-party claim, demand, or action (“**Claim**”) brought against any of the Indemnified Parties (i)

alleging facts or circumstances that would constitute a breach by User of any provision of this TOS Agreement; (ii) the posting of any User-generated material that infringes or misappropriates a third party's intellectual property rights; or (iii) arising from or related to User's use of the Site or the services provided on this website. Indemnified Party shall promptly notify each Indemnitor in writing of any Claim that it becomes aware of that may be covered by this Indemnification provision. TDS may, in its sole discretion, control the disposition of any Claim covered by this Indemnification provision, at Indemnitor's sole cost and expense. Without limiting the foregoing, Indemnitor may not settle, compromise, or in any other manner dispose of any Claim without the written consent of TDS.

#### 14. Disclaimer of Warranties

ACCESS TO THE SITE AND THE SERVICE ARE PROVIDED "AS IS" WITH NO WARRANTY AT ALL, AND ON AN "AS AVAILABLE" BASIS. THE USER ASSUMES ALL RISK OF USE AND TDS WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY RESULTS ACHIEVED BY USER FROM THE SERVICE OR ANY DATA ACCESSED BY USER THROUGH THE SITE OR THE SERVICE. TDS WILL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR INVALID DESTINATIONS OR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF INFORMATION CARRIED OVER TELECOMMUNICATIONS CARRIERS' OR OTHER PROVIDERS' FACILITIES, OR FOR FAULTY OR INTERRUPTED COMMUNICATION LINKS. USER AND COMPANY ACKNOWLEDGE THAT SUBSTANTIAL AMOUNTS OF THE CONTENT OF THE WEBSITE ARE PROVIDED BY THIRD PARTIES, AND TDS HAS NO CONTROL OVER, OR LIABILITY OR RESPONSIBILITY FOR, ANY SUCH CONTENT.

#### 15. Exclusions and Limitations of Liability

**15.1. No Non-Direct Damages.** TO THE FULL EXTENT ALLOWED BY LAW, NEITHER TDS NOR ITS LICENSORS (IF ANY) WILL BE LIABLE TO USER, SUBSCRIBING COMPANY, OR ANY THIRD PARTY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR ANY DAMAGES THAT ARE NOT DIRECT, ARISING OUT OF OR IN CONNECTION WITH THIS TOS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, OR THE USE OR THE INABILITY TO USE THIS WEBSITE OR ANY SERVICE, EVEN IF TDS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

EXCEPT FOR THE USER'S AND COMPANY'S OBLIGATIONS UNDER **SECTION 13 "INDEMNIFICATION"**, NEITHER USER NOR COMPANY SHALL BE LIABLE TO TDS FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, OR ANY DAMAGES THAT ARE NOT DIRECT, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF, EVEN IF COMPANY OR USER HAS BEEN ADVISED BY TDS OF THE POSSIBILITY THEREOF.

**15.2. Monetary Cap.** IN NO EVENT SHALL TDS OR ITS LICENSORS BE LIABLE TO USER OR COMPANY FOR DAMAGES HEREUNDER (IF ANY) IN EXCESS OF THE TOTAL AMOUNT PAID BY USER OR COMPANY TO TDS UNDER THIS TOS AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO THE CLAIM, OR \$100, WHICHEVER IS GREATER.

#### 16. Compliance with Laws; Export Control

**16.1. General.** With regard to User's use of the Site, User and Company agree to comply fully with all applicable laws, statutes, ordinances, and other governmental rules and regulations.

**16.2. Export Control.** User and Company each agree not to export, either directly or indirectly, any data obtained from the Site ("**Technical Data**") without first obtaining any required license or other approval from the U.S. Department of Commerce or any other agency or department of the United States Government. If User or Company exports any Technical Data from the United States or re-export any Technical Data from a foreign destination, User or Company (as the case may be) shall ensure that the export/re-export or import of the Technical Data is in compliance with all laws, regulations, orders or other restrictions of the United States and the applicable foreign government.

#### 17. Entire Agreement; Amendment; Order of Precedence

This TOS Agreement is intended as the complete, final and exclusive statement of the terms of the agreement between the Parties, and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, relating to the subject matter hereof. TDS reserves the right, in its sole discretion, to modify or

supplement this TOS Agreement any time upon giving notice to User in accordance with **Section 19 “Notices”**. No TDS employee is authorized to orally modify or amend any provision of this TOS Agreement.

## **18. Force Majeure**

TDS will not be liable to User or Company for the failure to perform any of its obligations hereunder resulting from acts of the User or Company, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy interruptions, strike, labor trouble, war, riot, accident, shortage, delay in transportation, or any other causes beyond the reasonable control of TDS.

## **19. Notices**

TDS will post a notice on the Site of any material change to this TOS Agreement, including the Privacy Policy, and such change will be effective five (5) business days after posting, unless a different effective date is stated in the notice, and User’s or Company’s authorized representative’s acceptance or use of the Site or Service on or after such effective date shall constitute acceptance of such modifications. Any notice from User or Company to TDS shall be given in writing to the address stated below:

To Twin Dolphin Software:

E-mail: info@twindolphinsoftware.com  
Facsimile: (650) 492-7707  
303 Twin Dolphin Drive, Suite 600  
Redwood City, CA 94065, USA.

## **20. Waiver; No Election of Remedies**

Failure of any Party to enforce compliance with any provision of this TOS Agreement shall not constitute a waiver of such provision unless accompanied by a clear written and signed statement that such provision is waived. A waiver of any default hereunder or of any of the terms and conditions of this TOS Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The election by any Party to terminate a subscription or this TOS Agreement in accordance with its terms, shall not be deemed an election of remedies, and all other remedies provided by this TOS Agreement or available at law or in equity shall survive any termination.

## **21. Arbitration**

All disputes, claims, and controversies among the Parties arising out of or related to this TOS Agreement or the breach hereof (except non-payment or late payment; infringement, misappropriation, or misuse of any intellectual property right; or any other claim where interim relief from the court is sought to prevent serious and irreparable injury to one of the Parties or to others) shall be settled by arbitration. The arbitration shall be conducted by one arbitrator, under the auspices of JAMS and under its then-current Streamlined Arbitration Rules and Procedures (if no disputed claim or counterclaim exceeds \$250,000, not including interest or attorneys’ fees), or under its then-current Comprehensive Arbitration Rules and Procedures (if any disputed claim or counterclaim exceeds \$250,000, not including interest or attorneys’ fees). The power of the arbitrator shall not exceed that possessed by a judge in Superior Court in California. The arbitrator shall issue a written opinion in support of his or her decision, stating the legal and factual basis for the decision and the reasoning leading to such decision. The arbitrator is prohibited from awarding damages or remedies in excess of those allowed by the provisions of this TOS Agreement. The decision and award of the arbitrator shall be final and binding and judgment on the award so rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in Santa Clara County, California; and the award shall be deemed to be made in California. Both Parties will equally share the arbitrator’s fee and the JAMS administrative fee, but each Party shall bear its own costs and expenses, including attorney’s fees, witness fees, travel expenses, and preparation costs.

## **22. Governing Law and Venue**

THIS TOS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND ALL DISPUTES HEREUNDER SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA, USA, EXCLUDING CONFLICT OF LAWS RULES. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have exclusive

jurisdiction and venue over all controversies in connection herewith, and User agrees not to object to the personal jurisdiction of such courts. However, TDS may seek equitable remedies, including injunctive relief and specific performance, for the purpose of protecting its intellectual property rights and enforcing its rights or the obligations of User or Company under **Section 13 “Indemnification”** in any court of competent jurisdiction, wherever located.

### **23. Attorney’s Fees**

With the exception of the Arbitration provision above, in any action to enforce, or arising out of, this TOS Agreement, the prevailing Party shall be entitled to be awarded allowable costs and reasonable attorney’s fees incurred.

### **24. Relationship of the Parties**

The Parties are independent contractors, and not partners, joint ventures, employer and employee, principal and agent, or otherwise participants in a joint undertaking.

### **25. Severability**

In the event any provision of this TOS Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as possible the original intent of the Parties; and the validity, legality and enforceability of any of the remaining provisions shall not in any way be affected or impaired thereby.

### **26. Headings**

Headings in this TOS Agreement are for the purpose of convenience only, and are not intended to be used in its construction or interpretation.

### **27. English Language**

The original of this TOS Agreement has been written in English, and such version will be the controlling document for all purposes. User and Company each waive any right he/she/it may have, if any, under any law or regulation to have this TOS Agreement written in a language other than English.