

# **TwinPeaks Software**

## **END USER LICENSE AGREEMENT FOR WEB-BASED APPLICATIONS**

### **I. TWINPEAKS SOFTWARE GENERAL END USER LICENSE AGREEMENT.**

- a. This is a legal agreement between TwinPeaks Software and/or its Affiliates, also referred to as "TwinPeaks," "we," "our," or "us", and the person, company, or organization that is being licensed to use web-based software developed by TwinPeaks, also referred to as "you," "customers", "licensees", "clients" and or "end user." Please review these license terms of the End User License Agreement (EULA), or "Agreement" thoroughly. This Agreement is a legally binding document between you, the User, and TwinPeaks Software. By indicating acceptance electronically, accessing or using the Software, or signing any bid/estimate, you agree that you have read and agree to these terms. If you do not agree to the conditions in this document, then do not indicate acceptance of the Agreement and do not use the Software.

### **II. USER**

- a. License to use the Software is granted to a User or to a Group of Users who are part of the original registered organization.

### **III. USER AND RESTRICTIONS**

- a. The Software is protected by copyright, trade secret, and other intellectual property laws. You are only granted certain limited, nontransferable rights to install and use the Software. The Software is licensed for use by you, not sold to you. By accepting this agreement, you acknowledge that you have read and that you understand the terms and conditions set forth within. You further agree that this agreement shall supersede any and all previous agreements, either verbal or written. You agree that you will use the software in a manner which it does not violate any applicable laws, regulations or this Agreement. You further agree that, without prior written authorization from TwinPeaks Software:
  - i. You will not provide access to or give in whole or in part the software to any third party;
  - ii. You will not reproduce, duplicate, copy, reverse-engineer, sell, trade or resell the Software in part or in whole;
  - iii. Offer use of the Software, in part or in whole, as a trade or settlement for any transaction, including sale of current business to new owners.

*\* Violation of any of these terms, your license to use the Software may be terminated by TwinPeaks Software at its sole discretion without a refund.*

### **IV. LICENSE GRANT AND RESTRICTIONS**

- a. Single User License
  - i. This grants you the permission to access the [web-based] Software from any computer, but a single computer at a time. Before accessing the Software from a different computer or device, you must first log-out of the system. This grants access for only one specific person to access the software at a time.
- b. Multi User License
  - i. You may purchase additional users and grant access to the Software. Access to the Software is solely based on the number of users purchased. Access is granted to the specific persons corresponding to the number of user licenses purchased, with no substitution of such users (for example, if you purchased a 3 user license pack and you have 10 employees in your company, the original 3 specific persons who were initially provided with access to and use of the Software, are the only persons licensed to use the Software, unless you purchase additional licenses).
  - ii. In the event an employee quits or is fired who the original user license was granted to, license maybe transferred to a new user by providing written notice to TwinPeaks Software.

**V. PAYMENT** - Unless TwinPeaks Software exempts you, in writing, the following terms apply for Software licensed from TwinPeaks Software:

- a. The Software is licensed on a payment or subscription basis.
- b. For Software licensed on a payment or subscription basis, you must pay with one of the following methods:
  - i. A valid credit card, charged monthly;
  - ii. With a business check or certified cashier's check, six months at a time, in advance;
  - iii. With a business check or certified cashier's check, one year at a time, in advance;
  - iv. By any other payment form provided by TwinPeaks Software in writing.
- c. Payments will be billed to you in U.S. dollars.
- d. If payment and registration information is not accurate, current and complete, and you do not notify us promptly when such information changes, we may, at our sole discretion, suspend or terminate your account and right to use our Software.
- e. Your subscription will be automatically renewed at the end of each monthly, bi-annual or annual subscription, at the then-current rates.
- f. User may be charged a onetime setup fee.
- g. User may be charged a data transfer or conversion fee.

**VI. CANCELTION**

- a. Use of the Software is granted on monthly, bi-annual, or annual basis.
  - i. Monthly
    1. User can cancel monthly use of the Software at anytime, with a 30-day advanced written notice. Notice must be provided 30-days before the next billing cycle. If cancelation is made after the beginning of the billing cycle, cancelation will take affect at the end of the next billing cycle.
      - a. Billing cycle begins on the 1<sup>st</sup> of month X. Cancelation is made on the 5<sup>th</sup> of month X. Cancelation will take affect at the end of month Y.
  - ii. Bi-annual & Annual
    1. User can cancel bi-annual and annual use of the software at anytime, with a 30-day advanced written notice and under conditions detailed below.
      - a. Notice of cancelation must be provided 30-days before the beginning of the next billing cycle;
      - b. If cancelation is received before the end of the subscription term, User will not be billed for the next cycle;
      - c. If cancelation is received before the end of the subscription term, but not with a 30-day advanced warning, User will be billed for the following month at the then-current monthly rate;
      - d. If cancelation is made in the middle of the subscription period, no money will be refunded for 'non-used' time.

**VII. IMPLEMENTATION AND TRAINING**

- a. TwinPeaks Software will create and grant access to the User.
- b. Unless agreed to otherwise, the User is responsible for implementation of the Software. Training may be provided by TwinPeaks Software on all modules purchased by the User for a fee.
- c. Unless agreed to otherwise, the User is responsible for imputing all necessary data.

**VIII. PRIVACY POLICY**

- a. TwinPeaks Software will not sell, provide or give away any private, trade secret, customer or product information. All your information is stored on secure servers and access is only granted to you and the employees of the registered business, based on the number of users purchased.

**IX. CHANGES TO THIS AGREEMENT**

- a. TwinPeaks Software reserves the right to make changes to this agreement at anytime without prior consent or notification. By accessing or using the Software, or signing any future bid/estimate, you acknowledge that you continue to agree to and to abide by these terms.

**X. CHANGES TO THE SOFTWARE AND SUPPORT**

- a. TwinPeaks Software reserves the right to make changes, updates and upgrades to the software without notification.
- b. At times, TwinPeaks Software will perform custom programming at the request of a customer and such changes will reflect for all.

- c. TwinPeaks Software will provide unlimited e-mail support and phone support during regular business hours. After hours support will be available in case of emergency. For non-emergency after hours support, User may be billed.

#### **XI. LIMITATION OF LIABILITY**

- a. In no event shall this site, its affiliates and/or its licensors be liable to anyone for any direct, indirect, punitive, special, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this site, its products, services, and/or content, any interruption, inaccuracy, error or omission, regardless of cause, even if this site or our licensors have been previously advised of the possibility of such damages.
- b. TwinPeaks Software has taken all the precautions available to it at the time to prevent the site from being hacked and information being stolen. In no event shall this site, its affiliates and/or its licensors be liable to anyone in case of hacking.

#### **XII. CONSUMER RIGHTS INFORMATION**

- a. If this site charges for services, products, content, or information, pricing information will be provided upon request as part of the ordering process for this site. We maintain specific contact information including an e-mail address for notifications of complaints and for inquiries regarding pricing policies. All correspondence should be addressed to:

- b. TwinPeaks Software  
2178 E. Villa Street, Suite A  
Pasadena, CA 91107  
[info@twinpeaks.net](mailto:info@twinpeaks.net)

Telephone: (626) 793-7223

Fax: (626) 793-7296

#### **XIII. ARBITRATION**

- a. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. Arbitration shall take place in Los Angeles, California, USA and may be conducted by telephone or online. The Arbitrator shall apply the laws of the State of California, USA, to all issues in dispute. All disputes or claims shall be arbitrated on an individual bases and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$500.00.

#### **XIV. CONTROLLING LAW**

- a. This Agreement shall be construed under the laws of the State of California, USA, excluding rules regarding conflicts of law.

# **END USER LICENSE AGREEMENT FOR SERVER-BASED APPLICATIONS**

## **I. TWINPEAKS SOFTWARE GENERAL END USER LICENSE AGREEMENT.**

- a. This is a legal agreement between TwinPeaks Software and/or its Affiliates, also referred to as "TwinPeaks," "we," "our," or "us", and the person, company, or organization that is being licensed to use server-based software developed by TwinPeaks, also referred to as "you," "customers", "licensees", "clients" and "end user." Please review these license terms of the End User License Agreement (EULA), or "Agreement" thoroughly. This Agreement is a legally binding document between you, the User, and TwinPeaks Software. By indicating acceptance electronically, accessing or using the Software, or signing any bid/estimate, you agree that you have read and agree to these terms. If you do not agree to the conditions in this document, then do not indicate acceptance of the Agreement and do not use the Software.

## **II. USER**

- a. License to use the Software is granted to a User or to a Group of Users who are part of the original registered organization.

## **III. USER AND RESTRICTIONS**

- a. The Software is protected by copyright, trade secret, and other intellectual property laws. You are only granted certain limited, nontransferable rights to install and use the Software. The Software is licensed for use by you, not sold to you. By accepting this agreement, you acknowledge that you have read and that you understand the terms and conditions set forth within. You further agree that this agreement shall supersede any and all previous agreements, either verbal or written. You agree that you will use the software in a manner which it does not violate any applicable laws, regulations or this Agreement. You further agree that, without prior written authorization from TwinPeaks Software:
  - i. You will not provide access to or give in whole or in part the software to any third party;
  - ii. You will not reproduce, duplicate, copy, reverse-engineer, sell, trade or resell the Software in part or in whole;
  - iii. Offer use of the Software, in part or in whole, as a trade or settlement for any transaction, including sale of current business to new owners.

*\* Violation of any of these terms, your license to use the Software may be terminated by TwinPeaks Software at its sole discretion without a refund.*

## **IV. PAYMENT** - Unless TwinPeaks Software exempts you, in writing, the following terms apply for Software licensed from TwinPeaks Software:

- a. The Software is licensed on a payment or subscription basis.
  - i. For software licensed on a payment or subscription basis, TwinPeaks Software will embed a security measure and notification of payment due each month. When payment is made, a security code will be provided to the User by TwinPeaks Software.
  - ii. In the event no payment is made, TwinPeaks Software will not provide the security code and the Software will "lock" and User will not be able to access the Software until a payment is made.
  - iii. After receiving final payment, security measure will be permanently removed.
- b. For Software licensed on a payment or subscription basis, you must pay with one of the following methods:
  - i. A valid credit card, charged monthly;
  - ii. With a business check or certified cashier's check, six months at a time, in advance;
  - iii. With a business check or certified cashier's check, one year at a time, in advance;
  - iv. By any other payment form provided by TwinPeaks Software in writing.
- c. Payments will be billed to you in U.S. dollars.
- d. If payment and registration information is not accurate, current and complete, and you do not notify us promptly when such information changes, we may, at our sole discretion, suspend or terminate your account and right to use our Software.
- e. Hardware must be paid in full before an order can be placed.
- f. A 20% restocking fee will apply to all hardware returned with a proper RMA. RMA will expire within 30 days of issuance.
- g. User is liable for all shipping charges – to and from the User.

- h. Fees for site visits, training, custom programming and setup (software, touch buttons, options or categories) are not refundable.
- i. For all custom programming, a 50% deposit is due before the project begins and the remainder of the balance must be paid in full before any custom programming will be transferred to the user. If custom programming does not function and or meet the needs agreed to by the User and TwinPeaks Software, changes will be made at no additional cost until satisfaction is reached.
- j. Z-Bake and all modules are sold as single user. Additional users may be purchased at 15% of the current software price.
  - i. For customers using multiple modules, additional users must be purchased for all modules. Additional users can not be purchased only for a specific module.

## **V. CANCELTION**

- a. Z-Bake licenses are non-refundable and non-returnable. All sales are final.

## **VI. GRANT OF LICENSE**

- a. Installation
  - i. TwinPeaks Software grants you the right to install and use copies of the Software, up to the number of user licenses purchased, on your computer running a validly licensed copy of the operating system for which the Software was designed for: Windows XP, Windows ME, Windows Vista, Windows 7 and Windows 8.
  - ii. TwinPeaks Software will email a temporary link that will allow the User to download the Software setup file and install it. It is the Users responsibility to copy and backup the setup file. Subsequent setup files will be resent for a fee.
    - 1. If User requests a setup file after updates and upgrades have been made to the Software by TwinPeaks Software, customer must purchase an upgrade to their version of the Software in order to receive a new setup file. Upgrade will be to the most recent version of the Software. TwinPeaks Software does not keep backups and old versions of their Software.
    - 2. TwinPeaks Software is not responsible for lost files on the User's computers.
  - iii. User may request their setup file be mailed to them on a CD. Requests should be made in writing, no later than 30 days after purchase.
- b. Backup Copies
  - i. User has the right to create a backup of the Software and all data for restoration purposes or archival purposes.
  - ii. Backup copies cannot be used as a licensed version of the software. The sole purpose of a backup is recovery in case of data corruption or files lost.
  - iii. You may not sell or transfer any copy of the Software made for backup purposes.
  - iv. All conditions set forth within this Agreement adhere to backups of the Software, where applicable.
- c. User Licenses
  - 1. Z-Bake is sold as a "single user" license and additional users can be purchased.
  - ii. Single User License
    - 1. Software is sold as a "single user" license. This grants the User the right to install and use the software on a single computer or laptop. The Software may also be installed on a storage device, such as a network server, external hard disk or cloud storage, and used on the storage device from any computer connect to the network. The software is to be accessed one computer at a time, and not installed on more than one device at a time. The license for the Software may not be shared, installed or used concurrently on different computers. Subject to the terms and conditions set forth in this EULA, you shall not have multiple installations of a single user licensed Software at any given time, except for:
      - a. Portable or Home Computer Use for Software and Remote Log In Use
        - i. Subject to the terms and conditions of this Agreement, the Owner of the Organization which the Software is licensed to may make one other copy of the Software and install it on either a portable computer or storage drive, a computer located at his or her home for his or her exclusive use, or through remote log in, Citrix or VPN, provided that:
          - a. The copy of the Software on the portable or home computer is not used at the same time as the copy of the Software on the primary computer for business use;

- b. The copy of the Software on the portable or home computer is not installed or used after the time user is no longer the primary user;
  - c. The User is still employed by the organization the Software is licensed to.
- d. Multi User License
- i. Multi-User License
  - ii. You may purchase additional users and grant access to the Software. Access to the Software is solely based on the number of users purchased. Access is granted to the specific persons corresponding to the number of user licenses purchased, with no substitution of such users (for example, if you purchased a 3 user license pack and you have 10 employees in your company, the original 3 specific persons who were initially provided with access to and use of the Software, are the only persons licensed to use the Software, unless you purchase additional licenses). This grants the User the right to install and use the software on multiple computers, provided you have a license for each separate computer on which the Software is installed and run. The Software may also be installed on a storage device, such as a network server, external hard disk or cloud storage, and used on the storage device from any computer connect to the network. The number of computers that can access the Software is limited to the number of licenses purchased. User may not install a personal copy of the Software on a portable or Home Computer. User may access the Software through a remote log in, Citrix connection or VPN.
  - iii. In the event an employee quits or is fired who the original user license was granted to, license maybe transferred to a new user by providing written notice to TwinPeaks Software.
- e. Audit of Software
- i. You agree that TwinPeaks Software may audit your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse TwinPeaks Software for all reasonable expenses related to such audit, in addition to any other liabilities you may incur as a result of such non-compliance. Reasonable notice is a time greater than or equal to 48 hours.
- f. Alterations/ Custom Programming
- i. All products licensed by TwinPeaks Software are not licensed as open source software. The User may not alter, change and add any custom programming to manipulate, change or enhance the Software.
  - ii. All custom programming and alteration requests need to be made to TwinPeaks Software. Upon consideration, custom programming may be made to the version of Z-Bake the User requesting the changes has or to Z-Bake as a whole, to be distributed to all.
  - iii. There may be a fee for custom programming work.
  - iv. Custom programming will only be done to the latest version of Z-Bake. If the User requesting custom programming is using an older version of the Software, they may be required to update to the latest version.

## **VII. PRIVACY POLICY**

- a. TwinPeaks Software will not sell, provide or give away any private, trade secret, customer or product information. The Software is to be installed in “on-site” servers so you may manage all your information.

## **VIII. CHANGES TO THIS AGREEMENT**

- a. TwinPeaks Software reserves the right to make changes to this agreement at anytime without prior consent or notification. By accessing or continued use of the Software, or signing any future bid/estimate, you acknowledge that you continue to agree to and to abide by these terms.

## **IX. CHANGES TO THE SOFTWARE AND UPGRADES**

- a. TwinPeaks Software reserves the right to make changes, updates and upgrades to the Software without notification.
- b. At times, TwinPeaks Software will perform custom programming at the request of a customer and such changes will reflect for all.
- c. To install an upgrade on an earlier version of the Software, you must possess a valid full license to a copy of an earlier version of the Software used. User may continue to use an earlier version of the Software without installing a purchased upgrade.
- d. In the event an upgrade is purchased, but not installed, User may re-purchase an upgrade at 50% of the current listed software price. If an upgrade is received and not installed, user may receive a new upgrade if no more than two months have passed (If an upgrade is purchased and not installed, you can request a

one-time new update within two months. After two months, user will be charged 50% of the upgrade price to receive the most up-to-date version of the Software).

## **X. SUPPORT AND MAINTENANCE**

- a. User may purchase an annual maintenance and support contract from TwinPeaks Software. Three types of support agreements are offered: Platinum, Gold and Silver.
  - i. Platinum agreement: TwinPeaks Software staff will provide unlimited support, 24 hours a day, 7 days a week.
  - ii. Gold agreement: TwinPeaks Software staff will provide unlimited support during normal business hours, excluding weekends and holidays.
  - iii. Silver agreement: TwinPeaks Software staff will provide hourly support, minimum one hour paid in advance.
  - iv. Fees are set by TwinPeaks Software staff; based on previous support provided, support requirements and current rates. User must call TwinPeaks staff for a quote.
- b. TwinPeaks Software may not support versions of any of our desktop software older than five (5) years. Depending on the support needed, User may have to upgrade their software to the latest version available.
  - i. Reasons user may have to upgrade are, but not limited to:
    1. If they are having an issue that is addressed and/or resolved in the latest version;
    2. If they are having an issue with the Windows OS that is addressed and/or resolved in the latest version;
    3. If they are trying to implement a web-based application;
    4. If the feature or function they are having an issue with has been modified or changed on the latest version;
    5. If support cannot be provided because the version is outdated.

## **XI. LIMITATION OF LIABILITY**

- a. In no event shall this Software, its affiliates and/or its licensors be liable to anyone for any direct, indirect, punitive, special, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this site, its products, services, and/or content, any interruption, inaccuracy, error or omission, regardless of cause, even if this site or our licensors have been previously advised of the possibility of such damages.
- b. No TwinPeaks dealer, agent or employee is authorized to make any amendment to this EULA unless such amendment is in writing and signed by a duly authorized representative of TwinPeaks Software.
- c. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software.

## **XII. CONSUMER RIGHTS INFORMATION**

- a. If this site charges for services, products, content, or information, pricing information will be provided upon request as part of the ordering process for this site. We maintain specific contact information including an e-mail address for notifications of complaints and for inquiries regarding pricing policies. All correspondence should be addressed to:
- b. TwinPeaks Software  
2178 E. Villa Street, Suite A  
Pasadena, CA 91107  
[info@twinpeaks.net](mailto:info@twinpeaks.net)

Telephone: (626) 793-7223

Fax: (626) 793-7296

## **XIII. ARBITRATION**

- a. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. Arbitration shall take place in Los Angeles, California, USA and may be conducted by telephone or online. The Arbitrator shall apply the laws of the State of California, USA, to all issues in dispute. All disputes or claims shall be arbitrated on an individual bases and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either

party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$500.00.

**XIV. CONTROLLING LAW**

- a. This Agreement shall be construed under the laws of the State of California, USA, excluding rules regarding conflicts of law. If any provision of this EULA shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this EULA will remain in full force and effect.