

## END USER LICENSE AGREEMENT

THIS END USER LICENSE AGREEMENT ("AGREEMENT") IS A BINDING AGREEMENT BETWEEN TWIN CITY FAN COMPANIES, LTD. AND ITS SUBSIDIARIES AND AFFILIATES ("TCF," "WE," "US" OR "OUR") AND YOU, THE INDIVIDUAL USER WHO REQUESTS TO DOWNLOAD, ACCESS, OR USE, OR OTHERWISE DOWNLOADS, ACCESSES, OR USES THE SOFTWARE (AS DEFINED BELOW), AS WELL AS THE BUSINESS OR ENTITY ON WHOSE BEHALF YOU ARE PERFORMING ANY OF THE FOREGOING ACTIONS (COLLECTIVELY, "YOU," AND SIMILAR TERMS). YOU WARRANT THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOURSELF AND SUCH BUSINESS OR ENTITY.

**IF YOU DO NOT WISH TO BE BOUND AND ABIDE BY THIS AGREEMENT, DO NOT CLICK "ACCEPT" OR OTHERWISE REGISTER FOR, DOWNLOAD, ACCESS, OR USE THE SOFTWARE. BY CLICKING "ACCEPT," OR OTHERWISE REGISTERING FOR, DOWNLOADING, ACCESSING OR USING THE SOFTWARE, YOU ACCEPT AND AGREE TO THE TERMS OF THIS AGREEMENT AND ARE BOUND HEREBY.**

PLEASE READ THE TERMS OF THIS AGREEMENT CAREFULLY, **INCLUDING THE WARRANTY DISCLAIMER, LIMITATION OF LIABILITY, AND INDEMNIFICATION PROVISIONS** BELOW. YOUR ACCESS AND USE OF THE SOFTWARE IS CONDITIONED ON YOUR ACCEPTANCE AND COMPLIANCE WITH THE TERMS OF THIS AGREEMENT.

### 1. DEFINITIONS.

- 1.1. Specific Definitions. As used in this Agreement, the following definitions and terms shall have the designated meanings:
  - 1.1.1. "**Documentation**" means any Software installation manuals, guides, or similar materials provided in connection with your use of the Software.
  - 1.1.2. "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
  - 1.1.3. "**Products**" means TCF's industrial and commercial air movement products.
  - 1.1.4. "**Services**" means those sales and customer relationship services performed by TCF, its employees, agents, representatives, resellers, distributors and contractors.
  - 1.1.5. "**Software**" means the TCF Fan Selector computer program, which is available in downloadable object code form or an online (SaaS) service. The term "Software" includes any corrections, bug fixes, updates, new releases, or other modifications TCF makes available. The term "Software" includes all information, data, images, graphics, prices, or other material or information displayed, contained in, or offered by the Software
  - 1.1.6. "**Third-Party Components**" means any third-party software components, including any graphics, works, trademarks, or other third-party intellectual property, that may be incorporated into, embedded in, displayed, or distributed with the Software.
  - 1.1.7. "**Users**" means you and your employees or independent contractors that are authorized to access or use the Software in connection with your internal business operations.
- 1.2. Other Terms. Other terms may be defined elsewhere in the text of this Agreement and shall have the meaning indicated in the text.

### 2. ELIGIBILITY.

- 2.1. Eligibility Requirements. The Software is offered and available to users who are 18 years of age or older located in the United States or Canada. Download, access, and use of the Software is intended for users located in the United States or Canada, and TCF does not intend to subject itself to any laws outside the United States by providing you the Software. By downloading, accessing or using the Software, you represent and warrant that you are 18 years of age or older and otherwise meet all of the eligibility requirements contained herein. If you do not meet all of these requirements, you must not request access to, or download, access or use the Software.
- 2.2. Account. If you choose, or are provided with, a username, password, or any other piece of information as part of our security procedures, you must treat such information as confidential. You are responsible for maintaining the security of your account and password. TCF cannot and will not be liable for any loss or damage from your failure to comply with this security obligation. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. From time to time, TCF may find it necessary to

access your account. For instance, TCF may access your account for support, maintenance or security-related reasons. In such event, TCF will, if possible, provide you notice of its intent to do so. Regardless of whether such notice is provided, you acknowledge and consent to such access. We also have the right to disable any username, password, or other identifier, whether chosen by you or provided by us, at any time if, in our opinion, you have violated any provision of this Agreement.

### **3. SOFTWARE LICENSE.**

- 3.1. Grant of License. TCF offers the Software to you for the specific purpose of allowing customers or potential customers to review its Products. Subject to your compliance with and in accordance with the terms of this Agreement, TCF grants you for the duration of the Term, a limited, non-exclusive, non-transferable, non-sublicensable, worldwide license to (i) in the case of the object code version of the Software, download one copy of the Software on one device owned, leased or controlled by you, or in the case of the online version of the Software, access the Software via the website provided by TCF; (ii) use the Software in accordance with the Documentation for the purposes of accessing TCF's Product catalog, including possible Product customizations, configurations, or designs, and (iii) use the Documentation solely in connection with such use of the Software. You may only use the Software in the form provided to you, and all use must be solely for your internal business use. You may make a reasonable number of copies of the Documentation for training or installation purposes, provided that you must reproduce all copyright and other proprietary notices in such copies. Any and all copies of the Documentation will be the exclusive property of TCF. This is the sole license granted to you with respect to the Software; no other licenses are granted or implied by this Agreement. All rights not expressly granted to you are reserved by TCF.
- 3.2. Restrictions. Except as otherwise set forth herein, you may not directly or indirectly, or permit any third party to, (i) use the Software except as permitted in this Agreement; (ii) develop or create any products or services which are derived from or based upon the Software, or any of its codes, features, functions, algorithms, structures or sequences, or derived from or based on any Third-Party Components, TCF Confidential Information, or any intermediate data output from the Software, including but not limited to data relating to the Products; (iii) make copies of the Software, or relocate the Software; (iv) translate, modify, reverse engineer, decompile or disassemble the Software or Documentation; (v) export, rent, lease, assign, enter any timeshare or subscription service or operate the Software as a "service bureau" for the benefit of others; (vi) remove, obliterate, alter or obscure the copyright and trademark notices and serial numbers that appear on or during the use of the Software or Documentation; (vii) use the Software to perform research outside the context of a potential Product purchase, (viii) use the Software or any information contained or presented by the Software for purposes of competitive analysis of the Software, the development of a competing software product or service, or competing Product, or any other purpose that is to TCF's commercial disadvantage.; (ix) disclose to any other party any part of or any information relating to the Software, or permit access to the Software except by Users; or (x) use the Software in any unlawful or fraudulent manner, including in violation of any applicable laws, rules or regulations or in violation of any proprietary or intellectual property right of any person. These limitations will survive termination of this Agreement for any reason and shall apply to any TCF software that is the subject of, or part of, any prior agreement(s) between the parties and/or their predecessors. Specifically, and without limiting the generality of the foregoing, you are responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by Users or by any other person to whom you or a User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.
- 3.3. Your obligations. You must use the Software solely in compliance with TCF's Documentation, including documented operating instructions and protocols, and maintain compatible infrastructure, networks, and computer platforms to utilize the Software as specified by TCF in writing from time to time, including replacing hardware or operating systems if such hardware or operating systems become obsolete. You must limit access and use of the Software to trained Users with proper user credentials, and employ reasonable safeguards against viruses, malware and other security threats on machines that have access to the Software. The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under this Agreement. You shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

### **4. SERVICES; PRODUCTS.**

- 4.1. General. By requesting access to the Software and by downloading, accessing or using the Software, you consent to TCF providing the Services and agree that TCF (including its resellers, distributors and authorized representatives) may use

your personal information to communicate with you regarding any inquiries, communications, requests for quotations, or other request TCF provide the Services, including through your use of the Software.

4.2. **Products.** Prices and availability of Products are subject to change without notice. TCF strives for accuracy, to the extent it controls, processes, or displays the Products, in all item descriptions, photographs images, compatibility references, detailed specifications, pricing, links and any other product-related information contained herein or referenced in the Software. Due to system, typographical, informational, technical, human, and other error, TCF cannot and does not guarantee that all information, including descriptions, photographs images, compatibility references, detailed specifications, pricing, links, availability and any other Product-related information listed is accurate, complete or current, nor does TCF assume responsibility for these errors. TCF reserves the right at any time and without notice to update product information and to correct or remove product-related errors, inaccuracies, or omissions. TCF shall at its sole discretion have the right at any time to refuse or cancel any order for a Product whose listing in the Software contained erroneous information, including but not limited to incorrect pricing. TCF is not responsible for changes or variations in product specifications or physical appearance. Unfortunately, there are varying determinates which, although infrequent, could cause the information in the Software to become outdated without our immediate knowledge. This includes but is not limited to new versions or revisions, color deviations, retail package alterations and other variations. TCF will not be held responsible for Product revision changes.

## 5. DELIVERY; HARDWARE; THIRD-PARTY COMPONENTS.

- 5.1. **Delivery.** The Software may be delivered in a format that allows you to download and install the Software on your personal device, or the Software may be delivered to you in an online, software-as-a-service format. You are responsible for complying with all directions, installation requirements, system requirements, and other installation information provided to you in connection with the Software, including as part of the Documentation.
- 5.2. **Hardware.** TCF is not responsible for providing any hardware or firmware to you in connection with the Software. It is your responsibility to obtain and configure any hardware or firmware required to execute the Software.
- 5.3. **Third-Party Components.** The Third-Party Components may be provided to you under license terms that are in addition to and/or different from those contained in this Agreement (“Third-Party Licenses”). You are bound by and shall comply with all Third-Party Licenses that are presented to you whether through a hyperlink or any list of materials supplied with the Software. Any breach by you or any of your Users of any Third-Party License also constitutes a breach of this Agreement.
- 5.4. **Maintenance.** TCF is under no obligation to maintain or support the Software or provide you any technical support. The Software is offered as a free service to assist with your inquiry and purchase of the Products. TCF reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Software or Services (or any part thereof) with or without notice. TCF may from time to time in its sole discretion develop and provide software updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, “Updates”). Updates may also modify or delete in their entirety certain features and functionality. You agree that we have no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. TCF makes no commitment regarding the availability of the Software and the availability of the Software is subject to change in TCF’s sole discretion.

6. **PROPRIETARY RIGHTS.** As between TCF and you, you acknowledge and agree that TCF owns all right, title, and interest, including all Intellectual Property Rights, in and to the Software and Documentation, and, with respect to Third-Party Components, the applicable third-party owns all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Components. TCF names and logos and all related product and service names, design marks and slogans are the trademarks or service marks of TCF. All rights reserved. You are not authorized to use any TCF name or mark in any advertisement, publicity or in any other commercial manner without prior written consent of TCF. All other trademarks, trade dress, images, photographs, and other works appearing in connection with the Software are the property of their respective owners. The entire contents and design of the Software and Documentation are protected by U.S. and international copyright law. All rights regarding the Software, Documentation, and materials contained in the foregoing are either owned by TCF, are licensed to it, or are used with permission. TCF and its licensors, vendors or other service providers retain and reserve all proprietary rights to the contents of the Software, Documentation and related materials.

## 7. CONFIDENTIAL INFORMATION; DATA.

- 7.1. **Confidential Information.** In the course of performing under this Agreement, you may receive, be exposed to or acquire confidential and/or proprietary information of TCF (“Confidential Information”). The Software, Documentation, all information about the Products and terms of this Agreement are deemed Confidential

Information of TCF. You agree to take reasonable steps to protect the TCF's Confidential Information, including not disclosing it to third parties except as otherwise permitted by this Agreement or using TCF's Confidential Information for any purpose other than as authorized by this Agreement. You will not be obligated to keep confidential any information of TCF that is or becomes publicly available without breach of this Agreement, is already known or is independently developed by you outside the scope of this Agreement or is rightfully obtained by you from a third party with no obligation to TCF.

- 7.2. Personal Information. You agree all information, including any personally identifiable information, you provide in connection with registering for, or downloading, accessing, or using the *Software*, or that you otherwise submit to TCF in connection with the Software or Services, is governed by the Fan Selector Privacy Policy, which can be accessed [here](#), and may be additionally presented at the time you request to download, access, and use the Software. You consent to all actions TCF takes with respect to your information consistent with the Fan Selector Privacy Policy, which is incorporated herein by reference. Where it is reasonable to do so, or permitted by law, TCF may rely on implied consent.
- 7.3. Usage Data. You agree TCF may collect, use, and disclose data derived from your registration, download, access or use of the Software or Services for any lawful purpose, provided such data is aggregated or de-identified in a way that the data cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to you (collectively, "Usage Data"). TCF solely and exclusively owns all rights to such Usage Data.
- 7.4. Feedback. You have no obligation to provide TCF with ideas, suggestions, or proposals ("Feedback"). However, if you submit Feedback to TCF, then you grant TCF a non-exclusive, worldwide, royalty-free license that is sub-licensable and transferable, to make, use, sell, have made, offer to sell, import, reproduce, publicly display, distribute, modify, or publicly perform the Feedback in any manner without any obligation, royalty or restriction based on Intellectual Property Rights or otherwise.

## 8. TERM AND TERMINATION.

- 8.1. Term. The term of this Agreement (the "Term") will commence on the date you first click to "Accept" these terms, or otherwise first download, access, or use the Software, and, unless earlier terminated as provided below, will continue for a period of one (1) year. Thereafter, this Agreement shall automatically renew for consecutive one (1) year renewal terms (each renewal period is included in any reference to "Term").
- 8.2. Termination. TCF may terminate this Agreement at any time in its sole discretion. TCF has the right to suspend or terminate your account and refuse any and all current or future use of the Software or Services, or any other TCF service, for any reason at any time. You also acknowledge and agree the Software, in the case of an installable version, may contain backdoors, time bombs, or other technological features that allow TCF to enforce its rights to terminate your use of the Software. TCF may block, limit or terminate your access to the Software for any reason, including if: (i) you violate this Agreement; (ii) you violate any applicable law or regulation relating to your use of the Software; (iii) you engage in any conduct which TCF, in TCF's sole discretion, believes is offensive, harmful, defamatory or otherwise harmful to TCF or others; or (iv) you breach any other agreement with TCF. Termination may result in the deletion of your account, your data, your access to the Software, and your forfeiture of any information held by TCF. TCF reserve the right to refuse service to anyone for any reason at any time.
- 8.3. Consequences of Termination. Upon termination of this Agreement, all licenses and rights granted by TCF under this Agreement will immediately terminate. You agree to immediately remove or return all copies of the Software and Documentation and delete the Software and Documentation from any computer system or device, including any User computer system or device.

9. **WARRANTY DISCLAIMER.** THE SOFTWARE IS PROVIDED "AS IS" AND TCF HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. TCF SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TCF MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOURS OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. Transmission of information via the internet is not completely secure. We cannot guarantee the security of your personal information transmitted via the Software or Services, our website or any mobile application. Any transmission of personal information is at your own risk. You acknowledge and agree that we are not responsible for circumvention of any privacy settings or security measures contained in the Software, our website or any mobile application.

10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL TCF BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER TCF WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL TCF'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED ONE-HUNDRED U.S. DOLLARS (\$100).
11. **INDEMNIFICATION.** YOU AGREE TO DEFEND, INDEMNIFY AND HOLD TCF, ITS AFFILIATE ENTITIES, AND ALL OF THEIR OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS AND SERVICE PROVIDERS, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, COSTS AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING FROM OR RELATED TO: (i) YOUR DOWNLOAD, ACCESS, OR USE OF THE SOFTWARE, (ii) YOUR BREACH OF THIS AGREEMENT, OR (iii) YOUR VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION.
12. **EXPORT CONTROL/GOVERNMENT USERS.** The Software and Documentation may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software or Documentation available outside the US. The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if you are the US Government or any contractor therefor, you shall receive only those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.
13. **GENERAL.**
  - 13.1. Governing Law/Venue. This Agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement, the Software, or the Service shall be instituted exclusively in the federal courts of the United States or the courts of the State of Minnesota in each case located in Hennepin County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.
  - 13.2. Scope of Agreement; Conflicting Terms. The Software provided by TCF will be governed solely by the terms of this Agreement. No invoice, order or other similar form may vary the terms of this Agreement. Any term thereof that is inconsistent with or additional to the terms of this Agreement will not be binding on TCF, and neither TCF's delivery of Software, nor any other action, except the delivery of written acceptance by a duly authorized officer of TCF, will constitute acceptance of such terms.
  - 13.3. Binding Effect. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns, subject to the limitations provided herein. You may not assign or transfer this Agreement, in whole or in part, without the prior written consent of TCF, except that you may assign this Agreement without such consent upon written notice to TCF in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets, unless such transaction would result in an assignment to an entity reasonably deemed to be a direct competitor of TCF.
  - 13.4. Waivers; Etc. The failure of either party to enforce or exercise, at any time or for any period of time, any term of or any right under this Agreement does not constitute, and will not be construed as, a waiver of such term or right and will not affect that party's right later to enforce or exercise it. No modification, amendment or waiver of any of the provisions of this Agreement will be binding upon TCF unless it is in writing and is executed by TCF.
  - 13.5. Injunctive Relief. A breach of any of the promises of agreements contained herein will result in irreparable and continuing damage for which there will be no adequate remedy at law, and the aggrieved Party will be entitled to

injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages, if appropriate).

- 13.6. Severability. In the event any provision contained in this Agreement is held invalid, void or unenforceable, such provision will not affect any other provision and the remainder of this Agreement will continue in full force and effect.
- 13.7. Entire Agreement. This Agreement is the complete and exclusive statement of the agreement of the parties regarding the subject matter hereof, and supersedes all proposals or prior or contemporaneous agreements, oral or written, and all other communications between the parties relating to the subject matter hereof. Any term that is inconsistent with or additional to the terms of this Agreement will not be binding on TCF, and neither TCF's delivery of Software, nor any other action, except the delivery of written acceptance by a duly authorized officer of TCF, will constitute acceptance of such terms. Any changes to this Agreement shall not be valid unless it is in writing and signed by a duly authorized officer of each party.
- 13.8. Survival. The provisions of this Agreement which by their nature extend beyond the termination hereof will survive and remain in effect until all obligations are satisfied.
- 13.9. Notices. Any notice required or permitted to be given hereunder shall, except where specifically provided otherwise, be given in writing by personal delivery, certified mail, electronic mail, fax, or overnight delivery; provided that TCF may deliver notice to you at any email address you provide when registering to download, access, or use the Software.
- 13.10. Force Majeure. Except for obligations relating to fees payable under this Agreement, neither party will have the right to claim damages or to terminate this Agreement as a result of the other party's failure or delay in performance due to circumstances beyond its reasonable control, including but not limited to labor disputes, acts of terrorism, strikes, lockouts, war, riot, insurrection, epidemics, acts of God, governmental action not the fault of the nonperforming party, or shortages of or inability to obtain labor, energy, components, raw materials, or supplies, provided that if such condition continues for ninety (90) days, the party whose performance is not delayed by such condition may terminate this Agreement.

Last Updated: August 18, 2021