rocktime

Software Licence Agreement & Terms and Conditions

Temporary Event Notice (TEN) Licensing Application Automation - verso™ Software

Version 1

Prepared by: Martin Bradbury

Date: 23.05.2018

1. Software Licence Agreement

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into upon the [ ] day of [ ] month [ ] year (the "Effective Date");

BETWEEN:

1. Rocktime Ltd a company incorporated in the UK with registration number 3781061 and registered office , 15 Factory Road, Upton, Poole, Dorset, BH16 5SN (the "Licensor"); and
2. The client (the "Licensee").

The above named shall collectively be known as "Parties", and each a "Party".

WHEREAS:

The Licensor wishes to enter in to an arrangement to license the use of the Product (defined below) to the Licensee for the Purpose (defined below).

IT IS HEREBY AGREED as follows:

1.1 Definitions and Interpretation

1.1.1 In this Agreement (including the Recitals and the Schedules), except to the extent that the context otherwise requires, the following terms shall have the meanings set forth below:

"Confidential Information" means the trade secrets, confidential or sensitive information or knowledge and know-how including the confidential financial, trade, customer, product, transaction, system and processing information and data of the relevant Party;

"Event of Force Majeure" means Acts of God, explosions, war or threat of war, terrorism or threat of terrorism, actions of the armed forces or government agencies pursuant to war, terrorism or threats thereof, fire, flood, adverse weather conditions, labour disputes, strikes, lockouts or other industrial actions irrespective of where such events occur, shortage of materials or services, detention or holding of goods by any customs authorities or any national or international airworthiness authority, riots or civil commotion, sabotage, earthquakes and natural disasters, acts, omissions, restrictions, regulations, prohibitions or measures of any governmental, parliamentary or local authority;

"Fees" means the amounts payable by the Licensee to the Licensor as set out in Schedule 2;

"Intellectual Property Rights" means patents, trademarks, service marks, rights in logos, rights in get-up, trade names, internet domain names, rights in designs, software, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, processes, rights in know-how and other intellectual property rights, in each case whether registered or unregistered, and all rights or forms of protection having

equivalent or similar effect anywhere in the world and registered includes registrations and applications for registration;

“Purpose” means provision of e-commerce.

“Product” shall have the meaning as set out in Schedule 1 and shall include any constituent parts thereof, to be provided to the Licensee under the terms and conditions of this Agreement.

1.1.2 In this Agreement, unless the context otherwise requires:

a. references to Recitals and Schedules are to be construed as references to the recitals and schedules to this Agreement and references to this Agreement include its Schedules;

b. words importing the singular include the plural and vice versa, words importing a gender include every gender;

c. references to a person shall be construed as including references to an individual, firm, issuer, company, unincorporated body of persons or any state or any agency thereof;

d. any reference to a statutory provision shall include such provision and any regulations made in pursuance thereof as from time to time modified or re-enacted; and

e. headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

1.2 Term

1.2.1 This Agreement and the license granted hereunder shall take effect upon the Effective Date and shall continue in full force and effect for a period of [ ] months or unless otherwise terminated in accordance with clause 1.8.1.

1.3 Grant of Rights

1.3.1 Subject to the Licensee’s full compliance with the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee a non-exclusive, non-sub licensable, non-transferable license to use the Product for the Purpose.

1.4 Restrictions

1.4.1 Except as otherwise expressly provided herein, the Licensee may not:

a. copy, rent, lease, sell, transfer, assign, sublicense, dissemble, reverse engineer or decompile, modify or alter any part of the Product;

b. use the Product on behalf of, share or permit to be shared, the Product with any third party;

c. use or permit to be used the Product for anything other than the Purpose;

d. attempt or provide a means to execute any bulk download operations, cache or otherwise store any content other than for what would reasonably be regarded as normal use including for data backup;

e. knowingly use the Product in connection with or to promote any products, services or materials that constitute, promote or are used primarily for the purpose of dealing in spyware, adware, spam, pornography or other offensive purposes;

f. knowingly use the Product in any manner or for any purpose that violates any applicable law or regulation, or any right of any person including, but not limited to, Intellectual Property Rights, or privacy rights.

1.4.2 The Licensee's usage of the Product shall be limited to a maximum of one instance of the system per licensee.

1.5 Ownership

1.5.1 The Product and all Intellectual Property Rights contained therein, are and shall at all times remain the sole and exclusive property of the Licensor or its licensors.

1.6 Fees

1.6.1 Licensee shall pay to the Licensor the Fees as set out in Schedule 2, which shall be exclusive of any duties, bank fees, sales tax, or excise or similar taxes due, unless expressly stated therein. The Licensor shall invoice the Licensee annually for the Fees.

1.6.2 Payment shall be made by the Licensee and received by the Licensor in full within the agreed terms upon receipt of an invoice by the Licensee in respect of the Fees.

1.6.3 The Licensor reserves the right to suspend or limit the availability of the Product if the Licensee fails to comply with clause 1.6.2 above.

1.7 Auditing

1.7.1 Both Parties agree to maintain accurate, complete and detailed records relating to this Agreement, from the Effective Date and for a period of 3 years following the termination or natural expiry of this Agreement.

1.8 Termination

1.8.1 Notwithstanding any other provisions contained herein, this Agreement may be terminated immediately:

a. by the Licensor if the Licensee commits any breach of the terms or conditions of this Agreement and fails to remedy such breach to the Licensor's reasonable satisfaction

within 14 days after receiving written notice from the Licensor requiring the Licensee to do so;

b. by the Licensor or if the Licensee shall present a petition or have a petition presented by a creditor for the Licensee's winding up or the Licensee enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or the Licensee shall have a receiver of all or any of the Licensee's undertakings or assets appointed, or the Licensee shall be deemed by virtue of the applicable law to be unable to pay the Licensee's debts, or the Licensee shall cease to carry on business;

c. by the Licensee if the Licensor commits any breach of the terms or conditions of this Agreement and fails to remedy such breach to the Licensee's reasonable satisfaction within 14 days after receiving written notice from the Licensee requiring the Licensor to do so.

1.8.2 Termination or natural expiration of this Agreement shall be without prejudice to any accrued rights of either Party or amounts payable in respect of the Fees and shall not affect obligations which are expressed not to be affected by termination or expiry hereof.

1.8.3 Termination of this Agreement by the Licensor under Clause 1.8.1 above shall be without prejudice to any claim which the Licensor may have against the Licensee for any loss or damage (including, without limitation, consequential loss or damage) suffered by the Licensor as a result.

1.8.4 In the event of termination or natural expiration of this Agreement, the Licensee undertakes that immediately upon the effective date of such termination of expiration, the Licensee and any parties acting on the Licensee's behalf shall:

a. cease use of the Product; and

b. within 30 days expunge, or where appropriate return to the Licensor, any and all of the Product that remains howsoever in the possession of the Licensor.

1.9 Representations and Warranties

1.9.1 Each Party represents and warrants to the other that it has the right and authority to enter into this Agreement and to perform all of its respective obligations and undertakings and to grant the rights set forth herein. Each Party further represents and warrants to the other that it is duly organised, validly existing and in good standing under the applicable laws, and that the execution, delivery and performance of this Agreement does not and shall not conflict with or violate any constitutional documents of such Party or the terms of any agreement between it and any third party.

1.9.2 The Licensor warrants that the Product does not violate or infringe any patent, copyright, trade mark, Intellectual Property Rights, rights of privacy, or rights of proprietary, of any third party.

1.9.3 It is the Licensee's responsibility to ensure that the Product is suitable for the Licensee's intended purposes. Licensor provides no warranties as to the function or use of the Product, whether express, implied or statutory, including, without limitation, any implied warranties of merchantability or fitness for particular purpose.

1.10 Liability and Indemnification

1.10.1 The Licensee undertakes to indemnify the Licensor against all liabilities, claims, demands, expenses, actions, costs, damages or loss arising out of breach or alleged breach by the Licensee in regard to the Licensee's obligations under this Agreement. Such indemnity shall survive the termination of this Agreement.

1.10.2 The Licensor shall not be liable to the Licensee for consequential, indirect, special or exemplary damages including but not limited to damages for loss of profits, business or anticipated benefits whether arising under tort, contract, negligence or otherwise whether or not foreseen, reasonably foreseeable or advised of the possibility of such damages.

1.10.3 No responsibility is assumed by the Licensor for any injury and/or damage to persons or property as a matter of product liability, negligence or otherwise, or from any use or operation of any methods, products, instructions or ideas contained in any item or Product supplied by the Licensor under this Agreement.

1.10.4 The express terms of this Agreement are in lieu of:

a. all warranties, conditions, undertakings, terms and obligations implied by statute, common law, trade usage, course of dealing or otherwise including but not limited to any implied warranties of merchantability or fitness for any particular purpose all of which are hereby excluded to the fullest extent permitted by law; and

b. any implied terms as to the performance of computers or networks when used in conjunction with the Product, materials, information, goods, services, technology and/or editorial content provided under this Agreement.

1.10.5 Nothing in this Agreement shall exclude or limit either Party's liability for:

a. death or personal injury resulting from the negligence of either Party or their servants, agents or employees;

b. fraud or fraudulent misrepresentation; or

c. breach of any implied condition as to title, or the ability to exercise any right granted under this Agreement.

1.10.6 Nothing in this Agreement shall prevent the Licensor from claiming for amounts lawfully due under the terms of this Agreement or operate to limit any liability resulting from any infringement or breach of Intellectual Property Rights by the Licensee.

1.10.7 Where the Licensor is liable to the Licensee for negligence, breach of contract or any other cause of action arising out of this Agreement, such liability shall not exceed the amount equal to the total sum of the Fees (exclusive of all taxes) paid by the Licensee to the Licensor since the Effective Date.

1.11 Confidentiality

1.11.1 Each Party will treat as confidential all Confidential Information obtained from the other under this Agreement. The Parties agree that they will not without the prior written consent of the other disclose Confidential Information to any person or entity or use the same except for the purposes of complying with their respective obligations pursuant to this Agreement.

1.11.2 Clause 1.11.1 does not prohibit disclosure of Confidential Information to:

a. the receiving Party's own personnel (including employees, agents and permitted contractors) who need to know of the Confidential Information provided that such personnel are first made aware of the confidential nature of the Confidential Information and the receiving Party's obligations in relation to it and themselves agree in writing to treat the Confidential Information confidentially; or

b. the receiving Party's auditors, professional advisers, any person or organisation having a statutory or regulatory right to request and receive that information, including without limitation a relevant tax authority.

1.11.3 Clause 1.11.1 does not apply to information which the receiving Party can show by reference to documentary or other evidence:

a. was rightfully in its possession before the start of discussions between the Parties relating to this Agreement;

b. is already public knowledge or becomes so at a future date (save for as a result of breach of clause 1.11.1);

c. is received from a third party who is not under an obligation of confidentiality in relation to the information; or

d. is developed independently without access to, or use of or knowledge of, the Confidential Information.

1.11.4 The obligations of confidentiality under this clause 1.11 shall survive the termination of this Agreement until such time as the Confidential Information enters the public domain other than through the fault of the recipient Party.

1.12 Force Majeure

1.12.1 Neither Party shall be responsible to the other for any delay or failure in carrying out obligations under this Agreement if the delay or failure is caused by an Event of Force Majeure. The affected Party shall notify the other of any such circumstances as soon as possible.

1.13 Assignment

1.13.1 The Licensee shall not be entitled to assign, transfer or novate rights and obligations under this Agreement without prior written consent from the Licensor which shall not be unreasonably withheld.

1.14 Miscellaneous

1.14.1 Any notice required to be given pursuant to this Agreement shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, by fax confirmed by first class post, or by e-mail which has been received, as evidenced by receipt by the sender of a read receipt, to the relevant Party, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting.

1.14.2 Any amendment or variation to this Agreement shall be made only by express written agreement between the Parties.

1.14.3 The failure of either Party to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.

1.14.4 Without prejudice to the rights of either Party in respect of actions relating to fraudulent misrepresentation, this Agreement and any documents referred to herein constitute the entire understanding between the Parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the Parties relating thereto.

1.14.5 The Parties agree that monetary damages may not be a sufficient remedy for the damage which may accrue to a Party by reason of failure by any other Party to perform certain of its obligations hereunder. Any Party shall therefore be entitled to seek injunctive relief, including specific performance, to enforce such obligations.

1.14.6 The unenforceability of any single provision of this Agreement shall not affect any other provision hereof. Where such a provision is held to be unenforceable, the Parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

1.14.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

1.14.8 Nothing in this Agreement shall be deemed to constitute a partnership between the Parties nor, save as expressly set out herein, constitute either Party the agent of the other Party.

1.14.9 This Agreement shall be governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability.

IN WITNESS WHEREOF the duly authorised representatives of the Parties hereto have executed this Agreement as of the day first above written.

Licensor	**Licensee**
Signed _____	Signed _____
Name _____	Name _____
Title _____	Title _____
Date _____	Date _____

2. Terms & Conditions

2.1 Definitions

In this document:

2.1.1 “Contractor” means Rocktime Ltd, its employees and/or subcontractors.

2.1.2 “Client” means the Client or Company named in the Quotation.

2.1.3 “3rd party Contractor” means an alternative agency/ individual commissioned by the Client to carry out work.

2.1.4 “Work” means the work which the Contractor has agreed to carry out or the services the Contractor has agreed to supply as set out in the Quotation, and shall include the supply to the Client of any website, software, domain name, artwork, or any other goods or services.

2.1.5 “Contract” means the terms and conditions set out in this document and the Quotation.

2.1.6 “Quotation” means the written Quotation given by the Contractor to the Client in respect of the Work.

2.2 Supply

2.2.1 On receipt by the Contractor of written acceptance of the Quotation by the Client together with the payment set out in Clause 2.5.3 hereof the Contractor agrees to carry out and the Client agrees to accept the Work in accordance with the Quotation, subject to the conditions herein.

2.2.2 No variation to the Contract shall be binding unless agreed in writing between the Contractor and the Client.

2.2.3 Any advice or recommendation given by the Contractor to the Client as to the application or use of the Work is followed or acted upon entirely at the Client’s own risk and the Contractor shall not be liable for any consequences arising from such advice or recommendation.

2.2.4 Any dates quoted for completion of the Work by the Contractor are best approximations only (as they cannot account for factors outside of its control) and the Contractor shall not be liable for any delay caused.

2.2.5 The Client accepts responsibility for testing all work that is completed by the Contractor prior to being made live and by doing so understands that the Contractor is not financially liable for loss of earnings relating to said Work.

2.3 Specifications & Copyright

2.3.1 The Client shall be responsible for ensuring the accuracy of any specifications submitted by the Client, and for supplying any specifications or information relating to the Work within a sufficient time to enable the Contractor to complete the Work in accordance with its terms.

2.3.2 The Client shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in connection with, or paid, or agreed to be paid by the Contractor in settlement of any claim for infringement of Patent, Copyright, design, Trademark, or industrial or intellectual property rights of any other person which results from the Contractor's use of the Client's specification.

2.3.3 The Client shall ensure that any necessary permissions, authorisations, licences or consents are obtained at its own expense prior to the Work being carried out and shall indemnify the Contractor against all loss, damages, costs and expenses awarded against or incurred by the Contractor in connection with any claim arising as a result of the Client's failure to obtain any such permissions.

2.3.4 Copyright/ Ownership of the product is retained by the Contractor until payment is made in full of the Contract price.

2.3.5 The Client shall continue to own sole copyright of any text or graphics provided to the Contractor in connection with the Work that are unique and exclusive to the Client.

2.3.6 The Contractor shall own sole copyright of any language, html, java script, Meta content or keywords, graphics, designs, scripts or other creative work produced by the Contractor as part of the work until final payment has been received. Upon receipt of the final payment the Client shall receive ownership of any text, images and custom built scripts and a licence for a single instance of the Contractor's Logic CMS, Source E-commerce platform and Core code base within the developed website. A single instance represents one active copy of the project this instance may reside on a single server or cluster of servers.

2.3.7 Site(s) hosted on Rocktime Servers are covered by Rocktime's licence, should the Client wish to host their site(s) on a different server a licence will be granted.

2.3.8 Sites hosted on Rocktime Servers hold licences for all the 3rd party components (such as J-Mail, ASP Upload & ASP JPEG) that are used within the construction of the Client's projects, if the Client wishes to host their project on a different server not controlled by the Contractor they shall need to ensure that the necessary components are installed and the relevant licences are purchased.

2.3.9 Should the client request access to site files for the purposes of having work carried out on the site by a 3rd party Contractor the Client will ensure that the 3rd party Contractor in question understands that they are bound by the same Terms & Conditions as the Client. In

addition, the 3rd party Contractor agrees that work to the site is for the benefit of the Client and that they will not copy any site files for the purposes of generating other forms of income not related to the Client project or agreed to by the Contractor.

2.3.10 The Client accepts that should any assistance be required by the Contractor for the purposes of enabling the 3rd party Contractor to carry out their work that time will be chargeable.

2.3.11 The Client accepts that the Contractor is not liable for any issues created by the 3rd party Contractor in performing their work on the site and that consequently any work carried out by the Contractor to resolve these issues will be chargeable.

2.4 Cancellation

2.4.1 In the event of cancellation of this Contract in writing by the Client the Client shall indemnify the Contractor in full against all loss, costs, charges and expenses incurred by the Contractor as a result of cancellation.

2.5 Payment

2.5.1 The price of the Work shall be the price specified in the Quotation (the “Price”).

2.5.2 The Contractor reserves the right to increase the Price at any time prior to completion of the Work to reflect any additional cost to the Contractor which is outside its control, or due to any change in completion dates or change to specifications supplied by the Client or the failure of the Client to provide adequate specification or information that results in the Contractor having to carry out additional work. These will be highlighted and discussed with the client prior to being carried out.

2.5.3 Subject to any special terms agreed in writing between the Client and the Contractor the Client agrees to pay to the Contractor 25% of the Price prior to commencement of the Work upon receipt of an invoice for the same from the Contractor where there is no domain name and/or web hosting required followed by further milestone payments outlined as part of the Quotation.

2.5.4 Subject to any special terms agreed in writing between the Client and the Contractor the Client agrees to pay to the Contractor the Price in full for domain name and/or web hosting upon receipt of an invoice for the same from the Contractor.

2.5.5 The Client shall pay the balance of the Price upon completion of the Work upon receipt of an invoice for the same from the Contractor.

2.5.6 If the project is delayed by lack of content or other input from the Client, The Client may be required to pay a further interim payment or the balance of the Price within the agreed

timescales laid out in the Contract where it can be demonstrated that the Contractor has met project milestones.

2.5.7 If the Client fails to make any payment by the due date then the Contractor shall cancel or suspend performance of the Work until such payment is received from the Client.

2.5.8 If the Client's site exceeds agreed Service requirements as detailed on the Quotation, the Contractor will present a new Quotation outlining proposed increases/ improvements to the Client.

2.5.9 The Contractor reserves the right to vary any of the service charges at any time but will give the Customer a minimum of 14 days' notice before the new charges become effective, this only applies to recurring charges.

2.5.10 If the majority of the project has been completed and Rocktime is waiting for final content or involvement to proceed, and a period of no less than 2 weeks has passed since the aforementioned request then 70% of the total contract will become due for payment. The final 5% will be settled on final completion.

2.6 Website Link

2.6.1 Unless the Client specifically requests otherwise the Contractor when carrying out the Work will insert its name in the footer of the site as a link.

2.6.2 The Client shall allow the Contractor after completing the Work to insert into the Contractor's own website a link to the Work from the Contractor's own website.

2.7 Acceptance

2.7.1 Upon receipt by the Contractor of written acceptance of the Quotation by the Client together with the payment set out in Clause 2.5.3 hereof the Client is deemed to have read and accepted the terms and conditions herein.

2.8 Confidentiality

2.8.1 The Client shall keep in confidence any information of a confidential nature relating to the Contract and

Quotation obtained from the Contractor under this Contract and must not disclose such information to any other person without the contractors' prior written consent, provided that this restriction does not apply to information which is:

2.8.1.1. In the public domain otherwise than in breach of this Contract;

2.8.1.2. Lawfully obtained from a third party which is free to disclose it;

2.8.1.3. Required to be disclosed by law or a competent authority;

2.8.1.4. In the lawful possession of the Customer prior to disclosure.

2.8.1.5. The restrictions in this paragraph shall survive the termination or expiry of this Contract.

2.9 Non Solicitation

2.9.1 The Client agrees not to solicit any employee of the Contractor for employment, or encourage any employee of the Contractor to leave his or her employment with the Contractor, without the expressed written consent of the Contractor. The above limitation shall be effective for the term of this Agreement and for a period of one (1) year following the termination of Services supplied by the Contractor or any extension hereto. Solicitation does not include advertisements in the general media and, except to the extent an individual was specifically encouraged to respond to such advertisements, there shall be no restriction on the hiring of individuals so responding.

2.10 Breaches of the Contract

2.10.1 If The Client:

a. Does not pay any charge within 14 (fourteen) days of it falling due; or

b. commits a breach of this Contract and if it is possible to remedy, fails to remedy the breach within a reasonable time of written notice to do so or if it is not possible to remedy the breach; or

2.10.1.1. The Contractor believes the Contract is being used in a manner prohibited under paragraph 8 even if the Client is unaware that the Contract is being used in such a way The Contractor can terminate this Contract without notice, and claim for the resulting losses or expenses. If The Contractor suspends the Contract under this paragraph, The Contractor can refuse to restore the Contract until The Contractor receives an acceptable assurance from the Client that there will be no further breach of this Contract.

2.10.2 The Contractor can also terminate this Contract if the Client is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors or if any of its assets are the subject of any form of

seizure or goes into liquidation, either voluntary (otherwise than for reconstruction or amalgamation) or compulsory, or if a receiver or administrator is appointed over its assets.

2.10.3 On termination under paragraphs 2.10.1 or 2.10.2, the Client shall pay to The Contractor all charges, which are due for the Service under this Contract.

2.10.4 The Client will remain liable to pay all charges, which are due during any period in which the Client does not comply with this Contract.

2.10.5 If The Contractor waives a breach of this Contract by the Client, that waiver is limited to that particular breach. The Contractor's delay in acting upon a breach is not to be regarded in itself as a waiver.

2.10.6 If the Client approaches a member of the Contractor's staff with the intention of offering them employment.

2.11 Termination by Notice

2.11.1 Either party can terminate this Contract on giving 14 days' notice to the other party.

2.11.2 If the Contractor gives notice of termination, The Contractor will repay or credit the appropriate proportion of any charges paid in advance following expiry of the notice period.

2.11.3 Termination by notice under this paragraph does not avoid any liability for Service already provided.