

**Software License Agreement**  
**Turnkey Web Tools, Inc.**  
**Revision 06/06/2017**

This Software License Agreement (the "Agreement") is a legal agreement and must be accepted by you ("The Licensee"), whether The Licensee is an individual, a company, an institution, an organization or body of any kind, before installation or use of any software ("The Software") or documentation ("The Documentation") or any associated license files, attachments and any optional modules, either whole or in part (collectively termed "The Product") that has been produced by Turnkey Web Tools, Inc. ("TWT").

If The Licensee is not an individual then The Licensee also accepts this Agreement for and on behalf of its organization, and must have the authority to do so.

By installing, copying or otherwise using The Product, you agree to be bound by the terms of This Agreement. If you do not agree to the terms of This Agreement then you may not install, copy or otherwise use The Product.

Please note; The Product is licensed, not sold. The Product is owned and copyrighted by Turnkey Web Tools, Inc. a California corporation and its principal. Your license confers no title or ownership in The Product and is not a sale of any rights in The Product. TWT may protect its rights in the event of any violation of the terms of This Agreement.

**1. Commencement**

This Agreement shall commence upon first install, copy or use of The Product by The Licensee, whether The Product comes in trial, fully licensed or other form. Use of any form of The Product, whether temporary or not, is considered acceptance of this Agreement in its entirety.

**2. License Schemes**

TWT may grant usage of The Product under various License schemes as defined below. Where usage is required that is covered by more than one scheme, or where is it covered only in part by a scheme, or overlaps another, consultation with TWT is required for approval and clarification of terms and conditions.

Unless otherwise stated, licenses granted by TWT or its agents are perpetual subject to the payment and other terms of this Agreement.

**A. Single Installation Licensing**

Where TWT grants usage for a single domain on a per-install basis ("Single Domain / Web Site License") these terms apply:

1. TWT grants a non-exclusive license to The Licensee for one copy of The Product for use on a single domain of a single Licensee's web site.

2. Each installation shall require a separate license.
3. If a user has access to multiple web sites (with access to the Product), that user will require additional Single Installation License (one for each site).
4. The Licensee may make one additional copy of each licensed copy of The Product for back-up or archival purposes. Except for back-up or archival purposes and except as expressly permitted in this Agreement, no permission is granted under this Agreement to use, copy, modify or distribute The Product back-up or part thereof for NON-COMMERCIAL or COMMERCIAL purposes.

#### **B. Application Service Provider (ASP) Licensing**

Application service providers ("ASP's") provide applications to individuals or organizations (the "ASP Client") across the Internet or other network connections. The ASP is typically responsible for implementing, customizing, hosting and maintaining those applications and may charge for those services. Where TWT grants usage as part of, or for use within, such environments these terms apply:

1. TWT grants a non-exclusive and non-transferable license to The Licensee, to allow access for one ASP Client to use one installation of the Product per license key.
2. Each ASP Client shall require a separate license key per installation.
3. The Licensee's usage of The Product shall be governed by the appropriate licensing scheme ("15 Simultaneous Domain License", "30 Simultaneous Domain License", "50 Simultaneous Domain License", "100 Simultaneous Domain License" or "Unlimited Simultaneous Domain License"), whichever is chosen by The Licensee, with each ASP Clients installation requiring a separate license key as generated from the ASP account area. Each license key generated used in an active installation constitutes one installation towards the "Simultaneous Domain" limit. Where the "Unlimited Simultaneous Domain License" scheme is used, The Licensee can generate an unlimited number of license keys for an unlimited number of installations for each ASP Client.
4. The ASP may make one additional copy of each licensed copy of The Product for back-up or archival purposes. Except for back-up or archival purposes and except as expressly permitted in this Agreement, no permission is granted under this Agreement to use, copy, modify or distribute The Product back-up or part thereof for NON-COMMERCIAL or COMMERCIAL purposes.

#### **3. Sale, Rental, Lease and Lend**

- A. Unless otherwise agreed with TWT, The Single Installation Licensee is not permitted to sell, rent, lease or lend The Product or its Licenses.
- B. Where TWT agrees usage by an ASP, the terms of the ASP licensing shall apply (plus any other additional terms agreed on a case by case basis).

#### **4. Trial Software**

- A. Trial software produced by TWT, for any of the above schemes, cannot be used for any reason other than for evaluation purposes, and cannot be used for more time than the permitted trial period (which is 14 days unless TWT expressly grants an extension).
- B. Unless express permission is otherwise given by TWT, trial software cannot be used on any public web site, commercial or otherwise, nor can it be used in any live production site or environment.
- C. Trial software comes without any warranties or guarantees, whether implied or not.
- D. If The Licensee chooses not to continue using trial versions of The Software and Documentation, or The Product part thereof, beyond the allowed trial period then The Product is considered unlicensed automatically and The Licensee will be bound by the termination clauses of this Agreement.

#### **5. TWT's Fees and Terms of Payment**

- A. Where TWT permits The Product to be used under the "Single Installation Licensing" scheme, TWT will charge a fee for each installation.
- B. Under the "Single Installation Licensing" scheme, the customer may choose to renew support, or support and updates, on a yearly basis. Invoices will be generated fourteen (14) days prior to the renewal date and the customer will be notified via the email address on file. During this period, the customer will have the ability to opt-out of the renewal. Any renewals processed automatically on or after the renewal date will be subject to the Refund policy outlined below in Section 6.
- C. Where TWT permits The Product to be used under the "Single Installation Licensing" scheme under the "Leased License" model, TWT will charge a monthly fee. Fees will be renewed each month automatically until canceled by The Licensee. Cancellation requests must be received at least seven (7) days prior to the next billing date.
- D. Where TWT permits The Product to be used under the "Single Installation Licensing" scheme under the "Complete Shopping Cart Solution" model, TWT will charge a monthly or yearly fee depending

on the frequency chosen. Fees will be renewed each month or year automatically until canceled by The Licensee. Cancellation requests must be received at least seven (7) days prior to the next billing date.

- E.** Where TWT permits The Product to be used under the "Application Service Provider (ASP) Licensing" scheme, TWT will charge a yearly fee. Fees will be renewed each year automatically until canceled by The Licensee. Cancellation requests must be received at least seven (7) days prior to the next billing date.
- F.** Unless otherwise agreed with TWT, The Licensee (or any of its users) may not use The Product until TWT or its agents have received full payment of this fee.
- G.** All software is supplied in electronic form only and all documentation is supplied in electronic readable form only. The Product and its license are provided by the TWT web site or email. Charges may be applied for other delivery mechanisms and repeat copies; both remain at TWT's discretion which will not be unreasonably withheld.
- H.** Except where otherwise agreed with TWT, TWT reserve the right to change its fees without notice.
- I.** Advice should be sought from TWT, or its agents, for the then current fees prior to purchase of licenses.

## **6. Refunds**

- A.** Where TWT permits The Product to be used under the "Single Installation Licensing" scheme, if The Licensee is not satisfied with TWT's products, they have the right to request and receive a refund within 14 days of the original purchase date. No refunds will be given after 14 days. Each Licensee has the right to one refund only on one license maximum under the terms of this agreement. All refunds must be requested by completing and faxing the "Letter of Intellectual Property Destruction" form which can be downloaded from <http://www.twt-inc.com/shopping-cart-guarantee.html>
  - 1. Non Qualifying Purchases:** Refunds will not be offered for any additional licenses purchased on existing accounts, multi-license purchases, license and support renewals, leased licenses or ASP licenses. "Complete Shopping Cart Solution" plans such as the "Monthly Plan" and the "Yearly Plan" do not qualify for refunds and no credit will be given for the remainder of the term upon cancellation.
  - 2. Installation & Upgrade Service Refunds:** Refunds of fees for installation & upgrade services may only be given on installations and upgrades that have not yet been initiated by TWT.

**3. Customization Refunds:** TWT will only offer refunds on custom development if the work has not yet been initiated. If the customization has been started and a request to cancel the customization is requested, the initial customization deposit will be forfeited and any remaining work may be halted. No refunds will be given on any completed customization projects.

**4. Other Refund Terms & Conditions:** TWT limited 14-day money back guarantee begins on and includes the date of purchase. Requests directed via email or phone calls are not accepted for cancellation and will NOT be honored. Failure to get a proper return authorization reference number from us or failure to complete all requested details, may result in your request not being honored. All copies of Software must be destroyed and completely removed from your server before your request is submitted. Failure to do so may result in your request not being honored. Refunds are typically processed within 10 business days of receipt of the signed request.

**B.** Where TWT permits The Product to be used under the "Application Service Provider (ASP) Licensing" scheme, license fees are non-refundable. Please ensure that you have fully evaluated the software, with a single license version if necessary, before making your ASP license purchases.

## **7. Retention of Rights**

TWT asserts its copyright, ownership rights, intellectual property rights including but not limited to trademark and patent rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) over all aspects of The Product and/or any services supplied and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future in any part of the world. All rights are reserved.

**A.** The Licensee agrees that it, and its users, will not perform any translation or localization, decompile, disassemble, reverse engineer or otherwise attempt to derive or interfere with source code, license files or licensing information; remove, replace or alter any digital certificate, trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the software; or publish any results of benchmark tests run on the software to a third party without prior and express written permission from TWT. The Licensee agrees not to limit or interfere in any manner with TWT's ownership of rights with respect to any of the above.

**B.** All Software and Documentation produced by TWT must contain all of the original proprietary notices and digital certificates whether used whole or in part. The Licensee agrees not to limit or interfere in any manner with TWT's proprietary notices with respect to any of the above without prior and express written permission from TWT.

- C. Unless express written notice or permission to state otherwise is given by TWT, no permission is granted to use, copy, modify or distribute The Product, or part thereof, for NON-COMMERCIAL or COMMERCIAL purposes without fee (which must be received in full by TWT) and a valid full License supplied by TWT or its agents to The Licensee.
- D. Failure to comply with any of the above will be considered breach of this Agreement pursuant to The Licensee's obligations and liabilities defined in this Agreement.
- E. The obligations under the provisions of this clause shall survive the expiry or the termination of this Agreement for whatever reason.

## 8. Warranties

- A. TWT makes no representations or warranties about the suitability of The Product, or part thereof, or services either express or implied, including but not limited to the implied warranties or merchantability, fitness for a particular purpose, or non-infringement, or that it is free of defects. TWT shall not be liable for any damages suffered by The Licensee as a result of using, modifying or distributing The Product, or part thereof, or any of its derivatives. The entire risk as to the suitability and performance of The Product, or part thereof, is borne by The Licensee. The Licensee agrees that TWT is not liable in respect of loss of earnings, service, time, repair or any other indirect or consequential damages caused while using The Product, or part thereof, and The Licensee agrees to determine that The Product, or part thereof, sufficiently meets its requirements prior to its use.
- B. The Product, or any part thereof, or services supplied by TWT are not designed or intended for use, resale or transfer to any equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the software could lead directly to death, personal injury, or severe physical or environmental damage ("high risk activities"). TWT specifically disclaims any express or implied warranty of fitness for high risk activities. The Licensee agrees that TWT will not be liable for any claims or damages arising from the use of The Product, or part thereof, in such applications.
- C. TWT represents that it has taken reasonable precaution to ensure that to the best of TWT's knowledge, The Product does not contain
  - 1. any virus or similar code that may destroy, modify, alter, or cause the deliberate destruction, modification or alteration, in whole or in part, of any of The Licensees equipment, devices or software or

2. other computer software routine or hardware components that are designed
  - a. to deliberately permit unauthorized access or use by third parties of The Product installed on The Licensees equipment,
  - b. to deliberately disable or damage hardware or deliberately damage, erase or delay access to software or data installed on The Licensees equipment, or
  - c. to deliberately perform any other similar actions.
- D. TWT's product(s) may be supplied with a TWT digital certificate. The TWT digital certificate is intended to provide the licensee with the comfort that the product is as shipped by TWT (unmodified). If the product is found to have a non-TWT certificate then there can be no assurances that the product is as shipped by TWT, and if that certificate is replaced without correct written authority by TWT then all warranties, whether stated or implied are withdrawn by TWT and TWT shall no longer provide any form of support or services of any kind for the product. Such an unauthorized replacement shall constitute a breach of these terms and conditions.
- E. Trial software comes without any warranties or guarantees, whether implied or not.
- F. Save as expressly set out in this Agreement and statutorily implied terms as to title, all representations, warranties, terms and conditions, whether oral or written, express or implied by law, custom, statute or otherwise and including but not limited to satisfactory quality or fitness for any particular purpose are excluded.
- G. TWT's products and modules may utilize technology licensed from third party vendors. TWT neither warrants the performance of such third party technology, nor guarantees the availability of the features or modules which rely on such technology in future builds or versions of the products. TWT, at its sole discretion, may cease to offer products, modules or features which rely on third party technologies. In such cases TWT may offer alternative products, modules or features from alternative third party providers, but is not obliged to do so.
- H. Where contact and co-operation is required with Licensee's engineers, software developers or alike, Licensee will provide adequately skilled, educated and experienced personnel. Failure to do so may invalidate Licensee's warranty and/or license(s).

## 9. Software Maintenance

- A. TWT may offer at its discretion optional software maintenance services for The Product to The Licensee, pursuant to a separate TWT Image Systems Software Maintenance Agreement (the "Software

Maintenance Agreement"). The maintenance and any other service fees will be in addition to the License fee as defined in their respective agreements. Services are available only for fully paid up and valid Licenses.

- B. This License, its terms and conditions and The Licensees obligations and liabilities are not dependent upon or rely upon any services supplied by TWT, or its agents, including but not limited to maintenance services. Any such services shall be governed by separate agreements.

## **10. Terms and Conditions**

- A. TWT retains the right to reject, for any reason, the supply of The Product, or part thereof, and that which is supplied is governed by the laws of California, and where sold outside the United States (U.S.) is governed by international treaties with the U.S. If The Licensee has already downloaded or obtained copies of The Product, or part thereof, or paid a fee via electronic means (i.e. without express prior agreement from TWT), and subsequently TWT rejects the supply thereof and terminates this Agreement, TWT will return all fees paid in full and The Licensee agrees to destroy all copies of The Product, or part thereof, and must provide reasonable evidence of having done so pursuant to the termination clauses of this Agreement.
- B. Both party's (The Licensee and TWT) are responsible for complying with any local laws in its jurisdiction which might impact its right to import, export or use The Product, license or part thereof, and both party's represent that it has complied with any regulations or registration procedures required by its governing law to make these terms and conditions enforceable.
- C. The terms and conditions of this Agreement may be changed for any upgrade, update, or new version of The Product whatever form. If the terms and conditions have not changed and have not been supplied with any upgrade, update or new version then it is assumed that these terms and conditions prevail.

## **11. Publicity and Advertising**

Unless TWT is expressly advised otherwise by The Licensee, and subject to the Confidentiality clauses of This Agreement, The Licensee grants TWT the right, at no charge and without the prior consent of The Licensee, to make reference to the existence of this Agreement and to otherwise utilize The Licensee's name and other public information regarding The Licensee in any press release, marketing and advertising undertaken by TWT. This right shall survive the termination of this Agreement.

## **12. Confidentiality**

- A. For the purposes of this Section, "Confidential Information" means any information, in whatever form, received by the recipient party from the disclosing party.

- B.** Each party agrees to maintain the confidentiality to the same extent that it protects its own confidential and proprietary information and, at a minimum, each party will not directly or indirectly make available to third parties or reveal, disclose, display, transfer, distribute or make use of the Confidential Information except in accordance with the terms of this Agreement and as necessary to exercise its rights and discharge its obligations under this Agreement or applicable law.
- C.** The obligations of either party contained in this Section will not apply to any Confidential Information that:
1. now or hereafter may be in the public domain by acts not attributable to the other party;
  2. was lawfully in the possession of the other party prior to receiving it from the disclosing party;
  3. is required to be disclosed by any applicable law or regulation;
  4. is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party has no obligations of confidence to the other party to this Agreement in respect of it and who imposes no obligations of confidentiality upon the Receiving Party.
- D.** Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which they may be entitled.
- E.** The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of this Agreement for whatever reason.

### **13. Force Majeure**

- A.** Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if, and to the extent that the delay or non-performance is, due to an event or circumstance beyond the reasonable control of that party ('an event of force majeure').
- B.** Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government, power failure, fire, flood, acts of God, acts of terrorism, labor disputes, riots, acts of war, and epidemics.

- C. If the event of force majeure in question prevails for a continuous period in excess of 3 (three) months after the date on which it began, the other party may give notice to the party terminating this Agreement. The notice to terminate must specify the termination date, which must be not less than 30 (thirty) days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of this Agreement due to an event of force majeure, but rights and liabilities that have accrued before termination shall not be affected.

#### **14. Termination**

- A. It is the responsibility of The Licensee to take all reasonable precautions to ensure The License and its terms are not abused, breached or misused in anyway. Failure to comply with this requirement will render this Agreement automatically terminated, save for those terms that survive its termination, and may leave The Licensee liable for civil and criminal proceedings.
- B. Without prejudice to any other rights, TWT may terminate this Agreement if The Licensee breaches any of its terms and conditions.
- C. Upon termination for whatever reason except infringement or rejection under the Terms and Conditions section as set out in this Agreement, TWT will not be liable for returns of any fees paid by The Licensee unless TWT has been proven to be in significant and unrecoverable breach of this Agreement for its reasonably recoverable fault and then only if that breach occurred within 3 (three) months of the start of this Agreement.
- D. Upon termination for whatever reason, The Licensee shall destroy all copies of The Product, or part thereof, and must provide reasonable evidence of having done so. Further, TWT will be permitted to request an audit for verification of this by an approved official auditing authority and The Licensee must cover the costs of such an audit if it transpires that The Licensee had not adhered to this condition or there was reasonable cause for concern that such a case may have arisen. Such audits will not be unreasonably requested by TWT.
- E. Following termination of this Agreement, those clauses in this Agreement that are expressly stated as surviving termination shall remain in force and the Licensee remains obligated to them.

#### **15. Assignment**

- A. This Agreement may not be assigned by either party without the prior written consent of the other party, except that either party may assign this Agreement without consent to a successor entity in

the event of a merger, acquisition or sale of all or substantially all of its assets, and in the case of TWT, its software sources, copyrights, patents and trademarks of any kind.

- B.** Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

#### **16. Entire Agreement**

This Agreement (including any addenda hereto signed by both parties) represents the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to the said subject matter.