



# Kapish

a Citadel Group Company

## eLearning Service

## Agreement

Hosted and Self-Hosted

Provided by Kapish Services Pty Ltd

*Version 1.0*

*Document Updated: 31 May 2022*

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## 1. Introduction

You agree that you have read the following details of this Agreement and have understood them. Under this Agreement you are licensed to use the specified training content either self-hosted, or hosted on the Kapish supplied eLearning platform, subject to the conditions set out in this Agreement.

## 2. Purpose

The purpose of this agreement is to describe the relationship between the Customer and Kapish in providing Support for the eLearning Product. It describes the services and commitments of Kapish as well as the expectations and obligations of the Customer.

## 3. Definitions

<b>Active User</b>	An enrolled <b>Customer</b> User who has engaged with training <b>Content</b> within the previous 12 months and is recorded as having a progress status of Incomplete, Complete or Failed.
<b>Administrator</b>	An employee/contractor of the <b>Customer</b> who has been provided with access to the Administration functions in the <b>CLS</b> .
<b>CLS</b>	Kapish provided Cloud Learning System, currently supplied by <b>Janison</b> via which the <b>Customer</b> accesses the <b>Content</b> if hosted.
<b>Content</b>	Online training resources, including all forms of multimedia and documents published as eLearning by <b>Kapish</b> as agreed in <b>Schedule 1</b> .
<b>Creator</b>	The organisation or individual who designed the <b>Content</b> and retains <b>Intellectual Property Ownership Rights</b> to the <b>Content</b> .
<b>Customer</b>	The organisation or individual purchasing <b>Content</b> for training purposes.
<b>Customer Sub Domain</b>	The partitioned access to the CLS provided to each Customer of Kapish branded with the Customer logo.
<b>Owner</b>	The organisation or individual with legal authority to supply the <b>Content</b> for publication, in this situation <b>Kapish Services Pty Ltd</b> .
<b>Kapish</b>	Kapish Services Pty Ltd (ABN 33 144 850 162).
<b>User</b>	An employee/contractor of the <b>Customer</b> who is currently, or has been, enrolled in training <b>Content</b> .

## 4. Background of Agreement

By purchasing Kapish self-hosted or hosted eLearning you accept this Agreement either for yourself or on behalf of your employer, and agree to be bound by its provisions. If you are accepting on behalf of your employer, you represent and warrant that you have full legal authority to bind your employer or such other entity.

## 5. Standard Agreement Terms

These Terms, together with your Order, constitute your Licence Agreement with us, and apply to all our eLearning Products, regardless of whether they are classed as a Subscription, or a Perpetual licence. Your eLearning Licence Agreement governs your use of the eLearning Licensed Materials, and any Support Services we provide regarding the eLearning Licensed Materials. By issuing a purchase order to us, downloading, installing, copying, or otherwise using the eLearning Licensed Materials, you agree to be bound by these terms. If you do not agree to these terms, do not install, or use the Product.

## 6. Permitted Standard Uses of Content

The said **Content** together with all updates thereof, will always remain the property of the **Owner**. You may not use or copy the **Content** for resale, licence or other distribution.

The **Customer** shall carry out such steps as required to protect **Content** copyright.

- 6.1 Use of the **Content** specified in the **Customer** quote is limited to the **Customer** named in the quote, and any departments, divisions or agencies of the named **Customer**.
- 6.2 **Distribution** - The **Customer** shall be granted the following rights as specified.
  - 6.2.1 The **Customer**, subject to the conditions following, shall during the legal term of this Subscription or Perpetual license have a right to make the works available online to **Users** and **Administrators** employed or contracted by the **Customer** through either the **Owner's** or the **Customer's** CLS provided web address;
  - 6.2.2 The **Customer** will take steps to advise all of its employees and agents that the **Content** is for the use of the **Customer's** employees and agents only;
  - 6.2.3 The **Content** is to be used only as part of a recognised training program conducted by the **Customer** or its agents and supplied only to bona fide students;
  - 6.2.4 The **Customer** may not sub-licence, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the **Content** or the rights granted under this Agreement;
- 6.3 **Exclusivity** - This Agreement to use the **Content** shall not be exclusive to the **Customer**.
- 6.4 **Location** - This Agreement allows the **Customer** the right to use the works at any locations at which employees and agents of the **Customer** operate.
- 6.5 **Perpetuity** – This clause remains effective in perpetuity even if the Agreement is terminated under the provisions of Clause 5.
- 6.6 The **Customer** may make copies of the eLearning Licensed Materials for backup purposes only, and the **Customer** must keep possession of them at all times, and they must be clearly marked as copyright material of Kapish.

You may not:

- 6.7 Use the eLearning Products for any unlawful activity, or to infringe the rights of others;
- 6.8 Distribute copies of eLearning Licensed Materials;
- 6.9 Attempt to rewrite, decompile, disassemble or reverse-engineer any of the eLearning Licensed Materials.

## 7. Service Inclusions

Your service agreement is inclusive of:

### 7.1 Access

- 7.1.1 The **Customer** will have unlimited repeat access to the **Content** throughout the service Agreement term.
- 7.1.2 Pricing for this Agreement includes access for the maximum of the number of **Active Users** specified in the quote per 12-month period.
- 7.1.3 The **Content** provided will automatically cease on expiry date of this service agreement. The **Customer** will be provided with ongoing access to the original published **Content** on finalisation of a continued Service Agreement. For self-hosted customers, annually the Customer will provide a report of User numbers of the Content for the previous 12 months, both active and inactive.
- 7.1.4 Where the number of annual **Active Users** exceeds the specified maximum per annum the **Customer** will be invoiced for:
  - 7.1.4.1 Adjustment of the Agreement to the required Site License bracket to provide for the level Active Users necessary per annum, including the initial period of exceeding.

### 7.2 Support – Inclusive in the **Agreement** is support provided to the Administrator in relation to:

- 7.2.1 If hosted, Initial configuration of **Content** for publication to Users.
- 7.2.2 If self-hosted, scorm files will be supplied to the **Customer** for uploading into the **Customer's** CLS.
- 7.2.3 Webinar based training of up to 2 hours covering establishment of User Groups, distribution and reporting (written instruction will also be provided).
- 7.2.4 Unlimited technical support will be provided for system/Content errors that may occur either during publication or post-publication.
- 7.2.5 Direct support will be provided between the hours of 9am and 5pm EST.

### 7.3 Training Version Upgrades

- 7.3.1 From time to time, as Kapish deem appropriate, revised **Content** will be provided to the public (version upgrades). Version upgrades may include new designs and design features as Kapish deem appropriate.
- 7.3.2 Version upgrades will be provided for Self-Hosted **Customers**.
- 7.3.3 Version upgrades will not be applicable for customised **Content** or bespoke **Content**. Where a version upgrade is recommended for the latter **Content**, a separate quotation will be provided.

## 8. Agreement Term and Termination

### 8.1 Hosted

If you have a paid **Subscription Licence**, then in order to ensure continuity of service, your Subscription will automatically renew each year. However, if you have an evaluation Licence, your Subscription will end at the expiry of the Subscription Term, unless you opt-in to a paid Subscription Licence.

We will use reasonable endeavours to notify you of your Subscription expiry, and the renewal Subscription Fee, approximately 2 months before your Subscription expires. We will send the notification to the email address set out in your Order.

Unless you notify us between 60 and 30 days before the expiry of the Subscription Period, that you do not wish to review your Subscription, it will be renewed for the further period specified in your Order.

### 8.2 Self-Hosted

If you have purchased a **Perpetual Licence**, the first year of Support Services were included in your Order. You can find more details about what's included in Support Services in section 7.2 above.

We will use reasonable endeavours to notify you of your Support Services expiry, and the renewal Support Fee, approximately 2 months before your Support Service expires. We will send the notification to the email address set out in the Order.

Unless you notify us between 60 and 30 days before the expiry of your current Support Service period that you do not wish to review your Support Services, your Agreement will be renewed for a further 12 months.

## 9. Kapish Services Warranty

We warrant that the Software provided under this Subscription will operate substantially in conformance with the applicable Documentation for such Software for a period of thirty (30) days from the date of installation of the Software to the Subscriber. We warrant that any media on which the Software is delivered to be free of defects in material and workmanship for a period of thirty (30) days following dispatch to any Reseller or the Subscriber.

The warranty above is voided by:

- use of the Software on a Device that does not meet the recommended operating requirements set forth in the applicable Documentation or
- modifying or altering the Software, unless that modification is certified in writing by us.

Our entire liability, and your exclusive remedy for any failure to meet the above warranty shall be replacement of the original Media containing (or providing you with the ability to download a replacement of) any defective Software with a copy of the same version. We may require proof of purchase before issuing any replacement Software.

To the extent permitted by law, we expressly disclaim all other warranties and guarantees (including of merchantability), in respect of the Licensed Materials or the Services, express or implied. We make no representation and give no warranty with respect to the merchantability or fitness of Software for any particular purpose, business, or application.

## 10. Cloud Learning System (Hosted)

- 10.1 The current Cloud Learning System provided by Kapish is developed and maintained by Janison ([www.janison.com.au](http://www.janison.com.au)). Janison is an Australian owned company which has been providing online learning solutions since 1998, and is a major supplier to Government organisations throughout Australia.
- 10.2 Kapish is the Tenant CLS site for each **Customer Sub Domain**. **Customer Sub Domains** are configured with the features and functionality to meet the requirements of non-Learning & Development CLS Administrators. Therefore a **Customer Sub Domain** will not inherit all CLS features and functionality.
- 10.3 CLS upgrades provided by Janison will automatically be made available to the **Customer Sub Domain**. Where features not currently inherited by **Customer Sub Domains** are upgraded, the upgraded feature will be assessed for release to **Customer Sub Domains**.
- 10.4 Kapish will inform **Customers** when upgrades occur that impact site functionality and provide training as it is deemed to be required. There will be no additional charge for upgrades to the CLS, or any training provided as a result.
- 10.5 **Customers** are provided with access to a Help menu in the footer of the CLS (including pre log-in). All issues with online training are to be reported via the Help contact addresses.





- 10.6 The **Owner** reserves the right to select their CLS service provider to ensure that the best user experience for the **Customer** and their **Users**. The **Customer** will not be financially impacted by these changes, and any operational impact will be communicated to the **Customer** by the **Owner** with a 60-day notice period to enable the **Customer** to communicate the changes to its **Users**.

## 11. Data & Access Protection (Hosted)

- 11.1 User access within each **Customer Sub Domain** is restricted by:
- 11.1.1 User email address matching the **Customer** email domain name.
  - 11.1.2 Access limited to a single account. Users cannot access accounts of other **Users** within the CLS.
- 11.2 The Janison CLS utilises two main sources for security requirements:
- 11.2.1 Information Security Manual (ISM) – The ISM describes the mandatory controls all government systems must implement. The Platform implements controls for UNCLASSIFIED systems.
  - 11.2.2 Janison Security Controls Register – The Platform is required to adhere to the system-specific security controls mandated by Janison.
- 11.3 It is to be noted that the following actions are in place to meet the ISM Controls of: Agencies must ensure that service providers’ systems are located in Australia if they store or process government information and are not listed on ASD’s Certified Cloud Services List.
- 11.3.1 The CLS platform is fully provisioned within the Microsoft Azure platform. Janison retains full control over the physical location of data stored in the Azure data centres. The platform is listed on the ASD Certified Cloud Services List (CCSL).
  - 11.3.2 The Microsoft Azure platform has undergone an IRAP assessment. This assessment validated the policies and processes of physical system access in accordance with the ISM.
  - 11.3.3 The specified data centre for Australian Government clients, and clients who require assurance that data remain in Australia, is the Australia South East region, which is a Melbourne-based data centre. All databases and components that are used to deliver the end to end solutions are fully provisioned within the specified data centre.





11.4 The supply of Content to Users requires gathering and storage of the following personal data:

-  First and last names of employees
-  Employee email addresses
-  Encrypted passwords (both system generated & personally supplied)
-  Training participation and completion results

The **Customer** may choose to import additional data for their personal reporting requirements, which will also be retained.

11.5 **Customer Sub Domains** are password protected and User access profiles are set by the internal client Administrator. These levels are:

-  Organisation Administrator – access to all data on their Customer Sub Domain and control over access rights, excluding passwords
-  User – access to personal data only.

11.6 It is the **Customers** responsibility to ensure Administrator access to their Sub Domain is only provided to authorised people within their organisation, and should prevent unauthorised people from observing access passwords.

11.7 Within Kapish, Tenant Administration is restricted to permanent staff with a need to manage the CLS system. Access rights are deactivated on changes in staff.

11.8 In the event that the **Owner** chooses to select a new CLS service provider, the **Owner** will ensure that the above Data and Access Protection criteria are maintained.

## 12. Acknowledgment

The Customer accepts the CLS and the Content on the basis of their prior inspection and will make no demands upon Kapish for any shortcomings, inaccuracy or incomplete information or any direct or indirect incidental or consequential damages arising from the use of the information contained in the said Content.

## 13. Licence or Support Service Fee Changes

If you have acquired a Subscription / Perpetual Licence or Support Services Agreement for an initial or renewal term that is greater than 12 months, then we may increase your Subscription / Perpetual License or Support Service Fee annually by the greater of 3% or an amount representing the CPI Increase at that date.

## **14. Effect**

- 14.1 This Agreement will come into effect when Kapish are in receipt of full payment of the Fee.
- 14.2 The Agreement will be applicable to additional Contracts purchased.

## **15. Law Applicable**

The Law of the State of Victoria, Australia shall be the law applicable to this agreement.