

Kapish



Legal Terms

License Agreement



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Kapish Software Licence Terms

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1. What does this Licence Agreement cover?

These Terms, together with your Order, constitute your Licence Agreement with us, and apply to all our Products, regardless of whether they are classed as a subscription, or a perpetual licence.

Your Licence Agreement governs your use of the Licensed Materials, and any Support Services we provide regarding the Licensed Materials.

By issuing a purchase order to us, downloading, installing, copying, or otherwise using the 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.

2. What rights do I have under the Licence?

Kapish® Products are licensed, not sold.

Kapish grants the Customer a non-exclusive, non-transferable, non-sub-licensable license on the terms of this Agreement to use the Products described in your Order:

- (if your licence is a Subscription), during the Subscription Period; or
- (if your licence is perpetual), until the licence is terminated by you or us in accordance with this Agreement.

3. What happens when my subscription ends?

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.

4. What happens when my support and maintenance Services term comes to an end?

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 below.

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.

5. Are there restrictions on how I can use a Product?

Yes. We have set out the restrictions and dependencies below.

5.1. Site Licensed Products

You cannot hold less Product Licences than the number of Content Manager licences you hold.

5.2. Named User Products

You cannot exceed the maximum number of named Users. Named User Licences cannot be shared amongst multiple individuals.

5.3. All Products

- You may use the Products only for your own in internal business purposes.
- The Customer name on your Order must match exactly your Content Manager licence name.
- Software may be loaded / installed on up to 5 Devices per Kapish User licence. The Software may then be run by the Customer from that one Device for use by a single User at a time.
- The Customer may make copies of the 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:

- use the Products for any unlawful activity, or to infringe the rights of others;
- share the Software on any computer network including a local area network (LAN), Intranet or Internet;
- distribute copies of Licensed Materials;
- attempt to rewrite, decompile, disassemble or reverse-engineer any of the Software or Software Copies;
- (without our prior written consent):
 - reproduce, transfer, transcribe or translate into any language the Documentation;
 - conduct any benchmark tests related to data access or data manipulation using Software;
- attempt to use the Software for a purpose that is not permitted by the Documentation.

6. I purchased my Licence through a reseller – what is their role?

Kapish authorised resellers will provide you with maintenance and technical support based on the Order you complete with them. The Support Services we explain in the next section will be provided through your reseller, and you should contact them in the first instance for maintenance and technical support.

7. Do you provide maintenance & technical support?

Yes. We provide the support described below for your Products during either your Subscription or Services Term. Note that when your initial Services Term ends, you will need to tell us if you don't want Support Services for your Perpetually-licensed Product for the following year.

7.1. Technical Support

Customers with a valid Service Contract or Subscription are entitled to the following in respect of their Products:

- opening of technical support incidents via e-mail, phone and online through the Kapish Support Portal; and
- resolution of technical support incidents via e-mail, phone or the Kapish Support Portal.

Where appropriate, support may be provided by WebEx or any other remote support tool we choose.

If in Kapish's reasonable opinion, your use of the Services is abusive, we may terminate your Services Agreement or withdraw that part of your Subscription, in each case without refund. 'Abuse' includes but is not limited to, frequent contact, frivolous contact, rude behaviour and/or customer incompetence, harassment, and continually failing to follow support instructions.

7.2. Maintenance

Minor releases. During your Support Service period, Kapish may release up to two minor updates or patches to the Licensed Materials to address issues reported since the last minor release. You will be entitled to download and install these, but you are not required to do so. The frequency of release cycles may alter after the introduction of new functionality and enhancements or maturity of the product.

Products will be tested against all new releases of Content Manager HP software within three months of the public release of Content Manager. If modifications are required to accommodate a new release of Content Manager software, they will ship with the next release of the Product after resolution.

Products will be tested against all new releases of the relevant supported operating system within three months of being certified for use with Content Manager software. If any modifications are required to accommodate a new release of the relevant supported operating system, they will ship with the next release of the Product after resolution.

Major releases During your Support Service period, Kapish may (but is not obliged to), issue a major release to the Software. If a major release is issued, any new Documentation will be released via our website for download. Major releases may have certain underlying software dependencies, which we describe in section 7.4 below.

Although we take all reasonable care to ensure that any update, patch or release does not materially affect the functionality of the Products, it is your obligation to thoroughly test any patch or update prior to use in your production environment.

7.3. Evaluation and preview versions

We may release Products or other Licensed Materials in an evaluation or beta version, which may not work correctly or in the same way the final version may work. If you download or install an evaluation or beta Product, you do so entirely at your own risk.

7.4. Release support

Although we do not oblige you to install updates, patches or new Product releases, your ongoing ability to take advantage of our updates, patches or releases is dependent on your running an officially supported version of the software that underlies the Products – Content Manager.



We accept no responsibility if you are unable to obtain the latest features in our Products because you are not using an officially supported version of Content Manager. Kapish is a Gold Micro Focus Partner and if you need assistance to upgrade your Content Manager to the latest or a more recent release level, please contact us here.

Similarly, if your version of Content Manager is not officially supported by Micro Focus, then any Support Services we provide in respect of our Products will be on a 'best efforts' basis and we cannot guarantee that any updates, patches or fixes will be developed for your officially unsupported version of our Products.

7.5. New features

Customers can suggest new features or enhancements for a Product, by logging an enhancement request through the Kapish Support Portal. Kapish has sole discretion as to whether these new features or enhancements are included in the product.

7.6. What updates, fixes and enhancements will you provide?

As we strive to continually improve our Products, we reserve the right to modify, and/or enhance the Products without obligation to notify you of such changes. All our updates, fixes and enhancements, and new Products are accompanied by comprehensive release notes, which you should read.

8. How do you verify we are complying with our licence?

Kapish (either itself, or through its authorised representatives), at its own expense, has the right to audit and examine all Devices, documents, papers, books and records (in whatever form they may be kept, whether written, electronic or other) relating to the subject matter of this Agreement.

You agree to maintain such books and records (including identifying where the Licensed Materials have been installed or stored), together with any supporting or underlying documents and materials, for the duration of this agreement and for at least 2 years following the expiry of your Licence Term.

The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to us (or our nominated representative) during normal business hours at your office or place of business. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location which is convenient for us.

9. What are the rules around intellectual property?

All rights not specifically granted to the Customer in this Agreement are reserved by Kapish. The Licensed Materials are protected by copyright and other intellectual property laws and treaties. Kapish or its suppliers own the title, copyright, and other intellectual property rights in the Licensed Materials.



You may not use the Licensed Materials to create products, technologies, software applications, web services in whole or in part, that directly compete with any Kapish product or technology. Compete means creating or distributing software or services that provide similar or same functionality as any Software or technology developed by Kapish or its Related Bodies Corporate.

This is a material term of our Agreement with you, and we reserve the right to revoke all your rights and license privileges immediately upon an infringement of this term. Upon notice of infringement and termination of your Agreement, you agree to immediately destroy all copies of Licensed Materials and remove Licensed Materials and references to Licensed Materials from all products, technologies, software applications and other storage media.

10. How will you bill me for the Products and Services?

Licence Fees are payable upon acceptance of your Order.

Subscription Fees are payable in full annually in advance and payment or a valid purchase order must be received prior to a licence key being issued.

Subscriptions involving more than 999 User licences may with our prior written agreement be payable monthly by direct debit. This must be agreed and recorded on your Order.

Support Service Fees are payable annually in advance and payment must be received before support will be provided.

When you order your Products or Services, we will send you an invoice. Fees are payable in the currency shown on the invoice and are exclusive of all duties and taxes. You are responsible for all applicable taxes and duties in addition to the Fees. If you are in Australia, it will include GST in addition to the Fees.

If you purchase your Product through a Reseller, you will need to confirm the payment details with your Reseller.

If you have a direct debit authority in place with us, you consent to us debiting your account for the Subscription or Support Service Fee each year in accordance with clauses 3 & 4.

If you fail to pay your Subscription Fee on time, we may suspend your access to your Product(s). If your account is overdue by 30 or more days, we may also charge interest on the unpaid Fees at the rate then in force under the Penalty Interest Rates Act 1983 (Vic).

11. When and how will my Agreement end?

11.1. Subscription termination

If you have given us a non-renewal notice in accordance with sections 3 and/or 4, or have otherwise lawfully terminated your Subscription or Support Service Agreement in accordance with section 11.3, your Subscription or Support Services Agreement will terminate on the last day of your Subscription Period or Support Services Term. You must uninstall all expired software within 10 Business Days of your Subscription Period ending, and destroy all Documentation. We may audit your compliance with this obligation even after your Subscription ends.

11.2. Non-renewal

We reserve the right not to offer a renewal of your Subscription or Support Service Agreement. If we elect not to renew your Subscription or Support Service Agreement, we will use reasonable endeavours to notify you at least 60 days prior to your Subscription Period or Services Term expiry. A failure to notify you in accordance with this clause does not prevent us from declining to renew your Subscription or Support Service Agreement.

11.3. Termination for cause

We may also (in our discretion) suspend or terminate your Licence or Support Service Agreement immediately upon written notice to you if you:

- fail to pay any amount due under this Agreement and that amount remains outstanding for more than 5 Business Days after our notice to you; or
- you are unable to pay your debts as and when they fall due; or
- you breach a material term of this Agreement, and if capable of remedy, you fail to do so within 5 Business Days of our notice to you.

If we terminate your Licence or Support Agreement under this section, you will not be entitled to a refund of any pre-paid Fee or unused period of your Subscription or Support Agreement.

11.4. Termination by you

Each Subscription and Support Services Agreement is non-cancellable and non-refundable. If you do not wish to renew your Subscription or Support Services Agreement at the end of the relevant Subscription Period or Support Services Term, you must give us notice in accordance with the process in sections 3 and/or 4 above.

12. How will Kapish contact me?

We will send you a message using the email address that you provided in your Order. It is your responsibility to ensure that this is kept up to date. If you need to update your contact details, email us here. We may need to verify your identity before we make any changes.

13. What about my privacy?

For information about how we handle any personal information you may provide to us under this Agreement, see our privacy policy here.

14. What warranty does Kapish provide?

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.

15. Do you limit your liability?

Yes. We exclude all liability to you for any punitive, exemplary or special damages, or Consequential Loss, suffered or incurred by you under, or in connection with, this Agreement (whether based in contract, tort (including negligence), statute or otherwise).

Our total liability to you for any and all Loss you suffer or incur, and for which we are liable under, or in connection with, this Agreement is equal to the sum of all Fees paid or payable by you under this Agreement in the twelve (12) month period immediately preceding the event(s) or circumstance(s) which gave rise to that liability.

The exclusions and limitations of liability in this clause apply even if we knew of the possibility of such Loss. However, these exclusions and limitations do not apply to any Loss arising from death or personal injury or loss of, or damage to, real or tangible property to the extent it is directly caused or contributed to by a negligent act or omission of Kapish or its employees, agents or contractors.

16. What about the Australian Consumer Law?

Nothing in this Agreement is intended to exclude, restrict, or modify any consumer rights under the Competition and Consumer Act 2010 (Cth) (CCA) or any other legislation which may not be excluded, restricted, or modified by agreement.

If the CCA or any other legislation implies a condition, warranty, or term into this Agreement or provides statutory guarantees in connection with this Agreement, in respect of goods or services supplied (if any), our liability for breach of such a condition, warranty, other term or guarantee is limited (at our election), to the extent it is able to do so: (a) in the case of supply of goods, us doing any one or more of the following: (i) replacing the goods or supplying equivalent goods; (ii) repairing the goods; (iii) paying the cost of replacing the goods or of acquiring equivalent goods; and (iv) paying the cost of having the goods repaired; or (b) in the case of supply of services, our doing either or both of the following: (i) supplying the services again; and (ii) paying the cost of having the services supplied again.

17. Do I have to indemnify Kapish, and if so, when and how?

You must indemnify us, and our Related Bodies Corporate for any loss, cost, liability or expense that we suffer as a result of your breach of this Agreement, or any other obligation you owe us.

18. Will my Licence or Support Service fee change?

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

19. 19. What other terms apply?

19.1. Do trade controls apply?

The Products, and your use of the Products may be subject to Australian and international laws, restrictions, and regulations that may govern the import, export, and use of the Products. You agree to comply with all the laws, restrictions, and regulations.

19.2. What law governs this Agreement?

This Agreement is governed by the laws having force in the State of Victoria, Australia (without reference to the conflicts of laws provisions therein).

19.3. How will disputes be resolved?

If your address on your Order is in Australia Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia to determine any dispute or difference arising out of or in connection with this Agreement (including its validity).

If your address on your Order is outside Australia Each party irrevocable and unconditionally agrees that any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any questions regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English.

19.4. Can Kapish apply for urgent help from a court or tribunal?

Without affecting, or being limited by the preceding two paragraphs, if your or others' unauthorized use of the Products or Services in breach of this Agreement, you agree that we are entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

19.5. Can I be part of a class action?

You may only resolve disputes with us on an individual basis, and you may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action.

19.6. What about implied terms?

You acknowledge that you have read this Agreement and any linked policies or terms, understand them and agree to be bound by its terms and conditions. Furthermore, you agree that this is the complete and exclusive statement of agreement between us and supersedes all prior agreements, verbal or written, any proposals and other communications between us relating to the subject matter in this Agreement.

19.7. Can I transfer my rights under this Agreement? Can Kapish?

You may not encumber, assign or otherwise transfer this Agreement or your rights and obligations under it, in whole or in part, without our prior written consent, and any such attempt will be void. You must give us at least 60 days written notice to any proposed transaction. We will not unreasonably withhold our consent, but our consent may be subject to reasonable restrictions or terms.

We may transfer our rights under this Agreement to a third party without your consent.

19.8. How do we amend this Agreement?

We may modify this Agreement without your consent where it is necessary to do so due to a change in law or our Products or the Service. If we wish to modify this Agreement for any other reason, we will notify you by email and the changes will take effect from the renewal of your Licence or Support Services.

20. Definitions and interpretation

20.1. Definitions

The following definitions are used in this Agreement:

Agreement means these Terms and your Order.

Confidential Information includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Licensed Materials and Services but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

Consequential Loss means any Loss that is suffered or incurred by a party as a result of a fact, matter or circumstance which does not arise naturally (that is, according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and expressly includes loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if any of that Loss arises naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and any penalties imposed by a Government Agency.

Copies means actual copies of all or any portion of Software and shall include updates, Major and/or Minor releases and backups of Software.

CPI means the All Groups, Consumer Price Index for Melbourne, Victoria published from time to time by the Australian Bureau of Statistics (ABS) for all groups (national) or, if the index is no longer published or if ABS ceases to exist, the published index which most closely resembles it.

CPI Increase means, as at an adjustment date, the percentage amount of the increase in CPI as at the adjustment date from the end of the same quarter in the previous calendar year or, if there has been no increase in CPI during that period, zero (0) percent.

Customer means the person, corporation or entity that has been granted a licence for one or more Products and Services by submitting an Order to us, and includes their employees, agents and contractors.

Device means a computer hardware system (whether physical or virtual) with a storage device or a mobile device (such as a smartphone or tablet) capable of running the Software. A hardware partition or blade is considered to be a Device.

Documentation means all printed or electronic materials produced by or distributed by us relating to the Software.

Fee or Fees means any one or a combination of a Subscription Fee, a Licence Fee, or a Support & Maintenance Fee, depending on your Product.

Licensed Materials means the Software and the Documentation that form part of a Product.

Loss includes all loss, damage or liability (including liability to a third party) of any kind.

Kapish, we, us, means Kapish Services Pty Ltd (ACN 144 850 162) the licensor of the Licensed Materials under this Licence Agreement, a subsidiary of The Citadel Group Limited.

Licence means a licence granted under this Agreement.

Licence Fee means the fee, specified in your Order that is charged for the grant of a perpetual licence to use the Licensed Materials.

Media means computer diskettes, CD ROMs and any other such magnetic media containing Software.

Order means the following combination of documents:

- our quote;
- your purchase order;
- each Product Licence Sheet;
- our invoice; and
- any other document that we expressly designate as part of your Order,

that either alone or in combination describe(s) the Product(s) and Services licensed, and the Subscription and/or Licence Fee.



Product refers to the combination of Licensed Material that we identify as a single product, such as Kapish Explorer, or Kapish Easylink. If you have purchased or subscribed to more than one Product, this may be described as a Suite.

Related Body Corporate has the meaning given to it in the Corporations Act 2001 (Cth). **Software** means the computer program or application, together with any updates, patches or modifications, provided by or distributed by Us. Software includes free, paid, evaluation, or beta test versions of any program or app.

Support Service means:

- any technical or non-technical service provided by Kapish including but not limited to providing technical support in person, by telephone, using the online Kapish Support Suite (<http://kapish.com.au/support>) or via any form of electronic correspondence; and
- access to Product maintenance as described in section 6.

Support Service Fee means the amount set out in your Order Form, or any renewal invoice, payable in respect of Support Services.

Support Service Term means the then current Support Services agreement period.

Subscription means a licence for one or more Products that is for a limited period of time, usually for periods of 12 months at a time. Subscription licences include access to Support Services and automatically renew unless cancelled.

Subscription Fee means the fee, specified in the Order Form (or any Subscription renewal invoice), that is charged for the grant of a licence to use the Licensed Materials and the Services, during the Subscription Period.

Subscription Period means the initial period of time shown on the Order Form (which begins when we issue your Product key), and any renewal period of the same duration.

Subscription Start Date means the date you first download the Licensed Materials, and each anniversary date upon which the Subscription is renewed.

Suite means a combination of Products.

User means an employee or direct contractor of a Customer.

You means the Customer.

20.2. Interpretation

In this agreement:

- a) words importing the singular include the plural and vice versa;
- b) words that are gender neutral or gender specific include each gender;
- c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- d) 'includes' means includes without limitation;
- e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- f) a reference to:
 - (1) a person includes a firm, unincorporated association, corporation and a Government Agency;
 - (2) a person includes the person's legal personal representatives, successors and assigns and persons substituted by novation;
 - (3) 'law' includes:
 - (A) statutes, regulations or by-laws of the Commonwealth, a State, a territory or a Government Agency; and
 - (B) rules, proclamations, ordinances, orders, decrees, requirements or approvals (including conditions) of foreign, state, territorial or local jurisdiction or a Government Agency that have the force of law;
 - (4) a right includes a benefit, interest, remedy, discretion, authority or power;
 - (5) an obligation of more than one person binds them all jointly and severally;
 - (6) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (7) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (8) time is AEST – Australian Eastern Standard Time;

- (9) month is a reference to a calendar month;
 - (10) '\$' or 'dollars' is a reference to Australian currency;
 - (11) 'costs' includes charges, expenses and legal costs (on full indemnity basis);
 - (12) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes electronic transmissions;
 - (13) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (14) this Agreement or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (15) a clause or paragraph is a reference to a clause or paragraph, as the case may be, of this Agreement; and
- g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and i) a term or expression:
- (1) given a meaning in the Corporations Act 2001 (Cth) that is not otherwise defined in this Agreement, has the same meaning in this Agreement as in the Corporations Act; and
 - (2) given a meaning in the GST Law, that is not otherwise defined in these General Terms or in the Corporations Act, has the same meaning in these General Terms as in the GST Law.

21. Acknowledgements and reservations

Kapish® and the Kapish logo are trade marks of Kapish Pty Limited in Australia.

Content Manager is a trade mark of Micro Focus International Plc in the United Kingdom, United States and other countries