

Kapish



eLearning Services Agreement

Hosted



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1. Introduction

This Agreement (**Agreement**) is made and effective from the date of signing the agreement, by and between Kapish Services Pty Ltd (**Kapish**) with its principal offices located at Level 46, 600 Bourke Street, Melbourne 3000, Victoria Australia 3000, and your Company (**Customer**).

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 online training content hosted on the Kapish supplied Janison Cloud Learning System (**CLS**) 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 access to the eLearning content specified in Schedule 1. It describes the services and commitments of Kapish as well as the expectations and obligations of the Customer.

3. Definitions

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

4. Background of Agreement

By purchasing Kapish 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

Kapish hereby grants to you a non-exclusive, non-transferable worldwide rights to use the **Content**, as specified in Schedule 1, for the Permitted Uses (as defined below). Unless the activity or use is a Permitted Use, you cannot do it. All other rights in and to the Content, including, without limitation, all copyright and other intellectual property rights relating to the **Content**, are retained by or the **Creator** of the **Content**, as the case may be.

6. Permitted Standard Uses of Content

- 6.1 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.
- 6.2 The **Customer** shall carry out such steps as required to protect **Content** copyright.
- 6.3 Use of the **Content** specified in Schedule 1 & 2 is limited to the **Customer** named in the schedule, and any departments, divisions or agencies of the named **Customer**.
- 6.4 **Distribution** - The **Customer** shall be granted the following rights as specified.
 - 6.4.1 The **Customer**, subject to the conditions following, shall during the legal term of this subscription have a right to make the works available online to **Users** and **Administrators** employed or contracted by the **Customer** through the CLS provided web address;
 - 6.4.2 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;
 - 6.4.3 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;
 - 6.4.4 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;
- 6.5 **Exclusivity** - This Agreement to use the **Content** shall not be exclusive to the **Customer**.
- 6.6 **Location** - This Agreement allows the **Customer** the right to use the works at any locations at which employees and agents of the **Customer** operate.
- 6.7 **Perpetuity** - This clause remains effective in perpetuity even if the Agreement is terminated under the provisions of Clause 5.

7. Service Inclusions

Your service agreement is inclusive of:

- 7.1 **Access** - Learners may be provided with unlimited repeat access to the content throughout the term defined in Schedule 1. 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. Annually the Customer will provide a report of User numbers of the Content for the previous 12 months, both active and inactive.
 - 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** listed in Schedule 2 per 12 month period.
 - 7.1.3 Where the number of annual **Active Users** exceeds the specified maximum per annum the **Customer** will be invoiced for:
 - 7.1.3.1 An Add On User Package applicable for 12 months from the date of exceeding; or
 - 7.1.3.2 Adjustment of the Agreement to the required Base Package to provide for the level Active Users necessary per annum, including the initial period of exceeding.The appropriate Package decision will be made in consultation with the Customer.
- 7.2 **Support** - Inclusive to the **Agreement** is support provided to the Administrator in relation to:
 - 7.2.1 Initial configuration of **Content** for publication to Users.
 - 7.2.2 Webinar based training of up to 2 hours covering establishment of User Groups, distribution and reporting (written instruction will also be provided).
 - 7.2.3 Unlimited technical support will be provided for system/Content errors that may occur either during publication or post-publication.
 - 7.2.4 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 deems appropriate, revised **content** will be provided to the public (version upgrades). Version upgrades may include new designs and design features as Kapish deem appropriate. Generic Content accessed by the Customer will automatically be upgraded.

- 7.3.2 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 The Agreement commences from the date and for the minimum Term listed in Schedule 1.
- 8.2 You agree that Kapish may terminate this Agreement without prejudice to any other rights or remedies, at any time without prior written notice to you in that you:
 - 8.2.1 Breach any clauses within this agreement;
 - 8.2.2 Engage in or participate with any third party in the unauthorised manufacture, duplication, distribution or use of any Content or otherwise infringe any other intellectual property right of Kapish or other Owner or Creator.
- 8.3 You may terminate this Agreement with:
 - 8.3.1 Written notice at any time following payment of the Fee. A fee refund will not apply.
 - 8.3.2 Written notice 30 days prior to annual renewal.
- 8.4 The Specified Content supplied under this Agreement shall:
 - 8.4.1 Continue to be supplied for a minimum period of 3 (three) years after the Commencement Date and, after that,
 - 8.4.2 Continue to be supplied on an annual basis unless this agreement is terminated by one of the parties giving to the other not less than 30 days' notice prior to the commencement of the next year.
 - 8.4.3 Be invoiced at the annual rate published and applicable preceding the Commencement Date of the agreement.

9. Kapish Services Warranty

- 9.1 Any errors, omissions, or inconsistencies in the works must be notified in writing to Kapish. Kapish reserve the right to correct these errors, omissions, or inconsistencies, as Kapish deem appropriate.
- 9.2 Kapish warrant to the Customer that the Content is original and does not infringe any existing copyright and Kapish indemnify the Customer against loss, injury or damage (including any legal costs or expenses properly incurred) occasioned to the Customer in

consequence of any breach by Kapish (unknown to the Company at the time of this Agreement) of this warranty.

- 9.3 To the maximum extent permitted by applicable law, under no circumstances, and under no legal theory, tort, contract or otherwise, will Kapish be liable to you for damages exceeding the Fee, including any lost profits, lost data or other indirect, special, incidental, or consequential damages, arising out of the use or inability to use the works or any of the related material, even if Kapish have been advised of the possibility of such damages, or for any claim of whatever nature by any other party.
- 9.4 The Content is provided to you "AS IS".
- 9.5 To the maximum extent permitted by applicable law, Kapish disclaims all other warranties, conditions or representations, expressed or implied, by statute or otherwise, regarding the Content, including the fitness for a particular purpose, quality, merchantability, or its non-infringement. In any event the liability of Kapish under the warranty set forth above is limited to the Fee.

10. Cloud Learning System

- 10.1 The Cloud Learning System provided by Kapish is developed and maintained by Janison (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 Sub Domains are upgraded, the upgraded feature will be assessed for release to 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.

11. Data & Access Protection

- 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.

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. Effect

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

14. Law Applicable

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