

# Kapish



## eLearning Services Agreement

Self-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 provided SCORM files 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   |
|----------------------|--|
| <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>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>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 self-hosted eLearning you accept this Agreement either for yourself or on behalf of your employer as the case may be, 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

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 Schedule 1 & 2 is limited to the **Customer** named in the schedule, 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 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;
  - 6.2.2 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.

## 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.
- 7.2 **Support** - Support will be provided to the **Administrator** in relation to initial publication of the content for in-house hosting. Direct support will be provided between the hours of 9am and 5pm EST Monday – Friday. Where additional support is requested during the period of the Service Agreement, this will be quoted based on requirements and provided on approval of the quotation.
- 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.
  - 7.3.2 Version upgrades will be provided for in-house 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 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.
- 8.4 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. Acknowledgment

The Customer accepts 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.

## 11. Effect

11.1 This Agreement will come into effect when Kapish are in receipt of full payment of the Fee.

11.2 The Agreement will be applicable to additional Contracts purchased.

## 12. Law Applicable

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