

# Kaptur Software – Mobile Application and Cloud Services Agreement

## TERMS AND CONDITIONS

This document outlines the terms and conditions in relation to the provision of the Kaptur System and all associated services.

### 1. Definitions

#### 1.1 In these Terms and Conditions:

**"Acceptance Criteria"** means:

- (a) the Kaptur System conforming in all material respects with the Specification; and
- (b) the Kaptur System being free from Defects.

**"Account"** means an account enabling a person to access and use the Kaptur System, including both administrator accounts and user accounts.

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity.

**"Agreement"** means a contract between the parties incorporating the Services Order Form, these Terms and Conditions including any amendments to such documentation from time to time.

**"API"** means the application programming interface for the Kaptur System that is made available by KS.

**"Authorised Use Limits"** means the limitations on usage of the Kaptur System as specified in the Services Order Form.

**"Business Day"** means any weekday other than a bank or public holiday in England.

**"Business Hours"** means the hours of 09:00 to 17:00 GMT/BST on a Business Day.

**"Charges"** means the amounts specified in the Services Order Form and such other amounts as may be agreed in writing by the parties from time to time.

**"Confidential Information"** means KS Confidential Information and the Customer Confidential Information.

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly).

**"Customer"** means the person or entity identified as such in the Services Order Form.

**"Customer Confidential Information"** means:

- (a) any information disclosed by the Customer to KS during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
  - (i) was marked as "confidential"; or
  - (ii) should have been reasonably understood by KS to be confidential.
- (b) the Customer Data; and

(c) the Customer Personal Data.

**"Customer Data"** means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to KS for incorporation into a Customisation or otherwise for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Kaptur System by the Customer (but excluding log files).

**"Customer Indemnity Event"** has the meaning given to it in Clause 22.3.

**"Customer Personal Data"** means any Personal Data processed by KS on behalf of the Customer in relation to the Agreement.

**"Customer Systems"** means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Kaptur System, including the mobile devices on which the Mobile App is installed that are used to access the Accounts.

**"Customer Third Party Services"** means any hosted or cloud services that are provided by any third party under a contract or arrangement with the Customer and have the capability to transmit data to and/or from the Kaptur System.

**"Customisation"** means a customisation of a template within the Kaptur System.

**"Data Protection Laws"** means (i) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer is subject, which relates to the protection of personal data; or (ii) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

**"Defect"** means a defect, error or bug in the Kaptur System having a material adverse effect on the appearance, operation, functionality or performance of the Kaptur System, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Kaptur System.
- (b) any use of the Kaptur System contrary to any documentation for the Kaptur System supplied by KS to the Customer, whether by the Customer or by any person authorized by the Customer.
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Kaptur System and any other system, network, application, program, hardware, or software not specified as compatible in the Specification.

**"Effective Date"** means the date upon which the parties execute a Services Order Form or such other date as specified in the Services Order Form.

**"EU GDPR"** means the General Data Protection Regulation ((EU) 2016/679).

**"Expenses"** means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by KS exclusively in connection with, the provision of Services away from the premises of KS at the request of the Customer.

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).

**"Hosted Services"** means the hosted services provided by KS using:

- (a) the *Kaptur Management Suite* or *KMS*, including the API; and
- (b) the interlink and storage solution managed by KS,

as specified in the Specification, which services will be made available by KS to the Customer as a service via the internet in accordance with these Terms and Conditions.

**"Initial Term"** means the period specified as such in the Services Order Form and if applicable, commencing upon the completion of the Set-Up Services in accordance with Clause 4.

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs).

**"Kaptur System"** means the software system composed of the Mobile App and the Hosted Services.

**"KS"** means Kaptur Software Ltd, a company incorporated in England and Wales (registration number 15052881) having its registered office at 1 White Oak Square, London Road, Swanley, Kent, BR8 7AG.

**"KS Confidential Information"** means:

- (a) any information disclosed by KS to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (b) the financial terms of the Agreement.

**"KS Indemnity Event"** has the meaning given to it in Clause 22.1.

**"Maintenance Services"** means the general maintenance of the Platform and Kaptur System, and the application of updates and upgrades to the Kaptur System software.

**"Mobile App"** means the mobile application known as *Kaptur* that is made available by KS to the public through the *Google Play Store* and the *Apple App Store*.

**"Outputs"** means the reports, documentation and/or other outputs generated by the Customer on the Kaptur System based on the Customer Data uploaded to the Kaptur System by the Customer.

**"Personal Data"** has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679).

**"Platform"** means the platforms managed by KS and used by KS to provide the Kaptur System, including the application and database software for the Kaptur System and the system and server software used to provide the Kaptur System.

**"Renewal Term"** has the meaning given to it in Clause 25.1.

**"Retention Period"** means the thirty (30) day period commencing with the end of the Term.

**"Services"** means any services that KS provides to the Customer, or has an obligation to provide to the Customer, including the right to use the Kaptur System, under these Terms and Conditions.

**"Services Order Form"** means the order form for the Kaptur System and Services that has been signed by both parties.

**"Set Up Services"** means the services in relation to set up and configuration of the Kaptur System for the Customer to be provided by KS in accordance with the Services Order Form, which may include the creation of Customisations, together with any training specified in the Services Order Form.

**"Specification"** means the specification for the Kaptur System set out in Schedule 3.

**"Support Services"** means support in relation to the use of, and the identification and resolution of errors in, the Kaptur System, but shall not include the provision of training services.

**"Supported Web Browser"** means the current release from time to time of Microsoft Edge, Mozilla Firefox or Google Chrome.

**"Term"** means the term of the Agreement (inclusive of the Initial Term and any Renewal Term), commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2.

**"Terms and Conditions"** means these terms and conditions including the Schedules, as amended from time to time.

**"UK GDPR"** is defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

## **2. Term**

2.1 The Agreement shall come into force upon the Effective Date.

2.2 The Agreement shall continue in force, subject to termination in accordance with Clause 25.

## **3. Set Up Services**

3.1 Where Set-Up Services are to be provided by KS, KS shall provide the Set-Up Services to the Customer with reasonable care and skill and, subject to Clause 3.2, shall ensure that the Set-Up Services are provided in accordance with any timetable set out in the Services Order Form.

3.2 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 23.1 KS will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.

3.3 Any Intellectual Property Rights that may arise out of the performance of the Set-Up Services by KS shall be the exclusive property of KS.

#### **4. Acceptance procedure**

- 4.1 Where Set-Up Services are to be provided by KS, within 5 Business Days following the completion of the Set-Up Services, the Customer shall test the Hosted Services to determine whether they meet the Acceptance Criteria.
- 4.2 If the Hosted Services meet the Acceptance Criteria, then the Customer must notify KS, within the period referred to in Clause 4.1, that the Hosted Services are accepted.
- 4.3 If the Hosted Services do not meet the Acceptance Criteria, then the Customer must notify KS of the failure, providing full details, within the period referred to in Clause 4.1, in which case KS shall use all reasonable endeavours to remedy the failure within a further period of 10 Business Days following receipt of the Customer's notice.
- 4.4 If the Customer fails to provide a notice to KS in accordance with Clause 4.2 or 4.3, then the Hosted Services shall be deemed to be accepted at the end of the period referred to in Clause 4.1.

#### **5. Kaptur System**

- 5.1 KS shall create Accounts for the Customer and shall provide to the Customer login details for those Accounts upon the completion of the Set-Up Services.
- 5.2 KS hereby grants to the Customer a worldwide, non-exclusive right to use the Kaptur System via the Accounts, by means of:

- (a) the Mobile App.
- (b) a Supported Web Browser; and
- (c) where the Services Order Form so provides, the API,

for the internal business purposes of the Customer during the Term, subject to the prohibitions and limitations set out in this Clause 5 and in the Services Order Form.

- 5.3 The Accounts may only be used by the employees of the Customer.
- 5.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the rights granted by KS to the Customer under Clause 5.2 is subject to the following prohibitions:
  - (a) the Customer must not sub-license its right to access and use the Kaptur System;
  - (b) the Customer must not permit or assist any unauthorised person to access or use the Kaptur System;
  - (c) the Customer must not allow individuals to share login credentials (for example, by using a generic email address that more than one person uses to access the Kaptur System;
  - (d) the Customer must not commercially exploit or otherwise use the Kaptur System to provide services to third parties;
  - (e) the Customer must not republish or redistribute any content or material from the Kaptur System, except that the Customer may distribute Output produced by means of the Kaptur System in the ordinary course of the Customer's business;
  - (f) the Customer must not make any alteration to the Platform or Kapture System; and

- (g) before the acceptance of the Hosted Services by the Customer in accordance with Clause 4, the Customer must only use the Hosted Services for the purpose of evaluating the Hosted Services.
- 5.5 The Customer is responsible for establishing, monitoring and implementing security practices to control the physical access to and use of the Kaptur System and all Accounts in accordance with Customer's own security policies and procedure, and to ensure that no unauthorised person may gain access to the Kaptur System using an Account. The Customer must notify KS immediately of any known unauthorised use of any Account.
- 5.6 The Customer must comply with the provisions of Clause 10 in relation to the use of the Kaptur System and must ensure that all persons accessing the Kaptur System with the authorisation of the Customer, by means of an Account and/or via the API using the Customer's API credentials, comply with those provisions.
- 5.7 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 5.8 KS may at its discretion:
  - (a) change the technical specification or functionality of the Kaptur System for technical or operational reasons, provided that any such change to the technical specification or functionality does not materially decrease or impair performance of the Kaptur System;
  - (b) provide an alternative service or make changes to a Service and/or the Kaptur System (for whatever reason including in order to manage obsolescence), provided that any such change does not materially decrease or impair performance of the Service and/or the Kaptur System; or
  - (c) change the Services and/or the Kaptur System in order to comply with any applicable law or regulation.

## **6. Customisations**

- 6.1 KS and the Customer may agree that KS shall design and implement a Customisation or Customisations in accordance with a specification agreed in the Services Order Form or otherwise in writing by the parties.
- 6.2 The Customer acknowledges that Customisations are not entirely bespoke and will consist of variations upon existing designs.
- 6.3 All Intellectual Property Rights in the Customisations (excluding Customer Data) shall, as between the parties, be the exclusive property of KS.
- 6.4 From the time and date when a Customisation is first delivered or made available by KS to the Customer, the Customisation shall form part of the Platform, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by Clause 5.
- 6.5 The Customer acknowledges that KS may make any Customisation (excluding Customer Data) available to any of its other customers or any other third party.

## **7. Maintenance Services**

- 7.1 KS shall provide the Maintenance Services to the Customer with reasonable skill and care during the Term.

- 7.2 KS shall where practicable give to the Customer prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Kaptur System or are likely to have a material negative impact upon the Kaptur System.
- 7.3 KS shall, where practicable provide scheduled Maintenance Services outside Business Hours.
- 7.4 The Customer acknowledges that updates and upgrades to the Kaptur System will from time-to-time result in changes to the appearance and functionality of the Kaptur System, including the API.

## **8. Support Services**

- 8.1 KS shall provide the Support Services to the Customer with reasonable skill and care during the Term.
- 8.2 KS shall make available to the Customer an online support portal and a telephone-based helpdesk, and the Customer may use the portal and/or helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk or portal for any other purpose.
- 8.3 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk or portal.
- 8.4 KS shall use reasonable endeavours to respond to requests for Support Services promptly, and to resolve issues notified through the Support Services promptly, taking into account the severity of the issue and its impact upon the Customer.
- 8.5 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.
- 8.6 KS shall have no obligation to provide Support Services in respect of any issue caused by:
  - (a) the improper use of the Kaptur System by the Customer.
  - (b) any alteration to the Kaptur System made without the prior consent of KS; or
  - (c) the use of an outdated version of the Mobile App or Hosted Services as described in the Specifications.

## **9. Customer obligations**

- 9.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to KS, or procure for KS, such:
  - (a) co-operation, support, and advice; and
  - (b) information and documentation,as are reasonably necessary to enable KS to perform its obligations under the Agreement.
- 9.2 The Customer must provide to KS, or procure for KS, such access to the Customer's computer hardware, software, networks, and systems as may be reasonably required by KS to enable KS to perform its obligations under the Agreement.
- 9.3 The Customer shall be responsible for making any changes and updates to the Customer Systems that may be necessary to ensure that the Customer Systems remain compatible with the Kaptur System and the Specifications.

## **10. Acceptable use**

### **10.1 The Customer must not:**

- (a) except as permitted by applicable law which cannot be excluded:
  - a. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or part of the Kaptur System;
  - b. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human readable form all or any part of the Kaptur System;
  - c. attempt to gain unauthorised access to the Kaptur System or its related system or networks or willfully interfere with or disrupt the integrity of Kaptur System or the data contained therein; or
- (b) access all or any part of the Kaptur System to build a product or service that competes with the Kaptur System; or
- (c) use the Services to access, store, distribute or use any malware or code that can harm or result in damage to the Kaptur System or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, libelous, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence, or is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or
- (d) use the Kaptur System in order to cause harm such as overload or create multiple agents for the purpose of disrupting operations of a third party; or
- (e) remove or modify any program markings or any notice of the Kaptur System or its licensors' proprietary rights; or
- (f) perform or disclose any benchmark or performance tests on the Kaptur System; or
- (g) perform or disclose any of the following security testing of the Kaptur System environments or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, penetration testing or any other test or procedure.

### **10.2 The Customer must not use the Kaptur System:**

- (a) in any way that is unlawful, illegal, fraudulent, or harmful; or
- (b) in connection with any unlawful, illegal, fraudulent, or harmful purpose or activity.

10.3 The Customer shall ensure that the Customer Data is not illegal or unlawful, does not infringe any person's legal rights, and is not capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

10.4 Without prejudice to the generality of Clause 10.3, the Customer warrants to KS that the Customer Data will not infringe the Intellectual Property Rights of any person under English law.

10.5 The Customer shall ensure that Customer Data is not and has never been the subject of any threatened or actual legal proceedings or any other similar complaint.

10.6 KS may immediately remove or disable the Customer's access to the Kaptur System should the Customer not comply with the conditions of use set out in this Clause 10. A breach by the



Customer of any of its obligations under this Clause 10 shall be considered a material breach of the Agreement.

## **11. Customer Data and back-ups**

- 11.1 The Customer hereby grants to KS a non-exclusive licence to copy, reproduce, store, distribute, export, adapt and edit the Customer Data to the extent reasonably required for the performance of KS's obligations and the exercise of KS's rights under the Agreement. The Customer also grants to KS the right to sub-license these rights to its support, hosting, connectivity and telecommunications service providers, subject always to any express restrictions elsewhere in the Agreement.
- 11.2 KS shall create a back-up copy of the Customer Data (excluding, for the avoidance of doubt, any data stored on the Customer's mobile devices but not transferred to the Platform) at least once per day, shall ensure that each such copy is sufficient to enable KS to restore the Kaptur System to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.
- 11.3 Within the period of 1 Business Day following receipt of a written request from the Customer, KS shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by KS in accordance with Clause 11.2. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.
- 11.4 The Customer is solely responsible for all activities that occur in, or are related to, the Accounts including the data, information stored or transmitted when accessing the Kaptur System and for the accuracy, integrity, legality, reliability and appropriateness of all Customer Data.
- 11.5 KS will collect, modify, utilise and analyse meta data and/or operations data which does not contain any Customer Data, such as system log files and transaction counts which relate to system utilisation and performance statistics, all as deemed necessary by KS.

## **12. Integrations with Customer Third Party Services**

- 12.1 Where applicable, those Customer Third Party Services identified in the Services Order Form will be integrated with the Hosted Services by the time of completion of the Set-Up Services.
- 12.2 KS may remove, suspend, or limit any Customer Third Party Services integration at any time in its sole discretion.
- 12.3 The supply of Customer Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. KS does not contract to supply the Customer Third Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Customer Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Customer Third Party Services.
- 12.4 The Customer acknowledges that:
  - (a) the integration of Customer Third Party Services may entail the transfer of Customer Data from the Kaptur System to the relevant Customer Third Party Services;
  - (b) KS has no control over, or responsibility in respect of, any disclosure, modification, deletion, or other use of Customer Data resulting from the integration of any Customer Third Party Services; and

- (c) the Customer is also responsible for managing components that are downloaded onto their environment such as web browser-based software plug-ins that extend the Kaptur System.
- 12.5 Without prejudice to its other obligations under this Clause 12, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:
  - (a) the transfer of relevant Customer Personal Data to a provider of Customer Third Party Services is lawful; and
  - (b) the use of relevant Customer Personal Data by a provider of Customer Third Party Services is lawful.
- 12.6 The Customer warrants to KS that the transfer of Customer Data by KS to a provider of Customer Third Party Services in accordance with this Clause 12 will not infringe any person's legal or contractual rights and will not put KS in breach of any applicable laws.
- 12.7 Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 23.1:
  - (a) KS gives no warranties or representations in respect of any Customer Third Party Services; and
  - (b) KS shall not be liable to the Customer in respect of any loss or damage that may be caused by any Customer Third Party Services or any provider of Customer Third Party Services.

### **13. Mobile App**

- 13.1 The parties acknowledge and agree that the use of the Mobile App shall be subject to these Terms and Conditions upon the download of the Mobile App from the relevant distribution platform.
- 13.2 To the extent that the Mobile App distribution platform provides an end user licence agreement, such agreement shall not apply to the use of the Mobile App and the provisions of these Terms and Conditions shall exclusively govern the use of the Mobile App.
- 13.3 The Customer acknowledges that KS has no control over mobile hardware or the operating system software and other software installed on mobile devices with which the Mobile App must interact. Subject to Clause 23.1, KS shall have no liability to the Customer with respect to any loss or damage (including any loss or corruption of data) that may be caused by such hardware or software or the Customer's use thereof

### **14. No assignment of Intellectual Property Rights**

- 14.1 KS or its licensors own all Intellectual Property Rights in:
  - (a) the Services, the Kaptur System and any improvements, enhancements or modifications to them; and
  - (b) the Kaptur name and logo.
- 14.2 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from KS to the Customer, or from the Customer to KS.

### **15. Charges**

- 15.1 The Customer shall pay the Charges to KS in accordance with these Terms and Conditions.
- 15.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to KS.
- 15.3 KS may elect to vary any recurring element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring after the end of the Initial Term or, if applicable, a Renewal Term, providing that no such variation shall result in an aggregate percentage increase (on an annual basis) in the relevant element of the Charges during the Term that exceeds 3% over the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

## **16. Expenses**

- 16.1 The Customer shall reimburse KS in respect of any Expenses, providing that KS must obtain the prior written authorisation of the Customer before incurring any Expenses exceeding such limitations as may be agreed in writing by the parties from time to time.

## **17. Payments**

- 17.1 KS shall issue invoices for the Charges to the Customer on or after the invoicing dates set out in the Services Order Form.
- 17.2 The Customer must pay the Charges to KS within the period specified in the Services Order Form or, if no such period is specified, within 14 days following the issue of an invoice by KS.
- 17.3 The Customer must pay the Charges by bank transfer or by such other form of payment as agreed by the parties (using such payment details as are notified by KS to the Customer from time to time).
- 17.4 If the Customer does not pay any amount properly due to KS under these Terms and Conditions, KS may:
- (a) charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 17.5 KS may suspend the provision of the Services if any amount due to be paid by the Customer to KS under the Agreement is overdue, and KS has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend Services on this basis.
- 17.6 If the Customer disputes the whole or part of an invoice, the Customer shall notify KS in writing, before the due date for payment. The notice must state that the invoice is disputed and be accompanied by details of the invoice that is being disputed and the reasons for the dispute. The Customer shall pay the undisputed amount. KS and the Customer shall each use reasonable endeavours to resolve the dispute as soon as reasonably practicable. The Customer waives the right to dispute its liability to pay any invoice in respect of which it has not raised a dispute in accordance with this clause.
- 17.7 The Services are subject to the Authorised Use Limits. The Customer may increase the Authorised Use Limits at any time, by executing a further Order Form for the additional Service. If the Customer exceeds any Authorised Use Limits, KS will provide notice to the Customer of

the overage amounts and rates and the Customer shall pay any invoice issued for excess usage within 14 days from the date of such invoice. The increased Authorised Use Limits based on such overage amount will be the basis for any renewal of the Term.

## **18. Confidentiality obligations**

### **18.1 KS must:**

- (a) keep the Customer Confidential Information strictly confidential;
- (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions;
- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as KS uses to protect KS's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to the Customer Confidential Information.

### **18.2 The Customer must:**

- (a) keep KS Confidential Information strictly confidential.
- (b) not disclose KS Confidential Information to any person without KS's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in these Terms and Conditions.
- (c) use the same degree of care to protect the confidentiality of KS Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to KS Confidential Information.

**18.3** Notwithstanding Clauses 18.1 and 18.2, a party's Confidential Information may be disclosed by the other party ("**receiving party**") to the receiving party's officers, employees, professional advisers, insurers, agents and subcontractors (together, "**representatives**") who have a need to access the Confidential Information that is disclosed for the performance of their work and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed and the receiving party shall ensure that its representatives comply with this Clause 18 as if they were parties to the Agreement.

**18.4** No obligations are imposed by this Clause 18 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality.
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

**18.5** The restrictions in this Clause 18 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognized stock exchange.

18.6 The provisions of this Clause 18 shall continue in force indefinitely following the termination of the Agreement.

## **19. Data protection**

19.1 The Customer warrants to KS that it has the legal right to disclose all Personal Data that it does in fact disclose to KS under or in connection with the Agreement.

19.2 The Customer shall only supply to KS, and KS shall only process, in each case under or in relation to the Agreement, the Personal Data of data subjects falling within the categories specified in Schedule 2 (Data processing information).

19.3 The Customer shall only supply to KS, and KS shall only process, in each case under or in relation to the Agreement, Personal Data of the types specified in Schedule 2 (Data processing information).

19.4 KS shall only process the Customer Personal Data for the purposes specified in Schedule 2 (Data processing information).

19.5 KS shall only process the Customer Personal Data during the Term and for not more than the Retention Period following the end of the Term, save to the extent required otherwise by applicable law.

19.6 KS shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.

19.7 Notwithstanding any other provision of these Terms and Conditions, KS may process the Customer Personal Data if and to the extent that KS is required to do so by applicable law. In such a case, KS shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

19.8 KS shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

19.9 KS and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Schedule 2 (Data processing information).

19.10 KS must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. KS is hereby authorised by the Customer, as at the Effective Date, to engage those third parties identified in, or falling within the processor categories specified in, Schedule 2 (Data processing information) to process the Customer Personal Data. In the case of a general written authorisation, KS shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third-party processor, and if the Customer objects in writing to any such changes before their implementation, then KS will not implement the changes. KS shall ensure that each third-party processor is subject to the same legal obligations as those imposed on KS by this Clause 19.

19.11 KS shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

- 19.12 KS shall assist the Customer in ensuring compliance with all obligations relating to security in the processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws.
- 19.13 KS shall make available to the Customer all information necessary to demonstrate the compliance of KS with its obligations under the Data Protection Laws.
- 19.14 KS shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to its processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 19.15 KS shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of KS's processing of Customer Personal Data with the Data Protection Laws and this Clause 19.
- 19.16 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

## **20. Warranties**

- 20.1 KS provides the Services on an "as is" basis. KS represents and warrants that it owns or otherwise has sufficient rights to grant the Customer the rights defined in the Agreement.
- 20.2 KS shall use all reasonable efforts to maintain the availability of the Hosted Services in accordance with Schedule 1.
- 20.3 KS warrants to the Customer that the Kaptur System, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person under English law.
- 20.4 If KS reasonably determines, or any third party alleges, that the use of the Kaptur System by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, KS may at its own cost and expense:
- (a) modify the Kaptur System in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - (b) procure for the Customer the right to use the Kaptur System in accordance with these Terms and Conditions.
- 20.5 The Customer warrants to KS that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.
- 20.6 To the maximum extent permitted by applicable law, except as expressly provided in the Agreement, no warranties, whether express, statutory or implied, including, without limitation, the implied warranties of merchantability, non-interference with or non-infringement of any intellectual property rights, or suitability and/or the warranty of fitness for a particular purpose, including that the Kaptur System and Services will be uninterrupted or error free or work in combination with any third-party software, hardware or services, are made by KS.

## **21. Acknowledgements and warranty limitations**

- 21.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, KS gives no warranty or representation that the Kaptur System will be wholly free from defects, errors and bugs.
- 21.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, KS gives no warranty or representation that the Kaptur System will be entirely secure.
- 21.3 The Customer acknowledges that the Kaptur System are designed to be compatible only with that software and those systems specified as compatible in the Specification; and KS does not warrant or represent that the Kaptur System will be compatible with any other software or systems.
- 21.4 KS is not responsible for delays, delivery failures, or any other loss or damage caused by the transfer of data over communications networks and facilities, including the internet that are not under KS's control or direction. The Customer acknowledges that the Kaptur System and Services are subject to limitations, delays and other problems inherent in the use of communications networks and facilities.
- 21.5 KS is not responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, except those third parties engaged by KS to maintain and back up Customer Data.
- 21.6 The Customer expressly recognises that KS does not create or endorse any Customer Data processed by or used in conjunction with the Services or any associated Output. The Customer assumes sole responsibility for results obtained from the use of the Kaptur System and Services, and for conclusions drawn from such use, and KS disclaims all liability for any loss or damage caused by errors or omissions in any Outputs.

## **22. Indemnities**

- 22.1 KS shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by KS of Clause 20.3 (a "**KS Indemnity Event**").
- 22.2 The Customer must:
- (a) upon becoming aware of an actual or potential KS Indemnity Event, notify KS;
  - (b) provide to KS all such assistance as may be reasonably requested by KS in relation to KS Indemnity Event;
  - (c) allow KS the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to KS Indemnity Event; and
  - (d) not admit liability to any third party in connection with KS Indemnity Event or settle any disputes or proceedings involving a third party and relating to KS Indemnity Event without the prior written consent of KS,
- without prejudice to KS's obligations under Clause 22.1.
- 22.3 The Customer shall indemnify and shall keep indemnified KS against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by KS and arising directly or indirectly as a result of any breach by the Customer of Clause 10.4 (a "**Customer Indemnity Event**").

22.4 KS must:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer.
- (b) provide the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event.
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations, and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

without prejudice to the Customer's obligations under Clause 22.3.

22.5 The obligations set out in clause 22.1 do not apply to the extent that a third party claim is caused by or results from:

- (a) the Customer's use of the Kaptur System with other software, services or products not specified as compatible with the Kaptur System in the Specification;
- (b) the Customer's continued usage after being notified of allegedly infringing activity and being provided modifications that would have avoided the alleged infringement (for which KS shall use commercially reasonable efforts to substantially preserve the utility and functionality of the Kaptur System that is the subject of the claim); or
- (c) the Customer's use of the Kaptur System in a manner not in accordance with these Terms and Conditions if the third party claim would have thereby otherwise been avoided.

## **23. Limitations and exclusions of liability**

23.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence.
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation.
- (c) limit any liabilities in any way that is not permitted under applicable law;
- (d) exclude any liabilities that may not be excluded under applicable law; or
- (e) limit the Customer's obligations to pay the Charges.

23.2 The limitations and exclusions of liability set out in this Clause 23 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 23.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the Kaptur System and the other subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

23.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.



- 23.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 23.5 Neither party shall be liable to the other party in respect of any loss of use.
- 23.6 Neither party shall be liable to the other party in respect of any loss of or damage to business, contracts, opportunities, goodwill, wasted management or administrative time.
- 23.7 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this Clause 23.7 shall not protect KS unless KS has fully complied with its obligations under Clause 11.2 and Clause 11.3.
- 23.8 Neither party shall be liable to the other party in respect of any special, exemplary, indirect or consequential loss or damage.
- 23.9 The aggregate liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to KS under the Agreement in the 12-month period preceding the commencement of the event or events.
- 23.10 Unless a party notifies the other party that it intends to make a claim within 12 months after the event giving rise to the claim, then such other party will have no liability for that event. The party's notice must identify the event and grounds for the claim in reasonable detail.

## **24. Force Majeure Event**

- 24.1 Except for payment obligations, if a Force Majeure Event gives rise to a failure or delay in either party (the "**affected party**") performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event. If such Force Majeure Event occurs and continues for 60 days or longer, then the non-affected party may terminate the Agreement immediately by notifying the affected party.

## **25. Termination**

- 25.1 On expiry of the Initial Term, the Agreement renews automatically for successive periods equal to the Initial Term (each a **Renewal Term**) unless:
- (a) either party gives the other party not less than 45 days' notice to terminate prior to the end of the Initial Term or Renewal Term (as applicable), in which case the Agreement ends on the expiry of the Initial Term or the then-current Renewal Term (as applicable); or
  - (b) unless terminated earlier in accordance with the terms of the Agreement.
- 25.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of the Agreement, and the breach is not remediable; or
  - (b) the other party commits a material breach of the Agreement, and the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.
- 25.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- (a) the other party:
  - (i) is dissolved.
  - (ii) ceases to conduct all (or substantially all) of its business.
  - (iii) is or becomes unable to pay its debts as they fall due.
  - (iv) is or becomes insolvent or is declared insolvent; or
  - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors.
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

25.4 KS may suspend the provision of the Services under the Agreement and/or terminate the Agreement immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to KS under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) KS has given to the Customer at least 14 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 25.4.

25.5 KS may suspend the provision of the Services under the Agreement immediately by giving written notice to the Customer if the Customer exceeds any storage capacity or other resources limitation specified in the Services Order Form.

## **26. Effects of termination**

26.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 5.7, 12.7, 13.2, 17.2, 17.4, 18, 19, 22, 23, 26, 29, 30 and 31.

26.2 Except to the extent that these Terms and Conditions expressly provide otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

26.3 Within 30 days following the termination of the Agreement for any reason:

- (a) the Customer must pay to KS any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
- (b) save where KS has terminated the Agreement in accordance with Clause 25.2, 25.3, 25.4 or 25.5, KS must refund to the Customer any Charges paid by the Customer to KS in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

26.4 On the condition that the Customer has paid all Charges due to KS in full, KS shall maintain Customer Data and Customer access to the Kaptur System during the Retention Period. The

Customer may, during the Retention Period, download any Customer Data or Outputs from the Kaptur System. Thereafter, following expiry of the Retention Period, KS will delete or destroy all copies of Customer Data (including Outputs) without liability or additional notice, unless legally prohibited from doing so. Customer Data (including Outputs) cannot be recovered once deleted or destroyed. The Customer may by written notice request KS to delete or otherwise dispose of the Customer Data prior to the expiration of the Retention Period.

## **27. Subcontracting**

- 27.1 Subject to any express restrictions elsewhere in these Terms and Conditions, KS may subcontract any of its obligations under the Agreement.
- 27.2 KS shall remain responsible to the Customer for the performance of any subcontracted obligations.

## **28. Notices**

- 28.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.
- 28.2 Any notice given by one party to the other under these Terms and Conditions must be:
- (a) delivered personally;
  - (b) sent by courier;
  - (c) sent by recorded signed-for post; or
  - (d) sent by email,
- using the relevant contact details set out in the Services Order Form.
- 28.3 The addressee and contact details set out in the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 28.
- 28.4 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
- (a) in the case of notices delivered personally, upon delivery;
  - (b) in the case of notices sent by courier, upon delivery;
  - (c) in the case of notices sent by post, 48 hours after posting; and
  - (d) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent).

## **29. Non-solicitation**

- 29.1 In order to protect the legitimate business interests of each of the parties, each party covenants with the other party that neither it nor any of its Affiliates shall (except with the prior written consent of other party):
- (a) attempt to, or actually, solicit or entice away from employment or service of the other party;
- or

(b) employ or engage or otherwise facilitate the employment or engagement of,  
any Restricted Person.

29.2 Each party shall be bound by the covenant set out in clause 29.1 during the Term and for a period of 12 months after termination or expiry of Term.

29.3 For the purposes of this clause 29.1, a Restricted Person shall mean, in respect of one party, any person directly or indirectly employed or engaged by the other party or any of its Affiliates during the Term and/or who has been directly or indirectly engaged in the provision of services either as principal, agent, employee, independent contractor or in any other form of direct or indirect employment or engagement by the other party or any of its Affiliates for the benefit of such party, whether during or prior to the Term.

### **30. General**

30.1 Neither party shall assign, transfer or otherwise deal with its contractual rights and/or obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed; providing that a party may assign the entirety of its rights under the Agreement to any Affiliate of that party or to any successor to all or a substantial part of the business of that party from time to time.

30.2 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach. No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

30.3 If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If that modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification or deletion under this clause 30.3 does not affect the validity or enforceability of the rest of the Agreement.

30.4 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party. The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

30.5 No variation of the Services Order Form is effective unless it is in writing and signed by the parties. KS may amend the terms of these Terms and Conditions from time to time provided that KS provides prior written notice of such proposed amendment to the Customer. In such circumstances, any undisputed revised terms of these Terms and Conditions will take effect thirty (30) days from the date of notice to the Customer, unless specified later (but not earlier). The Customer's continued use of the Kaptur System and/or Services shall be deemed to constitute its acceptance of any such revised terms.

30.6 The Services Order Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter. Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement. The provisions of this Clause 30.6 are subject to Clause 23.1.

30.7 Nothing in the Agreement is intended to establish any partnership or appoint either party the agent of the other, or otherwise authorise either party to commit the other in any way whatsoever. Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

30.8 These Terms and Conditions shall be governed by and construed in accordance with English law.

30.9 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

### **31. Interpretation**

31.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

31.2 In the event of a conflict between the Services Order Form and any other element of the Terms and Conditions, the Services Order Form shall take precedence.

31.3 In these Terms and Conditions:

- (a) the terms **including, include, in particular, for example** and other similar terms are illustrative and do not limit the sense of the words preceding them;
- (b) a reference to **written** or **in writing** includes email but not fax, SMS, WhatsApp or any other social media;
- (c) headings do not affect the interpretation of these Terms and Conditions;
- (d) words in the singular include the plural and vice versa; and
- (e) unless otherwise specified, references to Clauses are to Clauses in these Terms and Conditions and to the Schedules are to the Schedules to these Terms and Conditions and to paragraphs are to paragraphs in the Schedules. The Schedules have effect as if set out in full in the body of the Terms and Conditions and any reference to the Terms and Conditions or to the Agreement includes the Schedules.

### **SCHEDULE 1 (AVAILABILITY SLA)**

1. In this Schedule 1, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between the public internet and the network of the hosting services provider for the Hosted Services.
2. KS shall ensure that the uptime for the Hosted Services is at least 99.5% during each period of three (3) months.
3. Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether KS has met the uptime guarantee given in Paragraph 2:
  - (a) a Force Majeure Event.
  - (b) a fault or failure of the internet or any public telecommunications network.

- (c) a fault or failure of any of KS's own hosting infrastructure services providers, unless such fault or failure constitutes an actionable breach of the contract between KS and that company.
- (d) a fault or failure of the Customer's computer systems or networks.
- (e) any breach by the Customer of the Agreement; or
- (f) scheduled maintenance carried out in accordance with the Agreement.

## **SCHEDULE 2 (DATA PROCESSING INFORMATION)**

### **1. Categories of data subject**

Clients of KS, owners, occupiers and residents of properties, details of which are stored using the Kaptur System.

Agents acting for those landlords.

### **2. Types of Personal Data**

Names and contact details; information linking individuals to properties.

### **3. Purposes of processing**

For the provision and monitoring of the Services only.

#### **A. Electronic access control**

Electronic access control to ensure no unauthorised use of the data processing systems including password procedures with secure passwords and encryption of data during transfer and storage;

#### **B. Availability and resilience**

Control systems to prevent accidental or willful destruction or loss, including on-site and off-site back-up systems; mirroring of permanent storage; uninterruptible power supplies; virus protection and removal systems; contingency planning; disaster recovery planning.

### **4. Sub-processors of Personal Data**

Amazon Web Services, Inc

Greyridge Software Limited – V1 only and V2 will be provided by Chris Dean

## **SCHEDULE 3 (SPECIFICATION)**

- 1. The Mobile App will at any time support the current major version and the immediately prior version of the iOS and Android operating systems.
- 2. The Hosted Services are tested and certified using the current major version of the Google Chrome web browser. Customers are welcome to use other desktop or mobile web browsers

to access the Hosted Services on the basis that all functionality has not been certified on such browsers and may not work as intended.

3. KS reserves the right to change the web browser used to test and certify the Hosted Services and will provide Customers with 30 days written notice in advance of doing so.
4. To optimise the performance of the Kaptur System, it is the Customer's responsibility to:
  - (a) keep their devices and hardware in functioning order and up to date with relevant operating system updates and security patches;
  - (b) manage the storage/memory on their devices and hardware to ensure they have sufficient storage to use the Services; and
  - (c) ensure they have sufficient network bandwidth to enable uploading large quantities of multi-media data in accordance with the use of the Services.
3. KS will make the Mobile App available through the Apple iOS App Store and Google Play Store only.
4. The Kaptur System is not compatible with any Customer Third Party Services save for those Customer Third Party Services mentioned in the Services Order Form.