

Terms and Conditions

PLEASE READ THE TERMS AND CONDITIONS OF USE CAREFULLY BEFORE USING THIS SITE. We maintain this web site as a service to our Users, and by using our site you are agreeing to comply with and be bound by the following terms of use. Please review the following terms and conditions carefully, and check them periodically for changes. If you do not agree to the terms and conditions, you should not review information or obtain goods, services or products from this site.

PLEASE NOTE: YOU MUST BE AN INDIAN RESIDENT WITH AN ACTIVE MOBILE PHONE CONNECTION IN ORDER TO PARTICIPATE ON OUR WEB SITE. IF NOT, YOU HAVE TO PROVIDE YOUR COUNTRY CITIZENSHIP ALONG WITH GOVERNMENT ADDRESS PROOF TO UTILIZE OUR SERVICE.

The following are the Terms and Conditions of this Agreement for the use of services offered by **KAP COMPUTER SOLUTIONS PVT. LTD.** herewith **KAPS** through www.kapsystem.com ("KAPS", "www.kapsystem.com website", "KAPS services", "the Products and/or Services", "the Products" or "the Services") to the User ("User" or "Users"). Any User availing the Products and/or Services and/or any part thereof shall invariably be bound by these Terms and Conditions.

IMPORTANT

The Products and/or Services offered under www.kapsystem.com are provided by KAP COMPUTER SOLUTIONS PVT. LTD KAPS is only a DOT COM that promotes www.kapsystem.com products and services. KAPS, the KAPS logo and any other names and symbols of KAPS products and services referred to on the KAPS website are trademarks of KAPS or its holding companies.

In accordance to the Information Technology Act, 2000 (Government of India), Telecom Regulatory Authority of India (TRAI) Act 1997 & 2000, Telecom Tariff Order 1999 (Forty Fifth Amendment 2007) and the common law of contract, these Terms and Conditions are valid, binding and enforceable for all persons that access the KAPS website, the web pages or any part thereof. Hence, if you do not agree to be bound over by these Terms and Conditions, then you may not use the KAPS website. The reasonable use of the KAPS website shall automatically bind the Users to this agreement.

It is important to understand that KAPS offers free SMS services, extend to limit, to its Users so that they can send personal SMS messages to their known persons. It is vital to realize that communication should be between known persons. You may not use the KAPS products and/or services to sell a product or service, or to increase traffic to your business for commercial reasons, such as advertising sales.

During the registration process, the User has to provide his/her mobile number that acts as User's identity while using KAPS products and/or services. By registering on KAPS website, user explicitly agrees to update KAPS whenever there is a change in the status of his/her mobile number.



Delivering contextual advertisements and related links is the key to provide our Users this free service. A standard SMS can be up to 160 characters. Users send free SMS up to 100 characters in length. Advertisers append a contextual advertisement to this SMS making up the rest of the 60 characters. Users get this free SMS text messaging service in exchange for opting in to have targeted ads appended to their messages. As a User, you opt in to carry advertisements in your personal SMS and in exchange you get to send SMS free.

DEFINITIONS AND INTERPRETATION

'KAPS' means KAP COMPUTER SOLUTIONS PRIVATE LIMITED, having the Corporate Identity Number U72200KA2009PTC050895 and situated at No. 1560, East End Main Road, 9th Block Jayanagar, Bangalore, Karnataka, India - 560 069, and which includes all its subsidiaries, owners, shareholders and business units.

'KAPS Website' means the entire website (and the WAP site) www.kapsystem.com, including any page, part or element thereof, which is owned and operated by KAP COMPUTER SOLUTIONS PVT. Ltd., For the avoidance of doubt, 'we', 'us' and 'our' shall also mean KAPS.

'User' means any person or entity that enters the www.kapsystem.com website and/or uses the KAPS Products/Services at www.kapsystem.com or offline, notwithstanding the fact that such person only visits the home page of the website and/or downloads the Products. For the avoidance of doubt, 'you' and 'your' shall also refer to a User.

'IP address' means the unique identifier for your computer or such other device through which you access the KAPS website.

'Personal Data' means all data that identifies you and that is processed by us, for example, your name, city, email address, mobile number and any data that forms part of the Preferences Data, Location Data and/or Traffic Data that could be used to identify you.

'Preferences Data' means all data that we process regarding your preferences. This will include the preferences that you provide to us via the Website and/or the data that we collect through your responses to the Promotional Messages, your Traffic Data etc.

'Promotional Messages' means advertisement taglines appended as part of the SMS you send or receive and/or pure promotional SMS messages sent to KAPS Users.

KAPS PRODUCTS AND/OR SERVICES

The Products and/or Services offered on KAPS website consist of, but not limited to, sending free SMS of up to 100 characters. The Products and/or Services consist of **Web Hosting, Payment Gateway Integration, Web Application Development, Website Designing, Customized Application Development, Outsourcing, extended to many more services in IT Corridor.** If applicable, synchronization software and/or application programming interface access.



The Users shall be held responsible for obtaining and maintaining all computer hardware, software and communications equipment that are needed to access the Products and/or Services, and for paying all the chargeable access charges (e.g., ISP, telecommunications) that are incurred while using the Products and/or Services.

To access and use KAPS Products and/or Services, Users need to have a KAPS Account ("account"). For this account, the User needs to complete a simple one-time registration process by providing all current, complete and accurate information as prompted by the Registration Form. Entering inaccurate details might result in suspension or blockage of the account. The User has to be accepted his/her unique mobile number as "username" (It should be 10 digit numeric). KAPS shall send out a "password" to the mobile number of the User as entered during the registration process. The User can then access the KAPS website using the combination of his/her "username" and "password".

Account Tied to Mobile Number - The account you are opening by accepting this Agreement is tied to the mobile phone number you enter during the registration process. You explicitly agree to update KAPS whenever there is a change in the status of your mobile number.

On the first login, the User is prompted to change his password. The Users shall be entirely responsible for maintaining the confidentiality regarding their password and account information. The user shall understand their account with KAPS website is as confidential as their own mobile phone. In addition, the Users shall be entirely responsible for any and all activities that occur under their accounts. KAPS shall not be held liable to any third party claims and/or actions taken with respect to the Products and/or Services being offered. The Users agree to notify KAPS immediately regarding any unauthorized use of their accounts or of any other breach of security.

KAPS finds no activity in any User's account for more than 30 days, KAPS, in its sole discretion, might terminate/suspend such User's account, without any prior notification.

Charges - The KAPS products and/or services include features without charges from KAPS. But, your mobile phone operator may charge you for usage. The User is liable for any mobile phone charges incurred (usage, subscription, etc) as a result of using any of KAPS services. Please consult your mobile phone operator's pricing plan to determine the charges for sending and receiving SMS text messages, WAP push, GPRS connectivity etc.

KAPS shall make no guarantees for the uninterrupted and continuous availability of the Products and/or Services or of any specific feature(s) of the Products and/or Services. The Products and/or Services are AS IS and are subject to the disclaimers of warranty and the limitations of liability as found in this agreement and which are subject to testing by the Users before entering into this agreement.

KAPS reserves the right to change or terminate the Products and/or the Services and/ or alter the Terms and Conditions of this Agreement at any time with/without notice and/or with immediate effect.



USER PRIVACY

KAPS respects the privacy of its Users and assures that it shall not monitor, edit, or disclose any personal information about the Users or about the User's KAPS account, which includes all of its contents, without the User's prior permission. However, this will not apply if KAPS has to:

- Conform to the statutory and/or legal requirements or comply with the legal process;
- Protect and defend the rights or property of KAPS;
- Enforce this Agreement or protect KAPS business or reputation, including without limitation, upon termination, cancellation or suspension of this Agreement by KAPS;
- Respond to the request for identification in connection with the claim of copyright or trademark infringement by the Users or to a claim by a third party that the User is using the Products and/or Services in connection with an infringement, illegal or improper activity; or
- Act to protect the interests of the Users or any others in general

Submissions - We welcome your comments and suggestions regarding the web site. However, any comments, feedback, notes, messages, ideas, suggestions or other communications (collectively, "Comments") sent by you to KAPS shall be and remain the exclusive property of KAPS. Your submission of any such Comments shall constitute an assignment to KAPS of all worldwide right, title and interest in all copyrights and other intellectual property rights in the Comments. KAPS will be entitled to use, reproduce, disclose, publish and distribute any Comments you submit for any purpose whatsoever, without restriction and without compensating you in any way. For this reason, we ask that you not send us any Comments that you do not wish to assign to us, including any confidential information or any original creative materials such as stories, product ideas, computer code or original artwork. You agree not to submit any Comments that may be submitted in violation of law or any agreement or obligation to keep the content of such Comments confidential. KAPS expressly disclaims any interest in any Comments that you are not authorized to submit. Of course, any information you submit which personally identifies you will be subject to our Privacy Policy.

We usually send all the message to everyone your registered mobile number as a sender id, not all the time, the sender name shall be displayed as (or KAPS mobile number in case of CDMA subscribers), User's mobile number, as recorded in his/her profile, shall be appended at the start of his/her personal message, or wherever appropriate. This is done purely to let the receiver know from whom he/she is receiving the message from.

The User agrees that KAPS can access his/her account, including the message content, as stated above or respond to product specific queries or technical issues.

The User hereby permits KAPS to send him/her communication via email and/or SMS of any updates, upgrades, notices, or any other information that KAPS deems important for the Users to know, relating to the Products and/or Services.

Also, KAPS might send certain appropriate and/or contextual promotional messages to its Users, based on the User demographics, traffic usage etc.

USER OBLIGATIONS AND DUTIES

KAPS expressly prohibits any commercial use of KAPS products and/or services. The User gives irrevocable agreement to abide by all the applicable local, national and international laws and regulations and is solely responsible for all acts or omissions (that occur under his/her account or password), including responsibility for the content of any transmissions through KAPS products and/or services.

The Users acknowledge that KAPS and its licensors retain ownership of all the propriety applications, software, intellectual property "IP" (Intellectual Property) and any portions or copies thereof in relation to them, and all rights therein.

KAPS provides by way of example, and not as a limitation, the stipulation that the Users agree not to, directly or indirectly:

- Create a false identity or forged email or mobile phone number or otherwise attempt to mislead others as to the identity of the sender or the origin of the message;
- Reverse engineer, de-compile, disassemble or otherwise make any attempt to establish the source code or the underlying ideas or algorithms of the Products and/or Services;
- Modify, translate, or create distinctive and derivative works based on the Products and/or Services;
- Use the Services in any way connected to any chain letters, junk SMS text messages, spam or any unsolicited messages (commercial or otherwise);
- Harvest or otherwise collect, information about other Users, including email addresses, without obtaining their consent;
- Transmit any unlawful, harassing, libelous, or abusive, threatening, and harmful, or vulgar, obscene or otherwise any objectionable material of any kind or nature;
- Transmit any material that is an infringement of the intellectual property rights or other rights of third parties, which will include any trademark, copyright or right of publicity;
- Defames or slanders any person, or try to infringe upon any person's privacy rights;
- Transmit any material that may contain any viruses, Trojan horses, worms, time bombs, cancel bots, or any other harmful or deleterious programs;
- Interfere with or disrupt the networks connected to KAPS or violate the regulations, policies or procedures of such networks;
- Attempt to gain unauthorized access to the Products and/or Services or to other accounts (through password mining or other means), computer systems or networks connected to KAPS;
- Interfere with another User's peaceful use and enjoyment of the Products and/or Services; or
- Engage in any other activity that KAPS could believe may subject it to criminal liability or civil penalty or judgment



You agree to not use the Products and/or Services to:

- Upload, post, transmit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable
- Harm minors in any way
- Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity
- Interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service
- "Stalk" or otherwise harass another

LIMITATIONS OF KAPS PRODUCTS AND/OR SERVICES

SMS Messages will be considered as delivered when KAPS has delivered, or sent the messages to the immediate destination that KAPS Core Messaging Platform has been programmed to do, which include SMPP/SMTP servers, or Mobile Telephone Networks. In addition, any other intermediary server or API is also deemed to be the point of dispatch of the message. KAPS does not extend guarantee of delivery on behalf of the Mobile Telephone Networks or Servers, as delivery (or failure to deliver) to the intended receiver/handset/device is outside of the control of KAPS.

Although KAPS makes all efforts to ensure delivery and prides itself on speedy delivery of messages, messages may be delivered late as a result of queuing or network congestion/traffic.

KAPS lays no claim to its network coverage. Although KAPS focuses on giving extensive coverage aggregation services, the mobile networks may choose from time to time to not be a part of KAPS or of its Service Providers' Networks. This may lead to messages not being delivered to those particular networks. At any point in time, there can be networks that KAPS is unable to deliver to.

Though the sender name shall be displayed as www.kapsystem.com (or KAPS mobile number in case of CDMA subscribers), User's mobile number, as recorded in his/her profile, shall be appended at the start of his/her personal message, or wherever appropriate. It is the User's responsibility to provide correct mobile number when registering with KAPS website.

KAPS assumes no responsibility for the deletion or failure to store information. Currently, KAPS has set an upper limit on the number of messages an User may send; however, in the future, with/without prior notification, KAPS may increase or reduce the number of SMS messages able to be sent by a user and the amount of storage space available to each User.

KAPS reserves the right to block the transmission and receipt of an SMS message if an advertising sponsor does not exist in the destination region or an intended recipient has requested that all KAPS messages be blocked from delivery to their mobile phone (Private Do Not SMS Registry).



KAPS reserves the right to block messages from being sent across its network that are the subject of an end receiver's complaint or messages that KAPS considers to be unlawful, harassing, libelous, abusive, threatening, and harmful, vulgar, obscene or otherwise objectionable.

TERMINATION, CANCELLATION AND/OR SUSPENSION OF USER ACCOUNT

KAPS continually makes efforts to improve its existing Products and/or Services, apart from adding new ones, resulting in frequent updates or modifications. Such changes often dictate that we simultaneously modify our Terms and Conditions. Hence, KAPS shall have the right to modify any or all the terms of this Agreement and to change or drop any aspect or feature of the KAPS Products and/or Services, as it deems reasonably necessary. Such changes shall be effective immediately upon posting of such addition, change or deletion. Any use by the Users of the Products and/or Services after any such change has been posted, shall be construed as the acceptance of the change. If the User is not agreeable to any such change, the relevant Product and/or Services or the User account, may be cancelled in accordance with the procedures for cancellation set forth in this Agreement. The Users acknowledge their responsibility to read and review this Agreement from time to time and also to be aware of any such changes.

The User has the right and is free to terminate or cancel this Agreement and his/her KAPS account at any time and for any reason. The User only has to intimate KAPS by sending an email (support@kapsystem.com) of this intention.

KAPS can terminate, cancel and/or suspend this Agreement and/or the User account any time if, in KAPS sole discretion, the User has breached the Terms of this Agreement. Such termination, cancellation and/or suspension by KAPS shall come into effect immediately after giving notice by KAPS to the Users in any reasonable manner, including but not limited to, notification by email and/or SMS. In addition, KAPS has the right to recover any and all damages from the Users arising from or relating to the event(s) giving rise to the suspension, termination or cancellation.

KAPS reserves the right to suspend the User's account at any stage for any reason that it may deem necessary in order to continue to provide any of its Products and or Services in a way that may be hindered by the User's status as being a KAPS User, or the content of the messages originating from the User.

In the event that KAPS has cause to receive complaints from recipients or third parties with respect to the use of the Products and/or Services, KAPS additionally reserves the right, in its sole discretion, to disclose any and all information to the recipient, applicable authorities or any other related party with regard to its Users.

Upon the termination, cancellation and/or suspension of this Agreement, the Users remains responsible for any obligations that have been accrued including, but not limited to, payment of any costs or charges, including legal obligation that may be arising in connection with such termination, cancellation and/or



suspension, and payment of all outstanding transaction fees for use prior to said termination, cancellation and/or suspension occurs. Upon termination and/or cancellation, for any reason, the User agrees to immediately cease using KAPS Products and/or Services and removes all the KAPS software and applications on any computer, database, and server (local or remote) in its possession or under its control. KAPS shall have no obligation whatsoever to the User after the termination or cancellation of this Agreement.

WARRANTIES AND LIABILITIES

While it is to be understood that KAPS shall make all efforts to ensure that the Products and/or Services are reasonably available, through the required access protocols, and shall endeavor to maintain connections to as many Aggregators, Gateways and Carriers as are, in its discretion, commercially viable, the User acknowledges that KAPS / www.kapsystem.com cannot guarantee the availability of the Products and/or Services at all times and all locations. The User expressly acknowledges and agrees that the use of the Products and/or Services is generally at its own risk and that KAPS Products and/or Services are being provided "AS IS" and "AS AVAILABLE" without any warranties or conditions whatsoever, express or implied.

KAPS does not make any warranties or representations that the KAPS website shall be available at all times. Users acknowledge that the KAPS website may be unavailable due to updates or other causes beyond the reasonable control of KAPS, including, but not limited to virus infection, unauthorized access (hacking), power failure or other "acts of God".

Though KAPS shall take all reasonable caution about the quality and accuracy of content available from the KAPS website, KAPS does not make any warranties or representation that the content available shall in all cases be true, correct or free from any errors. The information, ideas and opinions expressed on the KAPS website should not be regarded as professional advice or the official opinion of KAPS, and Users are strongly encouraged to consult professionals before taking on any course of action that is related to the information, ideas or opinions expressed on the KAPS website.

KAPS shall take all reasonable steps to secure the content of the KAPS website and to secure the information provided by and collected from Users to prevent unauthorized access and/or disclosure. However, KAPS does not make any warranty or representation that the said content shall be 100% safe or secure.

KAPS is under no legal duty to encrypt any of the content or communications from and to Users and is also under no legal duty to provide the digital authentication of any pages on the KAPS website.

Hyperlinks to the KAPS website from any other source shall be directed to the home page of the KAPS website. Links beyond the KAPS home page may only be used with KAPS prior written consent and permission. Persons that wish to link to pages beyond the home page of the KAPS website without KAPS



prior written consent shall do so at their own risk and indemnify KAPS against any loss, liability or damage that may result from the use of such hyperlinks.

KAPS may provide hyperlinks to websites not controlled by KAPS and such hyperlinks do not imply any endorsement, agreement on or support of the content, products and/or services of such websites. KAPS does not editorially control the content, products and/or services on such websites and shall not be liable, in any manner whatsoever, for the access to, or the inability to access, or the use, inability to use or content available on or through such websites.

KAPS (which also includes its owners, employees, suppliers, internet services providers, partners, licensors, affiliates and agents) shall not be held liable for any damage, loss or liability of any nature incurred by whomever and resulting from use of KAPS Products and/or Services, the KAPS website, websites linked to the KAPS website, any content available on the KAPS website, any downloads from the KAPS website, and/or any other reason which is not directly related to KAPS gross negligence.

KAPS (which also includes its owners, employees, suppliers, services providers, partners, licensors, affiliates and agents) shall in no event be held liable to the Users or anyone else for any inaccuracy, error or omission in, or loss, injury or damage caused in whole or in part by the failures, delays or interruptions of the Products and/or Services generally, and any aspect ancillary thereto; the User agrees to indemnify KAPS for any and all third party claims arising from any such or of the failures, delays or interruptions in connection with regard to use of the Products and/or Services.

Without in any way limiting the foregoing, KAPS shall in no event have (in the aggregate) any monetary liability whatsoever in connection with this Agreement.

The KAPS Products and/or Services are not fault-tolerant and are not designed, manufactured or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, including but not limited to use in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of KAPS could lead directly to death, personal injury, or to severe physical or environmental damage ("high risk activities"). In addition to all the other disclaimers and limitations contained within this Agreement, KAPS and its affiliates, agents, content providers, services providers and licensors specifically disclaim any express or implied warranty of fitness for high risk activities which may also include emergency notification services.

THIRD PARTY BENEFICIARIES

Notwithstanding anything to the contrary contained herein, the provisions for the Warranties and Liabilities set forth herein are for the benefit of KAPS and its affiliates, agents, content providers, services providers, partners and licensors and each shall have the right to assert and enforce such provisions directly on its own behalf.

INDEMNIFICATION

The User agrees to indemnify, hold harmless, and defend KAPS and its affiliates, agents, content providers, services providers, partners and licensors against any and all claims, liabilities, damages, all costs and expenses (including, but not limited to consequential damages, incidental damages, special damages, attorneys' fees and disbursements) arising from or relating to –

- The use of the Products and/or Services in any manner which violates the terms of this Agreement or otherwise violates any law, rule, or regulation and
- Any claims made by third parties arising from issues related to any failure, delay or interruption of the Products and/or Services.

The User agrees to cooperate as fully as reasonably required in the defence of any claim. KAPS reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by the User.

MISCELLANEOUS

The failure of either KAPS or the User to exercise in any respect any right provided for herein will not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise continue to remain in full force and effect and is enforceable.

This Agreement, any reference to the singular includes the plural and vice versa, any reference to natural persons includes legal persons and vice versa and any reference to one gender includes the other genders.

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Union of India. The English language version of this Agreement shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions, if any.

No agency, partnership, joint venture, or employment is said to be created as a result of this Agreement and the User does not have any authority of any kind to bind KAPS in any respect whatsoever. In any action proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover all the costs and attorneys' fees.

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery services; and upon receipt, if sent by certified or registered mail, return receipt requested.

These Terms and Conditions constitute the whole agreement between KAPS and the User and neither party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.