# Terms of service

**Software as a Service**

By purchasing any Software-as-a-Service (SaaS) subscription or additional service or product from Kensho Pty Ltd Pty Ltd (Kensho Pty Ltd) Kenshoworld and or TelemetryNow.com, you(The Customer) are entering into an agreement with Kensho Pty Ltd that is bound by the Terms of Service ("TOS") outlined in this document. This Agreement shall be construed in all respects in accordance with the laws of the state of Queensland, Australia applicable to contracts enforceable in that state. By completing the ordering process, you agree to have read, understood, and be bound by these Terms of Service.

**1. Definitions**

1.1 Software-as-a-Service (SaaS) subscription – Any software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted.

1.2 Additional services – Any product or service that is considered an "add-on" to a primary hosting service, or which covers one off charges for additional work carried out by a Kensho Pty Ltd staff member.

1.3 Resource usage – Any and all allocated resources provided to the customer to allow for the storage and delivery of the web based content within a SaaS. This includes but is not limited to disk space, Memory, CPU, Bandwidth.

1.4 Subscription – The term(monthly, quarterly, semi-annually, annually) applicable to the purchased service.

1.5 Members Portal – An account management interface for managing the billing aspects of hosting or additional services purchased including invoices, contact information, and domain registrations.

**2. FEES**

2.1 Payment – Establishment of any SaaS or additional service is dependent upon receipt by Kensho Pty Ltd of payment of stated charges as outlined on the Kensho Pty Ltd website or any other documentation or custom quote provided to The Customer. Subsequent payments are due on the anniversary date of the subscription term in advance for the following subscription term's service. All service fees are disclosed within a product description or will be disclosed to the customer prior to payment being required for any custom quotations or services ordered via phone.

2.2 Setup Fee – The Customer agrees to pay in advance and in full any amount of a non-recurring nature required for the initial deployment of the purchased hosting service. Any such fees are listed as setup fees in the service description or will be disclosed in any custom quotations prior to any server provisioning, equipment acquisition or installation by Kensho Pty Ltd.

2.3 Recurring fee – All subscriptions for SaaS provided by Kensho Pty Ltd are recurring by nature and the Customer agrees to pay any recurring fees listed in the Service description in advance each anniversary date until such time as The Customer submits a cancellation request in accordance with these Terms of Service.

2.4 Non-Refundable Fees – Certain fees paid to Kensho Pty Ltd are considered non-refundable due to the nature of the product or service purchased and this includes but is not limited to the following:

2.4.1 Third Party Products – Products supplied by Kensho Pty Ltd where Kensho Pty Ltd acts as a reseller for another provider (e.g. software licences, domain registrations, SSL certificates, third party product licences) are provided as non-refundable products and refunds cannot be provided once the product has been activated on an account.

2.4.2 Advanced Administration Time – Services where additional labour is to be carried out by Kensho Pty Ltd staff are non-refundable once the additional labour has been carried out.

2.5 Additional Resource Usage fees – Should Customer exceed the total amount of included hosting resource utilisation as described in Service Definitions. Customer agrees that overage fees will apply and be due immediately.

2.6 Invoices and Statements – invoices are provided to The Customer by email using the contact email address assigned to the Customer or any additional billing contacts within the Kensho Pty Ltd billing system. Invoices cannot be sent via postal mail or any other courier style service.

2.7 Statements – Kensho Pty Ltd does not provide written or printed statements. However, an account's invoice history can be requested by The Customer contacting Kensho Pty Ltd via the email admin@kensho.com.au.

2.8 Failure to Pay – Kensho Pty Ltd may temporarily deny service or terminate this Agreement upon the failure of The Customer to pay a subscription's applicable recurring fees where the fees reach 28 days past due. Such termination or denial will not relieve The Customer of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees. Accounts that are not collectable by Kensho Pty Ltd may be turned over to an outside collection agency for collection which may result in additional fees or fines being payable.

**3. REFUNDS, DISPUTES AND CANCELLATIONS**

3.1 Refunds – All payments to Kensho Pty Ltd are non-refundable. One time setup and additional fees are non-refundable except where an ordered SaaS product or additional service cannot be provided by Kensho Pty Ltd. Where an ordered service cannot be provided but an alternative service is provided in its place, all applicable one-time setup fees will remain payable. Refunds are not provided automatically and must be requested by the customer within 30 days of requesting cancellation.

3.2 Disputes – All overcharges or billing disputes must be reported within 60 days of the time the dispute occurred. If you dispute a charge to your credit card issuer that, in Kensho Pty Ltd' sole discretion is a valid charge under the provisions of these Terms of Service, you agree to pay Kensho Pty Ltd an "Administrative Fee" of not less than $50 and not more than $150.

3.3 Service Cancellation by The Customer – Kensho Pty Ltd provides an ongoing recurring service which will remain active until such time as The Customer submits a cancellation request via email to admin@kensho.com.au.. Requests for cancelling accounts must be submitted within 20 business days prior to the next due date to ensure no further fees are payable.

3.3.1 No Cancellation Fee – Kensho Pty Ltd does not charge a cancellation fee and does not refund prepaid fees.

3.3.2 Customer Data – Upon successful cancellation of a hosting service, all data stored within the cancelled service will be removed. Kensho Pty Ltd does not provide any guarantees that The Customer's data will be retrievable once the cancellation process has been completed.

3.4 Service Cancellation by Kensho Pty Ltd – Kensho Pty Ltd may cancel The Customer's hosting service for any breach of these Terms of Service or the AUP without prior notification. Kensho Pty Ltd does not provide any guarantees that The Customer's data will be retrievable once the cancellation process has been completed.

**4. ACCOUNT OWNERSHIP**

4.1 Account Owner – The point of contact in the Kensho Pty Ltd database is considered the Account Owner. Individual SaaS products or additional services that are associated with an account, are controlled by the Account Owner and modifications and updates to an account's information can only be actioned by the Account Owner or their Authorised Additional Contact. The Account Owner is established at the time the account is created. The details of an Account Owner must be that of a real person. It is not permitted to use fictitious or "fake" names for the details of an Account Owner. Accounts containing fictitious or "fake" names, and contact details that do not reflect the details of a real person may be suspended or terminated without notice.

4.2. Account Information – The Customer warrants that all information provided to Kensho Pty Ltd is truthful and correct and accurate and up to date and that the person designated as the Account Owner is of or above 18 years of age and is legally empowered to act and enter into this contract as The Customer or on behalf of The Customer as indicated on the relevant application form.

4.2.1 Maintaining Account Information – The Customer is responsible for maintaining the contact information stored within their account and failure to maintain up to date contact information does not warrant the waiving of any fees, overdue fees, or warnings issued by Kensho Pty Ltd.

4.3 Authorised Additional Contact – The Account Owner may add and authorise an additional contact person or persons to act on their behalf. The Account Owner is limited to adding one additional billing contact and a maximum of three additional technical contacts and accounts found to have more than the allowed maximum additional contacts will be requested to remove the excess to ensure adherence to the limits.

4.4 Account Transfer – The Account Owner role can be transferred to another Authorised Additional Contact or Kensho Pty Ltd Customer by contacting our billing support team to obtain the appropriate steps. To contact billing support via email, use the following address admin@kensho.com.au.

4.5 Account Closure – An account will be automatically deactivated when no active SaaS product or additional services are being operated under the account.

**5. GENERAL TERMS AND SUPPORT BOUNDARIES**

5.1 Support Boundaries – Kensho Pty Ltd provides technical support to its direct customers only and does so in accordance with its defined support boundaries. Kensho Pty Ltd' support is designed to assist customers with the use of and connections to the SaaS products and does not extend to diagnosing or fixing issues that relate to the coding of external devices or external applications connecting to the SaaS product.

5.1.1 Support to Customers of The Customer – Kensho Pty Ltd does not provide direct technical support to customers of The Customer. Resellers, Affiliates and customers must not advise their customers to contact Kensho Pty Ltd directly and should instead contact Kensho Pty Ltd on their customer's behalf. Kensho Pty Ltd is happy to assist with all support issues that fall within the scope of our support boundaries when contacted by The Customer.

5.2 Advanced Support – Where Kensho Pty Ltd can and agrees to provide advanced support to The Customer, additional service fees are required for the provision of the advanced support. Fees for advanced support are payable in advance based on the time estimated by Kensho Pty Ltd for the additional task to be carried out.

Kensho Pty Ltd provides no guarantees that an issue or task will be resolved within the estimated time, and if further time is required, additional advanced support time will need to be paid for prior to any further labour being carried out.

5.3 Responsibility for Content and Account Activity – The Customer is solely responsible for the content stored on and served by the SasS purchased and the activity of any scripts or material created under the service. The Customer must maintain the security of all account passwords and applications or scripts and ensure all scripts under the service are free from malicious content that may harm any part of the Kensho Pty Ltd infrastructure, other client accounts hosted by Kensho Pty Ltd, or the external systems of visitors viewing the hosted content.

5.3.1 Acceptable Usage – The Customer must ensure at all times they comply with Kensho Pty Ltd' Acceptable Usage Policy (AUP) and must not host any content or allow any account activity that breaches the AUP. Breaches to the AUP are governed by the following conditions:

5.3.1.1 First violation – When Kensho Pty Ltd determines a SaaS product has violated any element of the AUP, The Customer shall receive an email warning advising of the violation. The SaaS product may at Kensho Pty Ltd' discretion be subject to a temporary suspension pending The Customer's agreement in writing to refrain from any further violations.

5.3.1.2 Second Violation – When Kensho Pty Ltd determines a SaaS product has committed a second violation of any element of the AUP, the SaaS product shall be subject to immediate suspension or termination without further notice.

5.3.1.3 Suspension of Service or Cancellation – Kensho Pty Ltd reserves the right to suspend access to The Customer's SaaS product if in the judgement of Kensho Pty Ltd, The Customer's service is the source or target of the violation of any of the terms of the AUP or these terms of service. If inappropriate activity is detected, all accounts of The Customer in question will be deactivated until an investigation is complete. Prior notification to the Customer is not assured and in extreme cases, law enforcement will be contacted regarding the activity. The Customer will not be credited for the time the hosting service is suspended.

5.4 Resource Usage – All SaaS products purchased have a variety of resource limitations applied in accordance to the applicable plan associated with the service. It is The Customer's responsibility to ensure their SaaS product does not exceed the resources allocated and to upgrade their service if it is determined more resources are required to continue the smooth operation of a hosting service.

5.4.1 Bandwidth Abuse – Kensho Pty Ltd reserves the right to shape, suspend, or terminate the service of any customer that is causing issues or performance problems for other customers on the Kensho Pty Ltd network. Kensho Pty Ltd reserves the right in a situation where a customer's traffic is causing unviable costs to its business to either charge the customer at a rate that is viable (change plan/rate) or suspend/terminate the service.

**6. THIRD PARTY TOOLS, APPLICATIONS AND LICENCES**

6.1 Third Party Applications and Licences – Kensho Pty Ltd may provide access to additional third party software and/or services ("Third Party Products ") through reseller or other commercial agreements Kensho Pty Ltd has established with certain vendors ("Third Party Vendors"). Unless otherwise stated, The Customer understands that product support for Third Party Products is provided by Kensho Pty Ltd and not by the Third Party Vendor. Neither Kensho Pty Ltd nor any Third Party Vendor makes any representations or warranties, express or implied, regarding any Third Party Products. The Customer expressly acknowledges and agrees that use of Third Party Products is at The Customer's sole risk and such third party products are provided "as is" and without representation or warranty of any kind from Kensho Pty Ltd or any Third Party Vendor,

including without limitation, any implied warranty of merchantability, fitness for a particular purpose, accuracy or completeness of responses or results, correspondence to description, or non-infringement of third party rights. To the maximum extent permitted by applicable law, neither Kensho Pty Ltd nor any third party vendor will be legally responsible for any damages, whether direct, indirect, or consequential, arising from the use or inability to use any third party product. The Customer agrees to observe the terms of any licence and/or applicable end user subscriber agreement for Third Party Products and The Customer shall be fully liable to Third Party Vendors and/or Kensho Pty Ltd with respect to any improper use of such Third Party Products or violation of licence agreements with them and/or applicable end user subscriber agreements.

6.2 ThingsBoard Licensing – Where licensing for ThingsBoard software has been purchased through Kensho Pty Ltd, the customer agrees to abide by the ThingsBoard Licensing terms.

6.3 Feature Availability – Kensho Pty Ltd provides no guarantees that any or all of the features available within a Third Party Product will be supported or made available to The Customer. It is at the sole discretion of Kensho Pty Ltd to determine which features are enabled and whether Kensho Pty Ltd will provide support for the use of enabled features.

**7. ADDITIONAL LEGAL INFORMATION**

7.1 Disclosure to Law Enforcement – Kensho Pty Ltd' AUP specifically prohibits the use of our service for illegal activities and The Customer agrees that Kensho Pty Ltd may disclose any and all customer information including assigned IP numbers, account history, account use, etc. to any law enforcement agent who makes a written request without further consent or notification to the The Customer. Kensho Pty Ltd reserves the right to immediately terminate any SaaS subscription found to be hosting content and performing activities of an illegal nature.

7.2 System and Network Security – Users are prohibited from violating or attempting to violate the security of the Kensho Pty Ltd network and systems. Violations of system or network security may result in civil or criminal liability. Kensho Pty Ltd will investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations. These violations include without limitation:

1. Accessing data not intended for such User or logging into a server or account, which such User is not authorised to access.
2. Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization.
3. Attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing".
4. Forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.
5. Taking any action in order to obtain services to which such User is not entitled.

7.3 Disclaimer – Whilst every effort is made to ensure the information provided on the Kensho Pty Ltd website and by Kensho Pty Ltd staff is accurate and free from errors, Kensho Pty Ltd provides no warranties, either express or implied, including but not limited to the service's fitness for a particular purpose, except where to not offer any such warranties would be deemed unlawful as defined by the Trade Practices Act 1974(Cth).

7.4 Limitation of Liability – Kensho Pty Ltd provides no guarantees that any SaaS subscription or additional service provided will be free from errors or interruptions. Kensho Pty Ltd will not accept liability for any costs or losses incurred by The Customer that result from:

1. the use of or inability to use any Kensho Pty Ltd' service;
2. any errors, mistakes, omissions, interruptions, defects, or delays in operation or delivery;
3. unauthorised access to Kensho Pty Ltd' data or services;
4. the suspension or termination of services due to breaches of the AUP;
5. the suspension or termination of services due to obligations under law.

7.5 Indemnification – The customer agrees to indemnify Kensho Pty Ltd from any and all demands, liabilities, losses, costs and claims, including reasonable legal fees asserted against Kensho Pty Ltd, that may arise or result from the use of any SaaS subscription provided.

7.6 Modification to these Terms – Kensho Pty Ltd reserves the right to amend, update or change these terms of service without prior notification. Where changes are made that may impact The Customer's use of a Kensho Pty Ltd service, The Customer will be advised by email using the primary email contact details within an account and the continuance in operation by The Customer of any hosting or additional services will constitute an acceptance of these Terms of Service.