



## MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS YOUR ACCESS TO AND USE OF THE KANDJI SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF YOU REGISTER FOR A FREE TRIAL OR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR FREE SERVICES.

BY (1) CLICKING A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "YOU" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THIS AGREEMENT, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on February 1, 2022. It is effective between You and Kandji as of the date You accept it by either (1) clicking a box indicating Your acceptance or (2) executing an Order Form that references this Agreement, whichever occurs first.

### 1. DEFINITIONS.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**"Agreement"** means this Master Subscription Agreement, Order Form(s) referencing this Master Subscription Agreement, and information contained in a URL or policy referenced in this Master Subscription Agreement and/or Documentation.

**"Devices"** means the authorized Apple electronic devices that are managed by the Services.

**"Documentation"** means the Service's implementation and security documentation, usage guidelines, and/or policies, each as updated from time to time.

**"Free Services"** means, individually and collectively, Services that Kandji makes available to You free of charge. Free Services exclude Services provided as a Free Trial and Services for which You have paid Fees.

**"Free Trial"** means a temporary subscription to the Services for which no Fees are charged, subject to the terms and conditions of this Agreement.

**"Kandji"** means Kandji, Inc. and/or its Affiliates as identified in the relevant Order Form.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**"Order Form"** means an ordering document or online purchasing or registration portal, including, in either case, any addenda and supplements thereto, that specifies the Services to which You have subscribed. By entering into an Order Form that references this Agreement, You and Your Affiliates agree to be bound by the terms of this Agreement as if each were an original party to this Agreement.



“**Services**” means the products and services purchased by You and provided by Kandji, as specified on an Order Form. “Services” excludes Free Services, Free Trials, and Third Party Products.

“**Third-Party Products**” means a web-based, offline, mobile, or other software application functionality that is provided by You or a third party and interoperates with a Service.

“**User**” means individuals who are authorized by You to use the Services, for whom a subscription to the Services has been procured. Users may include, for example, Your and Your Affiliates’ employees, consultants, clients, external users, contractors, agents, and third parties with which You do business.

“**You**” or “**Your**” means, in the case of an individual accepting this Agreement on their own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, such company or other legal entity and the Affiliates of that company or other legal entity (for so long as they remain Affiliates).

“**Your Data**” means all electronic data submitted by You or on Your behalf to the Services.

## **2. KANDJI’S OBLIGATIONS.**

**2.1. Access to Services.** Kandji will make the Services available to You pursuant to this Agreement and all Order Forms during the applicable Subscription Term (as defined below), and grants You a limited, non-sublicensable, non-exclusive, non-transferable right during the Subscription Term to allow You and Your Users to access and use the Services in accordance with the Documentation, solely for internal business purposes and only for the number of Devices (as applicable) specified in the applicable Order Form. During a Subscription Term, the functionality of the Services will not materially decrease. Kandji will (a) provide You with industry-standard support; (b) will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime for maintenance, and (ii) any unavailability caused by circumstances beyond Kandji’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Kandji employees), Internet service provider failure or delay, Third-Party Products, or denial of service attack, and (c) provide the Services in accordance with laws and government regulations applicable to Kandji’s provision of its Services to its customers generally (as opposed to Your particular use of the Services), and subject to You and Your Users’ use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form.

**2.2. Free Trial.** If You register for or otherwise accept a Free Trial, Kandji will make the Services available to You on a trial basis free of charge until the earlier of (a) the end of the Free Trial period for which You registered to use the Services, or (b) the start date of any paid subscriptions ordered by You for the Services, or (c) termination by Kandji in its sole discretion.

ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU DURING A FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE FREE TRIAL OR EXPORT SUCH DATA, BEFORE THE END OF THE FREE TRIAL PERIOD. YOU CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO SERVICES THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE FREE TRIAL; THEREFORE, IF YOU PURCHASE A SUBSCRIPTION TO SERVICES THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE FREE TRIAL, YOU MUST EXPORT YOUR DATA BEFORE THE END OF THE FREE TRIAL PERIOD OR YOUR DATA WILL BE PERMANENTLY LOST. NOTWITHSTANDING THE “REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS” SECTION AND “INDEMNIFICATION BY KANDJI” SECTION BELOW, DURING THE FREE TRIAL ALL FEATURES AVAILABLE THROUGH THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND KANDJI WILL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE KANDJI’S LIABILITY



WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$500.00. WITHOUT LIMITING THE FOREGOING, KANDJI AND ITS AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT THAT: (A) USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET REQUIREMENTS, (B) USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO KANDJI AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOU AND YOUR USERS USE OF THE SERVICES DURING THE FREE TRIAL PERIOD AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

**2.3. Free Services.** Kandji may make Free Services available to You. Access to and use of the Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this Section and any other portion of this Agreement, this Section shall control. Free Services are provided to You without charge up to certain limits as described in the Documentation. Usage over these limits requires Your purchase of subscriptions to the Services. You agree that Kandji, in its sole discretion and for any or no reason, may terminate Your use of or access to the Free Services or any part thereof. You agree that any termination of Your use of or access to the Free Services may be without prior notice, and You agree that Kandji will not be liable to You or any third party for such termination. You are solely responsible for exporting Your Data from the Free Services, if applicable, prior to termination of Your access to the Free Services for any reason, provided that if Kandji terminates Your account, except as required by law, Kandji will provide You a reasonable opportunity to retrieve Your Data for up to thirty (30) days from the effective date of termination by Kandji.

NOTWITHSTANDING THE “REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS” SECTION AND “INDEMNIFICATION BY KANDJI” SECTION BELOW, THE FREE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND KANDJI SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE KANDJI’S LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED \$500.00. WITHOUT LIMITING THE FOREGOING, KANDJI AND ITS AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT THAT: (A) USE OF THE FREE SERVICES WILL MEET REQUIREMENTS, (B) USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO KANDJI AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR OR YOUR USERS’ USE OF THE FREE SERVICES, ANY BREACH BY YOU OR YOUR USERS OF THIS AGREEMENT, AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

### **3. USE OF SERVICES**

**3.1. Subscriptions.** Your right to access and use the Services is purchased as subscriptions for the Device-based tiered plans and for the term stated in the applicable Order Form. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Kandji regarding future functionality or features.

**3.2. Your Responsibilities.** You are responsible for all activities conducted under Your and Your Users’ logins to the Services. You will use the Services in compliance with this Agreement, the applicable Order Form, and all Documentation.

**3.3. Usage Limits.** The Services may be subject to usage and/or Device limits as specified in the applicable Order and Documentation. If You or Your Users exceed a contractual limit, Kandji may work with you to either (i) execute an Order Form for additional subscriptions of the applicable Services or (b)



reduce your usage so that it conforms to that limit. If, notwithstanding Kandji's efforts, You are unable or unwilling to abide by a contractual limit, Kandji may suspend or otherwise decrease the functionality of Your Services to the extent necessary to bring Your use in compliance with the applicable contractual limit.

**3.4. Usage Restrictions.** You will not (a) sell, resell, license, sublicense, distribute, rent or lease the Services; (b) store in the Services any personal health data, credit card data, personal financial data or other such sensitive data which may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards; (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful material, or to store or transmit material in violation of third-party privacy rights; (d) use the Services to store or transmit Malicious Code; (e) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Services or the data contained therein; (f) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit; (g) modify, copy or create derivative works based on the Services, or any portion thereof; (h) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Services or access it to (i) build a competitive product or service, (ii) build a product or service using similar ideas, features, functions or graphics of the Services, (iii) copy any ideas, features, functions or graphics of the Services, or (iv) determine whether the Services are within the scope of any patent.

**3.5. Third-Party Products.** The Services may permit integration with certain third-party offerings including apps, browsers, software and/or services ("Third-Party Products") which You may access through the Services. Your use of Third-Party Products is in Your sole discretion, and Kandji does not warrant, guarantee or support such Third-Party Products. Kandji cannot guarantee the continued availability of such integrations and may cease providing them without entitling You to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third-Party Product ceases to make the Third-Party Product available for interoperation with the corresponding Services' features in a manner acceptable to Kandji. The terms of use, terms of service, end user license agreement or other terms or conditions of any Third-Party Product, including, without limitation, registration, payment of fees and exchange of data between You and the third-party provider, is solely between You and the applicable third party. You will not use the Services in a manner which violates or breaches any Third-Party Product terms. If You elect to use a Third-Party Product with the Services, You grant Kandji permission to allow the Third-Party Product and its provider to access Your Data as required for the use of that product with the Services. Kandji is not responsible for any disclosure, modification, or deletion of Your Data resulting from any such access by third-party providers. Kandji cannot guarantee the continued availability of any Third-Party Products; for example, if the provider of any Third-Party Product ceases to make the Third-Party Product available for use through the Services on reasonable terms, Kandji may cease providing such Services' features and such cessation of any or all of the Services features shall not entitle You to any refund, credit, or other compensation. Kandji is not responsible for any disclosure, modification or deletion of Your Data resulting from access by any Third-Party Product or its provider. If You receive notice that a Third-Party Product must be removed, modified and/or disabled to avoid violating applicable law or third-party rights, You will promptly do so. If You do not take the required action in accordance with the above, or if in Kandji's judgment continued violation is likely to reoccur, Kandji may disable the Services and/or Third-Party Product.

#### **4. PROPRIETARY RIGHTS.**

**4.1. Reservation of Rights.** Subject to the limited rights expressly granted in this Agreement, Kandji, its Affiliates, and its and their licensors reserve all rights, title, and interest in and to the Services (including all updates, customizations, and/or modifications), its and their trade and service marks, and the Aggregate Data (defined below), including in each case all related intellectual property rights. No rights are granted to You or Your Users other than as expressly stated in this Agreement.

**4.2. Your Data.** As between Kandji and You, You exclusively own all rights, title, and interest in and to Your Data. You grant Kandji, its Affiliates and applicable contractors a limited, personal, non-



transferable, non-assignable (except as expressly permitted in this Agreement), worldwide, non-exclusive license to host, copy, use, transmit, and display Your Data, as reasonably necessary for Kandji to ensure proper operation of the Services and associated systems in accordance with this Agreement.

Notwithstanding the foregoing, You agree that Kandji has the right to: (a) access and use Your Data (i) to provide, maintain, and update the Services; (ii) for the purpose of providing statistical insights and analysis related to usage of the Services; and (b) anonymize and aggregate Your Data (such anonymized and aggregated data, "Aggregate Data") to prepare reports, studies, analyses, and other work product resulting from such Aggregate Data, provided that under no circumstances will Kandji distribute or otherwise make available to any third party any data that is identifiable as Your Data.

**4.3. Feedback.** You and Your Users grant Kandji and its Affiliates a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, transferable and assignable license to use or incorporate into its products and services any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or Your Users relating to the features, functionality or operation of the Services ("Feedback"). Kandji will have no obligation to use Feedback, and You will have no obligation to provide Feedback.

## **5. FEES AND PAYMENT**

**5.1. Fees.** You will pay all fees specified in an Order Form ("Fees"). Except as otherwise specified in this Agreement or in the applicable Order Form: (a) Fees are based on subscriptions to the Services purchased and not actual usage; (b) payment obligations are non-cancellable, and Fees paid are non-refundable; and (c) quantities purchased cannot be decreased during the relevant Subscription Term.

**5.2. Invoicing and Payment.** You agree to provide Kandji with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Kandji. If You provide credit card information to Kandji, You authorize Kandji to charge such credit card for all Fees due hereunder. Except as otherwise set forth in the applicable Order Form, payment of Fees shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. Unless otherwise stated in the Order Form, invoiced Fees are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Kandji and notifying Kandji of any changes to such information, as well as for payment of any fees or charges associated with Your payment other than those charged by Kandji's or its Affiliates' bank.

**5.3. Overdue Charges.** If payment of any Fees is not received by Kandji by the due date, then, without limiting Kandji's other rights or remedies, (a) the Fees may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Kandji may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.

**5.4. Suspension.** If any Fees owed by You under this Agreement are more than 30 days overdue, Kandji may, without limiting its other rights and remedies, suspend Your access to the Services until such amounts are paid in full.

**5.5. Payment Disputes.** Kandji will not exercise its rights under the "Overdue Charges" or "Suspension" section above for 60 days if You are disputing the applicable Fees reasonably and in good faith and are cooperating diligently to resolve the dispute.

**5.6. Taxes.** Fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, but not limited to, value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with purchases hereunder. If Kandji has the legal obligation to pay or collect Taxes for which You are responsible under this Section, Kandji will invoice You and You will pay that amount unless You provide Kandji with a valid tax exemption certificate authorized by the appropriate taxing



authority. For clarity, Kandji is solely responsible for taxes assessable against it based on its income, property, and employees.

## 6. TERM AND TERMINATION

**6.1. Term of Agreement.** This Agreement commences on the date You first accept it and continues until all Subscription Terms have expired or have been terminated.

**6.2. Renewal of Subscription Terms.** The term of each subscription shall be as specified in the applicable Order Form ("Subscription Term"). Except as otherwise specified in an Order Form, each Subscription Term will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice (email is acceptable) of non-renewal at least 30 days before the end of the expiring Subscription Term. The per-unit pricing during any automatically renewed renewal term may increase by up to 7% from the applicable pricing in the prior term, unless Kandji provides You notice of different pricing at least 60 days prior to the applicable renewal Subscription Term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Kandji's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in repricing at renewal without regard to the prior term's per-unit pricing.

**6.3. Termination.** Either party may terminate this Agreement, and all Order Forms hereunder, for cause upon (a) 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts, (c) the other party making an assignment for the benefit of creditors, or (d) the other party's dissolution or ceasing to do business. A material breach under this Section includes, but is not limited to, failure to pay the applicable Fees when due. Termination or expiration of this Agreement or an Order Form shall not extinguish any of Your or Kandji's obligations under this Agreement that, by their nature, continue after the date of termination or expiration, including but not limited to the obligation to pay any unpaid but due Fees and the confidentiality obligations of each party hereunder.

**6.4. Refund or Payment Upon Termination.** Upon any termination for cause by You, Kandji will refund to You any prepaid Fees covering the remainder of the then-current Subscription Term after the effective date of termination. Upon any termination for cause by Kandji, You shall pay any unpaid Fees covering the remainder of the then-current Subscription Term. In no event shall any termination relieve You of the obligation to pay Fees payable to Kandji for the period prior to the effective date of termination.

**6.5. Surviving Provisions.** The sections titled "Free Services," "Use of Services," "Proprietary Rights," "Fees and Payment," "Confidentiality," "Disclaimer," "Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions" and "General" will survive any termination or expiration of this Agreement, and the section titled "Data Protection" will survive any termination or expiration of this Agreement for so long as Kandji retains possession of Your Data.

**7. DATA PROTECTION.** Kandji will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Your Data (other than by You, Your Affiliates, Users, and/or Authorized Persons). The terms of the data processing addendum available <https://www.kandji.io/data-processing-agreement> (or other designated or replacement URL) ("DPA") are hereby incorporated by reference. To the extent Personal Data (as defined in the DPA) from the European Economic Area (EEA), the United Kingdom, and Switzerland are processed by Kandji or its Affiliates as part of Your use of the Services, the Standard Contractual Clauses will apply, as further described in the DPA. For the purposes of the Standard Contractual Clauses, You and Your applicable Affiliates are each the data exporter, and Your acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be



treated as its execution of the Standard Contractual Clauses and Appendices. Upon Your request made within 30 days after the effective date of termination or expiration of this Agreement, Kandji will make Your Data available to You for export or download. After such 30-day period, Kandji will have no obligation to maintain or provide any of Your Data, and will thereafter delete or destroy all copies of Your Data in its systems or otherwise in its possession or control, unless legally prohibited.

## **8. CONFIDENTIALITY.**

**8.1. Definition of Confidential Information.** As used in this Agreement, “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether electronically, orally, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure. Your Confidential Information includes Your Data and this Agreement; Kandji’s Confidential Information includes the Services, the Aggregate Data, the Documentation, and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without reference to, or reliance upon, the Confidential Information of the Disclosing Party. For the avoidance of doubt: (i) the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with any Free Trials and/or Free Services as well as the evaluation of any of additional Services and (ii) each party retains all ownership, right, and title in and to its Confidential Information.

**8.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) to protect the Confidential Information of the Disclosing Party; (b) not use any Confidential Information of the Disclosing Party for any purpose not authorized by this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to, and disclosure of, the Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need access for purposes consistent with this Agreement and who have confidentiality obligations with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel, and accountants without the other party’s prior written consent; provided that a party that makes any such disclosure to its Affiliate, legal counsel, or accountants will remain responsible for such Affiliate’s, legal counsel’s, or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing: (i) Kandji may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Third-Party Provider to the extent necessary perform Kandji’s obligations related to this Agreement, under terms of confidentiality materially as protective those set forth herein and (ii) Kandji may provide access to Your Confidential Information to those of Your Users, employees, contractors, and agents whom You permit to use and manage Your access and use of the Services.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.



## **9. REPRESENTATIONS, WARRANTIES, AND DISCLAIMER.**

**9.1. Mutual Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**9.2. Representations and Warranties by Kandji.** Kandji warrants that during an applicable Subscription Term (a) the Services will perform materially in accordance with the applicable Documentation, (b) Kandji will not materially decrease the overall security of the Services, and (c) except as described in the “Third-Party Products” section, Kandji will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

**9.3. Representations and Warranties by You.** You represent and warrant to Kandji that: (a) Your Data does not and will not infringe, misappropriate or otherwise violate any third party rights (including any intellectual property rights), (b) will ensure that You have all necessary and appropriate consents and notices in place to enable lawful transfer and processing of personal data (as defined under data protection laws) and (c), to the extent that You permit Your Users to use a personally owned Device to provide services to Your organization (“BYOD”), You have implemented and continually monitor and enforce an agreement or policy with Your Users that addresses (i) confidentiality and security provisions for Your Data, Kandji’s data, and any personal data used in connection with the applicable devices, (ii) permitted and impermissible use by Users subject to the policy, and (iii) data collection, retention, anti-commingling and destruction obligations.

**9.4. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. FREE SERVICES OR FREE TRIAL SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **10. INDEMNIFICATION.**

**10.1. Indemnification by Kandji.** Kandji will defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the Services infringe or misappropriate such third party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, attorney fees, and costs finally awarded against You as a result, or for amounts paid by You under a settlement approved by Kandji in writing, of a Claim Against You: provided that You: (a) promptly give Kandji written notice of the Claim Against You; (b) give Kandji sole control of the defense and settlement of the Claim Against You (except that Kandji may not settle any Claim Against You unless it unconditionally releases You of all liability); and (c) give Kandji all reasonable assistance, at Kandji’s expense. If Kandji receives information about an infringement or misappropriation claim related to the Services, Kandji may in its discretion and at no cost to You (i) modify the Services so as to no longer infringe or misappropriate as claimed, without breaching the representations and warranties under “Representations and Warranties by Kandji,” (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your subscriptions for the Services, in whole or in part, upon thirty (30) days’ written notice and refund to You any prepaid Fees covering the remainder of the then-current Subscription Term for the terminated subscriptions or parts thereof. The above defense and indemnification obligations do not apply if: (1) a Claim Against You arises from the use or combination of the Services, or any part thereof, with software, hardware, data, or processes not provided by Kandji, if the Services or use thereof would not infringe without such combination; (2) a Claim Against You arises from Free Services or a Free Trial; or (3) a Claim Against You arises from a Third-Party Product or Your breach of this Agreement, the Documentation, or the applicable Order Form.





**10.2. Indemnification by You.** You will defend Kandji and its Affiliates against any claim, demand, suit, or proceeding made or brought against Kandji or its Affiliate arising out of or in connection with (a) a third party allegation that (i) Your Data (ii) a Third-Party Product, or (iii) a combination of a Third-Party Product provided by You and used with the Services infringes or misappropriates such third party's intellectual property rights, (b) any unauthorized or illegal use of the Services by You, Your Users, or a third party using Your User information ((a) and (b) each a "Claim Against Kandji"), and will indemnify Kandji and its Affiliates from any damages, attorney fees, and costs finally awarded against Kandji or its Affiliate as a result, or for any amounts paid by Kandji or its Affiliate under a settlement approved by You in writing, of a Claim Against Kandji, provided that Kandji: (i) promptly gives You written notice of the Claim Against Kandji; (ii) gives You sole control of the defense and settlement of the Claim Against Kandji (except that You may not settle any Claim Against Kandji unless it unconditionally releases Kandji and its Affiliates of all liability); and (iii) gives You all reasonable assistance, at Your expense. The above defense and indemnification obligations do not apply if a Claim Against Kandji arises from Kandji's or its Affiliate's breach of this Agreement, the Documentation, or the applicable Order Form.

## **11. LIMITATION OF LIABILITY.**

**11.1. Limitation of Liability.** EXCEPT FOR INFRINGEMENT OR MISAPPROPRIATION OF KANDJI'S INTELLECTUAL PROPERTY RIGHTS IN AND TO THE SERVICES AND YOUR INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, TOGETHER WITH ALL OF ITS AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT YOU AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**11.2. Exclusion of Consequential and Related Damages.** EXCEPT FOR INFRINGEMENT OR MISAPPROPRIATION OF KANDJI'S INTELLECTUAL PROPERTY RIGHTS IN AND TO THE SERVICES, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, DATA, USE, OR OTHER ECONOMIC ADVANTAGE, OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE.

## **12. GENERAL.**

**12.1. Entire Agreement.** This Agreement is the entire agreement between You and Kandji regarding Your use of the Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a purchase order or in any other order documentation (excluding Order Forms) provided by You is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

**12.2. Assignment.** Neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld); provided, however, that either party may assign this Agreement in its entirety (including all Order Forms), without the other party's prior written consent (a) to an Affiliate or (b) in connection with a change of control, merger, stock transfer, sale or other disposition of substantially all the assets of the assigning party's business. Subject to the foregoing, this Agreement and each Order



Form will bind and inure to the benefit of the parties and their respective successors and permitted assigns.

**12.3. Use of Name.** Kandji may use Your name and logo to identify You as Kandji customer of the Services, including on Kandji's public website and in sales and marketing collateral. Kandji agrees that any such use will be subject to Kandji's compliance with any written guidelines that You provide to Kandji regarding the use of Your name and logo and will not be considered Your endorsement of the Services.

**12.4. Export Compliance.** The Services may be subject to export laws and regulations of the United States and other jurisdictions. You and Kandji each represent that it is not on any U.S. government denied-party list. You will not permit any User to access or use any Services in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Syria or Crimea) or in violation of any U.S. export law or regulation.

**12.5. Anti-Corruption.** You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Kandji employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Kandji.

**12.6. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

**12.7. Third Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

**12.8. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**12.9. Severability.** If any provision of this Agreement or any Order Form, shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement or any Order Form is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**12.10. Governing Law; Venue.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods and each party consents to the personal jurisdiction and venue of the state or federal courts located in San Diego, California.

**12.11. Dispute Resolution and Arbitration.** The parties agree that most disputes can be resolved without resort to litigation. The parties agree to first attempt to resolve any dispute arising under this Agreement through mediation with JAMS in San Diego County, California. If such dispute cannot be resolved by mediation, the parties agree that all disputes arising out of or in any way relating to this Agreement, including without limitation its existence, validity or termination, shall be resolved according to California law and exclusively by binding arbitration before a single arbitrator with the Judicial Arbitration and Mediation Service (JAMS) and pursuant to the then existing arbitration rules at JAMS. If the parties cannot agree upon selection of an arbitrator, then JAMS shall appoint an arbitrator experienced in the enterprise software industry. The place of the arbitration will be San Diego, California unless otherwise agreed upon by the parties. The arbitration will be conducted in English. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. The parties further agree that the



arbitration shall be conducted in their individual capacities only and not as a class action or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. If any court or arbitrator determines that the class action waiver set forth herein is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the portions of this "Dispute Resolution and Arbitration" section mandating arbitration shall be deemed null and void in its entirety and the parties shall be deemed to have not agreed to arbitrate disputes. You may opt out and not be bound by the arbitration and class action waiver provisions by sending written notice to Kandji within thirty (30) days from the date You first accept this Agreement. If You opt out of arbitration, Kandji also will not be bound to arbitrate. Disputes, claims, or controversies concerning either party's intellectual property rights or claims of piracy or unauthorized use of the Service shall not be subject to arbitration. The parties further agree that the prevailing party in any action or proceeding to enforce any right or provisions under this Agreement, including any arbitration or court proceedings, will be entitled to recover its reasonable costs and attorneys' fees.

**12.12. Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing by registered mail or internationally recognized service, or (c) the day of sending by email. Notices of termination or of an indemnifiable claim must be sent to [legal@kandji.io](mailto:legal@kandji.io). Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.