

# Kabandy Terms of Services

## Version of November 2023

The following terms and conditions (the “Terms”) apply to individuals and entities (each, a “Customer” and collectively, the “Customers”) using services to be provided by Kabandy SA (“Kabandy”), with offices at Rue des Pères Blancs 4, 1040 Brussels, Belgium, through the online use of software owned or licensed by Kabandy. Each individual Service Package (as defined below) is defined in a separate Order Form (as defined below), which shall be executed separately, sequentially numbered and, when so executed by both parties and delivered to Kabandy by the Customer will be incorporated herein by reference. In the event of a conflict between the provisions of these Terms and the provisions of an Order Form, the provisions of the Order Form will control.

By using a Service Package, you agree to the Terms, just as if you had signed a physical copy of them. Kabandy reserves the right, in its sole discretion, to change, modify, add or remove portions of the Terms at any time. Each Customer should check the Terms periodically for changes. By using a Service Package after Kabandy posts any changes to the Terms, a Customer agrees to accept those changes, whether or not the Customer has reviewed them. If a Customer does not agree to these Terms, such Customer should not use the products of Kabandy. Use of the same implies full informed consent and agreement to abide by these Terms. PLEASE READ THE TERMS CAREFULLY. IF YOU DO NOT AGREE TO THESE TERMS DO NOT USE THE SERVICES OR PRODUCTS OF KABANDY, AS VIOLATION OF THESE TERMS CAN LEAD TO LEGAL LIABILITY.

## **1. Definitions**

“Kabandy Intellectual Property” means all patents, copyrights, trademarks, service marks, trade names and applications therefore, and all inventions, domain name rights, and other trade secret rights, and all other intellectual property rights that are owned by or licensed to Kabandy.

“Kabandy Technology” means all of the Kabandy’s proprietary technology (including, but not limited to, hardware, software, documents, processes, algorithms, user interfaces, and know-how) and services made available by providing each Service to the Customer.

“Customer Data” means any data or information that is inputted or submitted by the Customer in connection with the Customer’s use of the Service and the resulting data that is outputted by the Service Package through the Customer’s use of the Service.

“Order Form” shall mean each order form executed by the Customer and Kabandy, each of which shall specify, among other things, the Service Package subscribed to by the Customer, the Subscription Volume, the pricing and fees associated with such Service Package, the Subscription Term and such other terms as may agree to in writing by the parties and set forth therein. Order forms are for example the formal contract offer issued by Kabandy to the

Customer. Such contract offer needs to be either signed by the Customer or referenced in a purchased order issued by the Customer.

“Workspace” shall mean an active workspace (i.e. a workspace which a Customer accesses and uses) within a Customer’s Kabandy environment.

“Workspace access” shall means the ability for a User to log in into a given active workspace within a Customer’s Kabandy environment. A workspace access is nominative and cannot be shared between different users.

“Service(s)” means the services and functionalities provided by each Service Package subscribed to by the Customer as evidenced by an Order Form.

“Service Package” means each separately priced service offering that is made generally available by Kabandy to its customers via an online access subscription to the software package that provides such Service.

“Subscription Term” means the term during which Kabandy will provide each Service Package Service to the Customer, in each case as set forth in the Order Form pursuant to which the Customer subscribed for such Service Package, unless earlier terminated in accordance with these Terms, together with any extension or renewal of such Service Package made in accordance with these

Terms; provided, however, that in the event any Order Form fails to specify the specific duration of a Subscription Term, the Subscription Term shall be deemed to be one (1) year.

"Subscription Volume" shall mean, with respect to each Service Package, the maximum number of unique Workspace accesses that the Customer is granted within such Service Package during the Subscription Period.

"Technical Specifications" shall mean the written technical specifications and functionality descriptions contained in the user manual that relates to a Service Package.

"User(s)" shall mean those employees, representatives, consultants, contractors or agents of the Customer who are authorized to use the Service and have been supplied user identifications and passwords by the Customer (or by Kabandy at Customer's request).

"Unmonitored Subscription Volume" means a Service Package with a fixed Subscription Volume, for which Kabandy will however allow the Customer to use a number of Workspace accesses in excess of the Subscription Volume during the Subscription Term. Upon the expiration of the Subscription Term, if the Customer elects to renew its Service Package for an additional Subscription Term, then the fixed Subscription Volume during such additional Subscription Term shall be (i) mutually agreed upon by the Customer and Kabandy and (ii) based on the actual usage of the Customer during the expiring Subscription Term, but shall not be less than the Subscription Volume during the expiring Subscription Term. An Unmonitored Service Package must be designated as such on the applicable Order Form.

## **2. Service**

### **2.1. Initial Service**

During the Subscription Term for each Service Package subscribed to by the Customer, Kabandy shall make such Service Package available to the Customer in accordance with Section 7.2 below on a software-as-a-service basis, and provide the Customer with the Service associated with such Service Package in accordance with these Terms and in accordance with the terms set forth in the Order Form associated with such Service Package, including the Subscription Volume. Kabandy shall have no obligation to provide the Customer with access to any Service Package other than those subscribed to and paid for by the Customer. The Customer shall not (i) access or use any Service

Package that the Customer has not subscribed and paid for or (ii) exceed the Subscription Volume subscribed to by the Customer in connection with each Service Package. If the Customer accesses any Service Package for which the Customer has not subscribed or the Customer exceeds the Subscription Volume for the Service Package subscribed to by the Customer, then Kabandy may bill the Customer and the Customer shall pay Kabandy for such additional Service Packages and such excess Subscription Volume based upon Kabandy's then-current list price.

### **2.2. Tacit Renewal of Service**

Upon the expiration of the Subscription Term set forth in an Order Form, such Service Package shall tacitly renew for a further period of 12 months, unless the Customer notifies Kabandy in writing of its election not to renew such Service Package at least thirty (30) days prior to the expiration of the then-current Subscription Term. Unless otherwise set forth in an Order Form, each Service Package that is renewed under these Terms, shall renew based upon Kabandy's then-current list pricing at the time of such renewal.

### **2.3. Additional Service**

If the Customer wishes to add additional Service Packages or increase Subscription Volume, the Customer shall deliver to Kabandy an Order Form evidencing such additional Service Packages or increased Subscription Volume. Upon Kabandy's acceptance of any such additional Order Form, Kabandy shall make such additional Service Packages available to Customer or increase Customer's Subscription Volume as provided in the additional Order Form.

### **2.4. Standard Set-Up and Configuration**

Some Service Packages require an initial standard configuration by Kabandy in order for Customer to use the Service associated with such Service Package. The Order Form associated with all such Service Packages shall specify the set-up fee associated with such initial standard configuration (the "Set-Up Fee").

### **2.5. Custom Configuration and Professional Services**

In the event that the Customer requests a non-standard or custom configuration of any Service Package or the Customer requests any modifications to a Service Package or services other than the Services provided by such Service Package, all such configurations, modifications or

additional services shall be provided by Kabandy as professional services on a time and material basis. Kabandy shall be under no obligation to provide any such configurations, modifications or additional services unless and until Kabandy enters into a Professional Services Agreement with the Customer.

### **3. Use of the Services**

#### **3.1. Kabandy's Obligations**

Kabandy shall: (i) in addition to its confidentiality obligations under Section 6, not use, edit or disclose the Customer Data, other than in connection with the use of Aggregated Meta-Data pursuant to Section 5.4 or as directed or consented to by Customer; (ii) use commercially reasonable efforts to maintain the security of each Service; (iii) unless indicated to the contrary on an Order Form, provide technical support to Customer's Users via email or phone during normal business hours (between the hours of 9:00 am and 5:00 pm CET on each business days); and (v) make the Service available to Customer's Users in accordance with Section 7.2 below.

#### **3.2. Customer's Obligations**

The Customer is responsible for all activities that occur under the Customer's User accounts. Customer shall: (i) promptly pay for all Services in accordance with these Terms and all applicable Order Forms, (ii) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Kabandy promptly of any such unauthorized use; (iv) comply with all applicable local and foreign laws in using each of the Services; and (v) use the Services only for its own internal business purposes in accordance with the Subscription Volume subscribed to by the Customer and shall do so using only passwords and User accounts which are rightfully possessed by the Customer.

#### **3.3. Press Releases**

Without Customer's prior written consent, Kabandy may publicly refer to the Customer as a client of Kabandy or user of the Services.

### **4. Fees & Payment**

#### **4.1. Fees**

Customer will pay each of the fees specified in an Order Form (including all Set-Up Fees specified therein) and all fees associated with any

unauthorized access to a Service Package or use of a Service Package in excess of the paid Subscription Volume, in each case as provided in Section 2.1 above. All fees are quoted in Euro currency. All fees are non-refundable and are based on the Service Packages and Subscription Volumes specified in the relevant Order Form. Fees for additional Service Packages or increased Subscription Volume added in the middle of a monthly billing period shall be charged for that billing period in full and going forward based on the number of months remaining in the Subscription Term. The Customer shall not be entitled to any refund or, except as expressly provided in Section 7.2 below, credit in respect of all or any portion of any Service Package or Subscription Volume subscribed for by the Customer but not used by the Customer during the applicable Subscription Term.

#### **4.2. Invoicing & Payment**

Kabandy will invoice the Customer for fees for the Service in advance and otherwise in accordance with the terms of the relevant Order Form. The Customer shall fully pay all invoiced amounts within thirty (30) days of the invoice date. All payments made will be in Euro currency.

#### **4.3. Overdue Payments**

If the Customer fails to make any payment when due, Kabandy may, at its discretion, assess a late charge at the rate of 1.5% of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

#### **4.4. Suspension of Service**

If the Customer's account is thirty (30) days or more past-due, in addition to any of its other rights or remedies, Kabandy reserves the right to suspend or modify the Service provided to the Customer, without liability to the Customer, until such amounts are paid in full.

#### **4.5. Taxes**

Kabandy's fees are exclusive of all national and foreign taxes, levies, or duties of any nature ("Taxes"), and the Customer is responsible for payment of all Taxes, excluding only Belgium taxes based on Kabandy's income. If Kabandy has the legal obligation to pay or collect taxes for which the Customer is responsible pursuant to this Section 4.5, the appropriate amount will be invoiced to and paid by the Customer unless the Customer provides Kabandy with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **5. Proprietary Rights**

### **5.1. Reservation of Rights**

Kabandy and its licensors own all right, title and interest to the Kabandy Intellectual Property, the Kabandy Technology, each Service Package and all Services provided thereunder, and all modifications, ideas, concepts or recommendations provided by the Customer to Kabandy. Neither an Order Form nor these Terms conveys or transfers any ownership rights in any Service Package, any Service provided thereunder, any Kabandy Technology or any Kabandy Intellectual Property. The Kabandy name, logo, and trade names are trademarks of Kabandy and no right is granted to use them except as granted herein.

### **5.2. License Grants**

Subject to these Terms and the relevant Order Form, Kabandy hereby grants the Customer a non-exclusive, non-transferable, non-sublicenseable, limited right and license during the applicable Subscription Term to access and use the Service provided by each Service Package subscribed to by the Customer, in each case solely for the Customer's own internal business purposes and only to the extent and in accordance with the Technical Specifications and Subscription Volume for which the Customer has subscribed, as evidenced by the applicable Order Form. The Customer grants to Kabandy a non-exclusive, non-transferable, non-sublicenseable, limited right and license during the applicable Subscription Term (and for a period of six months following termination of the Subscription Term) to process, copy, transfer, store, modify and display the Customer Data solely to the extent necessary to provide the Services to the Customer or to provide the Customer with a copy of the Customer Data. All rights not expressly granted to the Customer are reserved by Kabandy and its licensors.

### **5.3. Restrictions**

The Customer may not, directly or indirectly, (i) sublicense, resell, rent, lease, distribute, or otherwise transfer rights to access and use any Service or Kabandy Technology for any purpose including timesharing or service bureau purposes; (ii) modify, copy or make derivative works based on the Service or any Kabandy Technology; (iii) disassemble, reverse engineer, or decompile any of the Kabandy Technology or Service or copy any ideas, features, functions or graphics of the Service for any purpose other than what is contemplated in these Terms, (iv) create Internet "links" to or from

the Service, or "frame" or "mirror" any of Kabandy's content which forms part of the Service (other than on the Customers' own internal intranets).

### **5.4. Use of Meta-Data**

Kabandy may aggregate non-identifiable Customer meta-data with non-identifiable anonymous meta-data from other Kabandy customers and third parties to create anonymous aggregated meta-data that does not identify any individual customer or the metrics or information pertaining to any individual customer or its domain ("Aggregated Meta-Data"). Kabandy will own all rights to Aggregated Meta-Data, and has the irrevocable right to maintain, store, use and disclose Aggregated Meta-Data.

### **5.5. Suggestions, Ideas and Feedback**

Kabandy will have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Customer or any other party relating to the Service to the extent it does not constitute Confidential Information of the Customer.

## **6. Confidentiality**

### **6.1. Definition of Confidential Information**

As used herein, "Confidential Information" means all information of a party ("Disclosing Party") which the Disclosing Party designates in writing as being confidential when it discloses such information to the other party ("Receiving Party"), or if not so designated, is understood by a reasonable Receiving Party from the context of disclosure or from the information itself to be confidential or proprietary, including without limitation these Terms, the Customer Data, all Kabandy Technology, all Kabandy Intellectual Property, and all methodologies, processes and software pursuant to which Kabandy provides the Services, all non-standard pricing or discounts offered by Kabandy, all passwords, IP address or internet addresses provided by Kabandy for the Customer to access to any Service, business and marketing plans, technology and technical information, product designs, product roadmaps, features, functionality and software under development and not generally available to Kabandy's customers and all business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). The Customer Data will be deemed Confidential Information regardless of its written designation. Confidential Information will not

include any information that: (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (iii) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party.

#### 6.2. Confidentiality

The Receiving Party may not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, except with the Disclosing Party's prior written permission.

#### 6.3. Protection

Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event will either party exercise less than reasonable care in protecting such Confidential Information.

#### 6.4. Compelled Disclosure

If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it will provide the Disclosing Party with prior notice of such compelled disclosure and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure.

#### 6.5. Remedies

If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

#### 6.6. Personal information

Many of Kabandy's Services allow the Customer to share its Customer Data. Kabandy does not claim any ownership rights in the Customer Data in any manner.

The Customer agrees (1) to have the right to publish the Customer Data and (2) that these data do not violate the provisions of these terms of services,

applicable laws, intellectual property rights, the rights to protection of personality or any other right of other persons.

The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of its Data including adaptation of standard text fields of the software standards to the Customer's specific circumstances.

The Customer agrees to defend and indemnify Kabandy against any claim arising from a breach of its obligations under this Section. The Customer agrees that if anyone takes legal action against Kabandy in relation to the Customer Data, to the extent permitted by applicable local laws, he will indemnify and hold Kabandy harmless against all damages, losses and expenses of any nature (including reasonable attorney fees) resulting from this lawsuit.

### 7. Warranties & Disclaimers

#### 7.1. Limited Functionality Warranty

Kabandy represents and warrants to the Customer during the Subscription Term for each Service Package subscribed to by the Customer, that under normal use and circumstances each such Service will perform substantially in accordance with the Technical Specifications related to such Service Package. The Customer's exclusive remedy and Kabandy's sole obligation for breach of the foregoing warranty will be for Kabandy to refund the fees paid by the Customer to Kabandy, for the applicable period of time, for which the foregoing warranty was breached, provided that the Customer notifies Kabandy of such breach within ten (10) days of the breach.

#### 7.2. Limited Service Availability Warranty

Kabandy shall provide at least 99.9% level of availability to access and use the Services on a 24-hour per day basis, including all holidays but excluding inability to access the Services due to any of the following circumstances (each, an "Exempt Event"): (a) Scheduled Maintenance; and (b) down time caused by circumstances beyond Kabandy's reasonable control, including, without limitation, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, failures or delays involving hardware or software not within Kabandy's possession or reasonable control, network intrusions or denial of service attacks, but only if such unavailability results notwithstanding the exercise of reasonable

care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes. For purposes of these Terms, the term "Scheduled Maintenance" means any period of downtime or unavailability of the Services (not to exceed more than six hours in any one instance or more than twenty-four hours in the aggregate in any one calendar month) for which Kabandy gives the Customer at least forty-eight (48)-hour advance notice. In the event that Kabandy fails to maintain the availability of the Service in accordance with this Section 7.2 and such unavailability of the Services is not due to one or more Exempt Events, upon request by the Customer, Kabandy shall issue to the Customer a service credit (a "Service Credit") that will be applied against the fees owing by the Customer upon any renewal of the Services by the Customer at the end of the then-current Subscription Term. Service Credits do not constitute a refund in respect of any Service and may not be exchanged for cash or other monetary consideration or value. Service Credits are not available in respect of any outage or unavailability of the Service associated with an Exempt Event. The amount of each Service Credit shall be calculated as follows: the Customer shall receive a Service Credit equal to ten percent (10%) of the monthly fee paid by the Customer in respect of the Services that were unavailable for each continuous two-hour period of downtime occurring during the hours for which Kabandy has guaranteed 99.9% availability, up to a maximum in any one calendar month of one hundred percent (100%) of the monthly fee paid by the Customer in respect of such Services. Service Credits shall be calculated by Kabandy based upon the total number of minutes in a month less any minutes of availability relating to Exempt Events. Service Credits are not available to any Customer that is more than thirty (30) days past due on any amount owing to Kabandy or to any Customer that has breached an agreement with Kabandy. In no event shall the Customer be entitled to a Service Credit in any amount greater than the monthly recurring fees (or equal to the subscription fees of the current period divided by the number of months of the subscription period) payable by the Customer in respect of such unavailable Service for a single calendar month. The Customer's exclusive remedy and Kabandy's sole obligation for any claims relating to the availability of the Service shall be the issuance by Kabandy of a Service Credit as provided in this Section 7.2.

#### 7.3. Cloud compliance

Kabandy is hosted on Google Cloud Platform (GCP) data centres within the European Union. GCP

undergoes independent verification of GCP security, privacy, and compliance controls to help meet regulatory and policy objectives. GCP satisfies ISO/IEC 27001/27017/27018/27701, SOC 1/2/3, PCI DSS, VPAT (WCAG, U.S. Section 508, EN 301549) and FedRAMP certifications, and alignment with HIPAA, GDPR, and CCPA.

#### 7.4. Disclaimer of warranties

Except as expressly provided in this agreement, each service package and all services provided and all Kabandy technology is provided to the Customer by Kabandy strictly on an "as is" basis and all other representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, are hereby disclaimed to the maximum extent permitted by applicable law. Kabandy and its licensors do not represent or warrant that (a) the services or Kabandy technology will meet the Customer's requirements or expectations, (b) any errors or defects will be corrected, or (c) any the Customer data is accurate as processed by the services. Kabandy's services may be subject to limitations or issues inherent in the use of the internet and Kabandy is not responsible for any problems or other damage resulting from such limitations or issues.

### 8. Indemnification

#### 8.1. Indemnification by Kabandy

Subject to these Terms, Kabandy will defend, indemnify and hold the Customer harmless against any loss or damage (including without limitation reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against the Customer by a third party alleging that the Customer's use of the Services infringes the patent, trademark or copyright of a third party; provided, that the Customer (a) promptly gives written notice of the Claim to Kabandy; (b) gives Kabandy sole control of the defense and settlement of the Claim (provided that Kabandy may not settle or defend any Claim unless it unconditionally releases the Customer of all liability); and (c) provides to Kabandy, at the Customer's cost, all reasonable assistance. Kabandy will have no obligations to the Customer under this Section 8.1 to the extent such Claims arise from the Customer's or its User's breach of these Terms or from the combination of such Service with any of the Customer's products, services, hardware or business processes. If any Service or any portion of

the Kabandy Technology is held to infringe any third party intellectual property rights, then Kabandy will, at its expenses and option: (i) obtain the right for the Customer to continue to use the Service; (ii) modify the software so that it is non-infringing; or (iii) replace the infringing component with a non-infringing functionally equivalent component. This Section 8.1 contains the Customer's exclusive remedy and Kabandy's sole obligation for Claims of infringement or misappropriation brought against the Customer.

## **8.2. Indemnification by the Customer**

Subject to these Terms, the Customer will defend, indemnify and hold Kabandy harmless against any loss or damage (including without limitation reasonable attorneys' fees) incurred in connection with Claims made or brought against Kabandy by a third party alleging that any Customer Data, or the use thereof with any Service, has caused harm to a third party or infringes the intellectual property rights of a third party; provided, that Kabandy (a) promptly gives written notice of the Claim to the Customer; (b) gives the Customer sole control of the defense and settlement of the Claim (provided that the Customer may not settle or defend any Claim unless it unconditionally releases Kabandy of all liability); and (c) provides to the Customer, at the Customer's cost, all reasonable assistance. The Customer will have no obligations to Kabandy under this Section 8.2 to the extent such Claims arise from Kabandy's breach of these Terms.

## **9. Limitation of Liability**

### **9.1. Limitation of Liability**

in no event will Kabandy's aggregate cumulative liability arising out of or related to this agreement or any order form hereunder, whether in contract, tort or under any other theory of liability, exceed the amounts paid or payable by and due from the Customer for the service package related to such claim during the one-year period immediately preceding the date the cause of action arose.

### **9.2. Exclusion of consequential and related damages.**

in no event will either party have any liability to the other party for any lost profits, loss of data, loss of use, costs of procurement of substitute goods or

services, or for any indirect, special, incidental, punitive, or consequential damages however caused and, whether in contract, tort or under any other theory of liability, whether or not the party has been advised of the possibility of such damage.

## **10. Terms and Termination**

### **10.1. Term**

The term of each Service Package shall be the Subscription Term specified in the Order Form relating to such Service Package and shall renew in accordance with Section 2.2 hereof unless terminated as provided in these Terms.

### **10.2. Termination for Cause**

A party may terminate all Order Forms related to a Customer for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of such thirty (30)-day period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by the Customer, Kabandy will refund the Customer any prepaid fees for the period after the date of termination.

### **10.3. Termination Without Cause**

A party may terminate any Order Form without cause and for such party's convenience by delivering written notice of such termination to the other party at least five (5) business days prior to the effectiveness of such termination; provided, however, that (i) in the case of any termination by Kabandy pursuant to this Section 10.3, Kabandy shall (a) permit the Customer to continue to utilize and access all Workspaces active as of the date of the termination notice until such Workspaces are completed and these Terms shall continue and survive with regard to such Workspaces until completion, and (b) refund to the Customer all pre-paid fees actually paid by the Customer in respect of the remaining balance of the Subscription Term on the date of such termination, and (ii) in the case of any termination by the Customer pursuant to this Section 10.3, the Customer shall have no right to any refund or credit in respect of any pre-paid fees paid or payable by the Customer on the date of such termination.

### **10.4. Return of Customer Data**

At any time during the Term at Customer's written request for any reason, or within ninety (90) days

after termination or expiration, Kabandy shall, and shall instruct all Authorized Persons to, promptly return to Customer all copies, whether in written, electronic, or other form or media, of Customer Data in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to Customer that such Customer Data has been returned to Customer or disposed of securely. Kabandy shall comply with all reasonable directions provided by Customer with respect to the return or disposal of Customer Data. After such ninety (90)-day period, Kabandy will delete the Customer Data from its servers unless requested otherwise by the Customer.

#### 10.5. Surviving Provisions

The following provisions will survive the termination or expiration of any Order Form for any reason and will remain in effect after any such termination or expiration: Sections 4, 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

### 11. Miscellaneous

#### 11.1. Relationship of the Parties

Neither these Terms, nor any Order Form, creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

#### 11.2. No Benefit to Others

The representations, warranties, covenants, and agreements contained in these Terms are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

#### 11.3. Notices

All notices under these Terms will be in writing and will be delivered to the addresses notified by the parties to each other by a means evidenced by a delivery receipt, by facsimile or by email. Notice will be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) on the date that notice is delivered via confirmed facsimile; or (iv) on the date that notice is delivered via confirmed email. Notices to Kabandy will be addressed to the attention of its Owner at the address set forth in the preamble to these Terms. Notices to the Customer shall be addressed to the Customer at the address set forth on the signature page hereto or to the last address provided by the Customer to Kabandy.

#### 11.4. Waiver and Cumulative Remedies

No failure or delay by either party in exercising any right under these Terms will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

#### 11.5. Severability

If any provision of these Terms is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision will be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms will remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate all Order Forms by notice to the other party.

#### 11.6. Assignment

The Customer may not assign or transfer any Order Form or these Terms or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of Kabandy. Notwithstanding the foregoing the Customer may assign an Order Form and all of its rights and obligations hereunder without consent of Kabandy in connection with a merger or acquisition of the Customer or a sale of all or substantially all of its assets of the Customer; provided, that in each case such assignment or transfer does not involve a direct competitor of Kabandy. Subject to the foregoing, any Order Form and these Terms will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

#### 11.7. Consolidation, Merger or Sale of Assets

Nothing shall preclude Kabandy from consolidating or merging into or with, or transferring all or substantially all of its assets to, another corporation which assumes these Terms, and all obligations of Kabandy, in writing. Upon such consolidation, merger, or transfer of assets and assumption, the term "Kabandy" as used herein, shall mean such other corporation and these Terms shall continue in full force and effect.

#### 11.8. Governing Law

All Order Forms and these Terms will be governed by and construed exclusively in accordance with the



Laws of Belgium, which will govern without reference to the conflicts-of-laws rules thereof.

11.9. Venue

Any claims arising under or relating to all Order Forms and these Terms will be brought exclusively in (and the parties will be subject to the exclusive jurisdiction of) the Law Courts of Brussels in Belgium. Each party hereby irrevocably consents to the jurisdiction of such courts.

11.10. Export Control Laws

The Customer agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Services or any underlying information or technology except in full compliance with all Belgian, foreign and other applicable laws and regulations.

11.11. Entire Agreement and Construction

These Terms, together with each Order Form executed by the Customer (e.g. in the form of a signed contract offer or a purchase order referring to such offer), constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of these Terms. No modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Notwithstanding any language to the contrary therein, no pre-printed terms or conditions set forth in a Customer purchase order or in any other Customer order documentation will be incorporated into or form any part of these Terms.