

Sendsteps Terms of Service(s)

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Introduction

Welcome to Sendsteps! Sendsteps offers Customer a software as a service solution for the use of a web-based audience response system. The system provides real-time interaction between a presenter and its audience via devices as described on Sendsteps' website such as laptops, tablets and smartphones. A general description of the different services that Sendsteps offers can be found on Sendsteps' website. Sendsteps offers Customer the possibility to use its web based software services by providing Free Services and Paid Services. In these Terms of Service(s) Sendsteps sets out the terms and conditions that apply to its Services.

About Sendsteps

Company name Sendsteps B.V.

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1. Applicability

1.1

These Terms of Service(s) apply to and form an integral part of all Agreements with Sendsteps for the use of any Paid Services or Free Services and apply to every use of the Service(s) by Customer, End User(s) and/or Audience. Any general terms and conditions of Users are rejected and do therefore not apply.

2. Definitions

2.1

The capitalized terms used in these Terms of Service(s) are defined words that shall have the following meaning:

Account The portal, accessible with a user name and password, that provides the Customer access to the Service(s) and that contains general information regarding the Customer and the applicable Service(s);

Agreement an Order Form and/or any other agreement with Sendsteps, including these Terms of Service(s);

Application A web-based audience response system for real-time interaction during a presentation between an Audience and a presenter via devices as described on Sendsteps' website such as

laptops, tablets and smartphones, including an add-in software program and management portal;

Audience Each individual who makes use of the interaction functionalities of the Application under the License of a Customer;

Content All data, including pictures, surveys, user data (such as user names) and personal information, submitted to the Application by a User of the Application;

Customer The individual or entity with whom Sendsteps has entered into (an) Agreement(s) for the use of a Paid Service or a Free Service(s);

End User(s) Each individual who makes use of a Paid Service or a Free Service under the License of a Customer, not including Audience;

Free Service A free service provided by Sendsteps whereby the Customer does not have to pay for the use of the Application;

License(s) A right of a Customer to have End User(s) and Audience use the Paid Service or Free Service;

Order Form A registration form or any other document entered into by Sendsteps and Customer (online or off line) for the use of the Service(s);

Paid Service A paid service(s) provided by Sendsteps whereby the Customer has to pay for the use of the Application and/or other Service(s) or the Student Service;

Paid Service Event A one-off Paid Service for a specific event as described on Sendsteps' website;

Paid Service Fun A one-off Paid Service for fun as described on Sendsteps' website;

Sendsteps Sendsteps B.V.;

Service(s) Any Free Service or Paid Service and/or any other service(s) agreed between Customer and Sendsteps as specified in the Account;

Student Version The service(s) provided by Sendsteps to students whereby the student is the Customer without any payment obligation for the use of the Application as described on Sendsteps' website;

Sub Account The portal, accessible with a user name and password, that provides End User(s) access to the Service(s) under the License(s) of a Customer and that contains general information regarding the Customer and the applicable Service(s);

Terms of Service(s) These Terms of Service(s);

User(s) Customer(s), End User(s) and/or Audience

3. Service(s)

3.1

The agreed Service(s) are specified in the Account.

3.2

Customer can choose for an upgrade of the Service(s), for example by upgrading from a Free Service to a Paid Service, by obtaining additional License(s) to a Paid Service or by obtaining additional functionalities within a Paid Service. Upgrades may be requested by Customer at any time.

3.3

Sendsteps also performs moderator services. Customer can contact Sendsteps if it wishes to make use of such moderator services. The Terms of Service(s), including but not limited to clause 6.2 regarding Customer's obligations with respect to interoperability, also apply to such moderator services agreed upon between Sendsteps and Customer.

3.4

All obligations for Sendsteps including the Service(s) qualify solely as best efforts obligations and not as result obligations.

3.5

The Service(s) may only be used by User(s) for audience response purposes under the conditions as set out in the Terms of Service(s).

3.6

The Service(s) are intended for business use only, except for the Student Service. Customer warrants that it will use the Service(s) (other than the Student Service) for business use only and not for consumer purposes.

4. License(s) and intellectual property rights

4.1

Sendsteps grants a non-exclusive, non-transferable and revocable license to Customer to use the Paid Service or Free Service for the term of the Agreement subject to the terms and conditions of the Terms of Service(s).

4.2

Customer is responsible for allocating an individual End User to a License. End User(s) must be employees of Customer or the Customer's group companies. Sendsteps preserves the right to not accept an End User(s) if to Sendsteps sole discretion there are reasonable grounds. Customer warrants that the number of End Users does not exceed the number of the License(s) under the Paid Service or Free Service and that not more than one individual End User uses a Sub Account under a License.

4.3

All intellectual property rights regarding the Service(s), including but not limited to the Application, knowhow, information, analysis, design and user manuals, remain exclusively with Sendsteps or its third party licensors. The Application is not sold or transferred to User(s) in any way.

4.4

A License does not include the right to a copy of the Application or the source code. A License does not include the right to, and Users are not allowed to:

- (1) (partly or completely) copy or reproduce the Application;
- (2) assign, lease, sub-license, encumber, disclose or otherwise make available (parts of) the Application;
- (3) change or make error corrections to (parts of) the Application;
- (4) reverse assemble, reverse engineer, decompile or otherwise attempt to derive the source code of (parts of) the Application.

5. Duration, upgrades and downgrades

5.1

Sendsteps will only provide a License to Customer and use of the Paid Service and/or Free Service is only allowed for the term of an Agreement and under the Terms of Service(s) and:

5.1.1

where it concerns a Paid Service other than a Student Service after Customer submits the Order Form and has accepted the Terms of Service(s) and Sendsteps has received the fees for the Services as described in clause 8 of the Terms of Service(s);

5.1.2

where it concerns a Free Service or a Student Service: after Customer submits the Order Form and has accepted the Terms of Service(s);

5.1.3

where it concerns upgrades: after Customer submits its request for additional Service(s) and Sendsteps has received the fees for the additional Services and Customer has accepted the Terms of Service(s).

5.2

An Agreement is effective as of the date set out in clause 5.1, except for upgrades. An upgrade is considered an amendment of the existing Agreement.

5.3

An Agreement regarding a Paid Service, other than an Agreement regarding the Paid Service Event or an Agreement regarding the Paid Service Fun, has an initial term of one (1) year, unless terminated earlier in accordance with the Terms of Service(s). Following the initial term of one (1) year, the Agreement is automatically extended for successive terms of one (1) year unless Sendsteps or Customer informs the other party in writing that it wishes not to extend the Agreement taking into account a notice period of one (1) month before the end of the then applicable term. If the Customer and Sendsteps agree to an upgrade before the end of the then applicable term of the Agreement, a new one-year-term within the existing Agreement commences as of the date set out in clause 5.1.3.

5.4

An Agreement regarding a Paid Service Event has a term of one (1) week. An Agreement regarding a Paid Service Fun has a term of three (3) calendar days. Such Agreements expire automatically and without a party's notice being required, unless terminated earlier in accordance with the Terms of Service(s). Such Agreements cannot be extended.

5.5

Customer has the right to downgrade a Paid Service into a different Paid Service or to lesser functionalities within the chosen Service(s) by specifying in writing to Sendsteps the desired downgrade taking into account a notice period of one (1) month before the end of the then applicable term of the Agreement.

5.6

If the event of termination of a Paid Service, the Agreement regarding a Paid Service will automatically revert into an Agreement regarding a Free Service under the Terms of Service(s).

5.7

An Agreement regarding a Free Service has an indefinite term, unless terminated by Sendsteps or Customer in accordance with clause 12.3 of the Terms of Service(s).

6. Customer and End User responsibilities

6.1

Customer and End User shall timely provide all assistance, data and information necessary for Sendsteps to provide the Service(s). Customer will deliver data and information in the form and manner set out by Sendsteps. Customer and End User shall act in accordance with Sendsteps' instructions for the use of the Application.

6.2

Customer and End User are responsible for the internet connection, interoperability, web browser, updated Microsoft software and equipment that enables User(s) to access and use the Application. Customer shall:

- (1) install the Application on Microsoft Windows computers with the most recent available Microsoft Windows software only;
- (2) install and use the most recent version of (any part of) the Application;
- (3) be responsible for a functioning internet connection;
- (4) not use the Application via a VPN (Virtual Private Network) connection.

6.3

Customer and End User ensure that the Content, software and equipment used is free of viruses, worms, Trojan horses or other codes or instructions that are designed to disrupt or damage the Application or any communication and that it cannot damage or disrupt the Application or any communication in any other way.

6.4

Customer and End User use the Application at their own risk. Sendsteps does not guarantee that the Application meets Customer's expectations.

6.5

Customer is responsible for the use of the Application by End User(s) and by Audience. All acts related to a License are considered to take place under the responsibility and supervision of Customer. Customer warrants that End User(s) and Audience comply with the Terms of Service(s) notwithstanding any independent obligations of End User(s) and Audience against Sendsteps under the Terms of Service(s). Customer will notify Sendsteps immediately if it suspects or becomes aware of abuse or unauthorized use of License(s) and/or the Application.

6.6

Customer procures that Customer and End User(s) keep log in information including but not limited to user name(s) and password(s) to the Application confidential. This includes but is not limited to the obligation not to share log in information with the Customer's (other) employees.

7. Service availability, maintenance, updates and support

7.1

A Service is provided on an "as is" basis. Sendsteps will make reasonable efforts to provide Customer with continuous access to the Service(s). Sendsteps will also make reasonable efforts to correct any errors in the Application. Parties however acknowledge that the Service(s) may not always be accessible and that the Application may not always operate without interruptions, errors or defects.

7.2

Sendsteps is entitled to block access to the Application and to switch off certain functionalities of the Application in order to perform the necessary maintenance, updates or improvements to the Service(s)

without prior notice. Sendsteps is not liable for any downtime as a result of this. Sendsteps strives to inform Customer in advance of planned maintenance that Sendsteps believes may temporarily affect the availability of the Service(s).

7.3

Sendsteps preserves the right to automatically add additional features or program adjustments, updates and upgrades to the Application. Customer agrees in advance to install and/or accept new version(s) of the Application.

7.4

Sendsteps does not warrant timely adjustment of the Service(s) to amended legislation or regulation.

7.5

Sendsteps offers different scopes of support, depending on the agreed Service(s). The applicable level of support is specified in the Account.

8. Payment

8.1

Customer shall pay to Sendsteps the fees specified in the Account, unless Customer has an Agreement regarding a Free Service or an Agreement regarding a Student Service. All fees and prices are increased with VAT and other taxes, levies or tolls if applicable.

8.2

Payment by Customer to Sendsteps must be made in advance of each term for the entire term. In case of an upgrade the prepaid fees will be settled on a pro rata basis with the fees for the new term.

8.3

Payment of the fees by Customer to Sendsteps for the initial term and payment of fees for upgrades must be made in accordance with the payment methods as described on the Sendsteps' website, unless payment on an invoice basis is agreed upon. Invoices must be paid by Customer to Sendsteps within fourteen (14) days following the invoice date, or, if the desired commencement date of the Agreement lies within fourteen (14) days following the invoice date, before the desired commencement date of the Agreement. Payment terms are fatal terms as mentioned in article 6:83 sub a Dutch Civil Code.

8.4

If the Agreement is extended pursuant to clause 5.3 of the Terms of Service(s), Sendsteps will collect the fees from Customer due for the following term via the chosen payment method. If Sendsteps for whatever reason is unable to collect the fees from Customer or, if payment on an invoice basis is agreed upon, has not received full payment of the invoice within the agreed payment term, a five-day-grace period commences. During this period of five calendar days following Sendsteps' first attempt to collect the fees, Sendsteps will make attempts to collect the fees due by Customer in accordance with the chosen payment method. If Sendsteps does not succeed in collection of the fees or, if payment on invoice basis is agreed upon, does not receive full payment by the end of this grace period, Sendsteps has the right to suspend the performance of its obligations notwithstanding any other rights. This includes, but is not limited to, the right to block Customer's (including End User(s)' and Audience's) access to the Application. This will not affect Customer's payment obligations. The fees will remain

due and payable by Customer. Sendsteps will give Customer written notice of the failure to collect the fees or, if payment on invoice basis is agreed upon, of the non-payment of the invoice.

8.5

Any right for Customer to suspend or settle any payment obligation is excluded.

8.6

Services and fees may be amended by Sendsteps from time to time. Sendsteps will give prior written notice to Customer of such amendments. Amendments will take effect as from the next one-year-term of an Agreement. If Customer does not agree with any amendment of the Service(s) or fees, Customer has the right to terminate an Agreement taking effect from the end of the then applicable one-year-term.

8.7

A Customer with an Agreement regarding a Paid Service has the right to terminate the Paid Service without cause within fourteen (14) days from the initial and each subsequent term by giving notice in writing to Sendsteps via legal@sendsteps.com. Sendsteps will repay to Customer the full amount of fees paid by Customer to Sendsteps within fourteen (14) days from receipt of this notice of termination. Customer is not entitled to a refund if Customer or its End User has used the Application with an Audience during the aforementioned fourteen (14) days from the initial term and/or if the Customer or its End User has tested the functionalities of the Application by using the interaction functionalities.

8.8

Customer will immediately notify Sendsteps of any changes in its name, address, e-mail address, bank account number, credit card information and other relevant information regarding the chosen payment method by updating the information in its Account.

9. Content

9.1

Customer is responsible for the use of the Application and the submission of Content by End User(s) and Audience.

9.2

Customer and End User(s) are not allowed to use the Application and to submit Content that is in conflict with applicable legislation and regulations, the Terms of Service(s) and any other Agreement. This includes, but is not limited to, a prohibition for Customer and End User(s) to use Content that infringes intellectual property rights of Sendsteps or third parties.

9.3

In addition, Customer and End User(s) are prohibited to use the Application in an inappropriate manner and to submit Content that is generally considered inappropriate. This includes, but is not limited to, Content that is libelous, harassing, promotes violence or is discriminatory.

9.4

Sendsteps has the right to remove Content that, in the opinion of Sendsteps, does not meet the requirements of clauses 9.2 and 9.3. Sendsteps also has the right to remove Content that according to a third party is unlawful or constitutes an infringement of intellectual property rights. In such cases Sendsteps cannot be obliged to investigate and assess the validity of such claims.

9.5

Sendsteps is not obliged to perform data recovery i