

# General Terms and Conditions on the Use of Software Services of Sandstorm Media GmbH related to the Software EXPLY (“General Terms”)

## § 1 Applicability of General Terms and Conditions

- (1) Sandstorm Media GmbH, Tatzberg 47, 01307 Dresden (“**SANDSTORM**” or “**Licensor**”) offers (cloud-based) proprietary software solutions, in particular in the fields of data analytics, run in majority on a web browser platform and at the moment being used and distributed under the name “Exply” (“**Software**”) for timely-limited use to its customers (“**Licensee**”).
- (2) SANDSTORM’s Software is an application which is separated – depending on Licensees individual agreements with SANDSTORM – into one or more modules and hosted on servers of SANDSTORM and/or of third parties.
- (3) These General Terms shall together with the individual agreement between the Licensor and the Licensee and its terms which specifies e.g., contractual prices, contractual periods etc. (“**Agreement**”) and – in case the Software is provided over the Atlassian Marketplace through Atlassian Pty Ltd, an Australian corporation (ABN 53 102 443 916) (“**Atlassian Marketplace**”) also the terms and conditions of Atlassian which may be found under <https://www.atlassian.com/licensing/marketplace/termsfuse> (“**AM Terms**”) outline and supplement the contractual relationship between SANDSTORM and the Licensee regarding the Software. In case of discrepancies the Agreement shall prevail over the General Terms which shall in turn prevail over the AM Terms.
- (4) SANDSTORM grants Licensee for a limited time access to its Software based on and subject to the Agreement.
- (5) The General Terms shall apply to all agreements between Licensee and Licensor related to the Software.
- (6) No general terms of Licensee – neither in whole nor in part – shall apply with regard to the Software. This shall also be applicable in case SANDSTORM delivers or grants access to the Software and does not or not expressly contradict such general terms of Licensee. Licensee will be considered having accepted these General Terms by using the Software without expressly consenting to the General Terms in case the General Terms have been delivered or made available by SANDSTORM to the Licensee prior to or together with the Software.
- (7) SANDSTORM reserves the right to amend these General Terms from time to time. In case of any amendment SANDSTORM or Atlassian Marketplace shall inform the Licensee with 14 days prior notice indicating Licensor’s right to refuse acceptance of such amended General Terms by granting Licensee an extraordinary termination right regarding the Agreement. Any Licensor not refusing acceptance of the General Terms shall be deemed to have accepted the General Terms. The same shall apply to changes in the AM Terms.

## § 2 Purpose of Agreement

- (1) SANDSTORM provides to Licensee its Software “as a service” over the internet together with – as the case may be – data storage space (“**SaaS**”).

- (2) SANDSTORM may use subcontractors to host the Software and the storage space, unless Licensee proves reasonable grounds which have occurred following the conclusion of the Agreement and notified SANDSTORM of such ground and request in writing that Software and data must be hosted with SANDSTORM. Licensee shall bear any additional costs arising out of such request. SANDSTORM shall be entitled to reject such request if SANDSTORM's interest to keep hosting unchanged outweigh Licensee's interest with regard thereto.

### § 3 Providence of Software

- (1) SANDSTORM provides to Licensee the Software based on the Agreement in its current version over the internet against payment. For this purpose, SANDSTORM installs the Software onto a server which may be reached by Licensee over the internet. SANDSTORM shall not be responsible for the data connection to the server and the Software and any costs arising out of or in connection with such connection shall be borne by Licensee.
- (2) The specifications of the Software are described in the Agreement or, if SANDSTORM and Licensee have not specifically agreed upon any specifications, by the specifications made for Software on Software's website which may currently be reached under [www.exply.io](http://www.exply.io) ("**Software Description**").
- (3) SANDSTORM shall, subject to the technical possibilities, remedy any defects of Software without undue delay. A defect shall be present in case Software does not fulfil the specifications mentioned in the Software Description.
- (4) Further developments made for or to Software shall be made at SANDSTORM's sole discretion. There shall be no claim of Licensee to be provided with regular updates of Software.

### § 4 Rights in Software

- (1) SANDSTORM herewith grants to Licensee the non-exclusive, non-transferable right to use the Software under the Agreement for the contractual term and the purpose of the Agreement as SaaS.
- (2) If not specified within the Agreement the licenses are granted as follows:
  - (i) for the Software containing all modules, e.g., dashboards, user management, data source management] on a per user per month basis as defined in the AM Terms;
  - (ii) for the Software provided as a public direct cloud on a per user per month basis.
- (3) Licensee shall, unless expressly authorized in writing by SANDSTORM, in particular not be entitled to amend, edit, modify, decompile or reverse engineer the Software.
- (4) Licensee shall further not be authorized to copy the Software unless such copying is carried out on the servers of SANDSTORM or other hosts used by SANDSTORM in order to run the Software. For the avoidance of doubt, the installation (even if temporary) or storage on hard disks or other hardware of Licensee is prohibited.

- (5) Licensee is not entitled to provide Software or access to Software whether against payment or free of charge to third parties. A further rent of Software or the transfer of access to SANDSTORM's Software is expressly prohibited.

## **§ 5 Granting of Storage Space**

- (1) SANDSTORM provides Licensee with a defined storage space on servers of SANDSTORM or other hosts used by SANDSTORM to store its data related to the Software and results arising from the use of Software ("**Software Data**"). Licensee may store data up to 20 GB [pursuant to the technical specifications given in the Software Description]. Should the storage space exceed the storage space necessary to store Software Data SANDSTORM may, conditional upon its availability, provide Licensee with additional storage space at further cost.
- (2) Licensee shall not be entitled to provide the storage space whether against payment or free of charge to third parties.
- (3) Licensee is obliged to ensure that only Software Data is stored on the storage space and that further no content is created, stored, published, made available or used that may infringe applicable laws or any third party rights.
- (4) SANDSTORM shall ensure that the Software Data are appropriately protected against loss of data.
- (5) Licensee shall be the solely entitled owner of the created or stored Software Data and may at any time request return or deletion of particular or all Software Data.
- (6) Upon prior notification and warning and following termination of the Agreement and further lapse of a reasonable time period set upon Licensee SANDSTORM may, without undue delay, delete Licensee's Software Data. Licensee can request SANDSTORM to transfer its Software Data related to configuration (e.g. dashboard, importer, user configuration) before deletion. The transfer will occur via secure transfer over the internet.

## **§ 6 Suspension / Impairment of Availability / Support**

- (1) Modifications and changes of SaaS as well as measures taken to identify, or cure malfunctions of SaaS shall only be followed by a temporary suspension or impairment of SaaS if such suspension or impairment is necessary for technical reasons.
- (2) Monitoring of SaaS is carried out without undue delay. Maintenance of SaaS is in general ensured Monday to Friday 9.00 a.m. – 5.00 p.m. CET. In case of serious malfunctions, e.g., the use of SaaS is seriously affected or impossible, maintenance shall be carried out within three hours (during ordinary business hours) from Licensee appropriately notifying SANDSTORM of such malfunction.
- (3) The availability of SaaS under the Agreement is ensured at an annual average of 98.5% including maintenance. However, availability shall not be suspended for any longer than two consecutive calendar days.
- (4) Support services are rendered in accordance with the Agreement. Should the Agreement not refer to reaction times or forms of reactions, SANDSTORM shall react to support requests at its earliest convenience and may freely choose whether a support

request shall be addressed by phone or email or other form of communications. In any case the support services are limited to the services referred to in the Agreement.

- (5) In case the Agreement contains stipulations on service levels etc. such stipulations shall prevail over this section 6.

## **§ 7 Obligations of Licensee**

- (1) Licensee shall ensure by appropriate measures that no third parties have access to Software and/or protected areas of SaaS. Licensee has to inform its employees and people with access to Software that any SANDSTORM's intellectual property rights must be respected at all times.
- (2) Irrespective of SANDSTORM's obligation to secure Software Data, Licensee shall be responsible to enter, maintain and keep its data (including Software Data) and information required to use SaaS.
- (3) Licensee shall be obliged to inspect its data (including Software Data) and information prior to its use with state-of-the-art virus scanners for viruses and other malicious components.
- (4) Licensee is solely responsible for the data it imports into Software. Software is not specifically certified to process special categories of personal data according to Articles 9 and 10 GDPR. In case Licensee chooses to process such data with Software this is done at their own risk.
- (5) Any user ID and passwords whether created by SANDSTORM or Licensee to access SaaS and/or Software shall be kept strictly confidential and may not be made available to third parties.
- (6) Any content on storage space allocated to Licensee may be protected by intellectual property or data protection rights. Licensee herewith grants SANDSTORM the right to transfer such contents upon Licensee's request for transfer over the internet and to copy and transfer such content for such purposes and for ensuring data security.

## **§ 8 Consideration**

- (1) Licensee agrees to pay SANDSTORM the consideration for the providence of Software, data storage and access to SaaS as agreed upon in the Agreement plus any applicable value added tax.
- (2) If not specified within the Agreement the licenses are granted for the consideration as follows:
  - (i) for the Software provided over the Atlassian Marketplace containing all modules, e.g. dashboards, user management, data source management on a per user per month basis as defined in the AM Terms;
  - (ii) for the Software provided as a public direct cloud on a per user per month basis.
- (3) Unless otherwise provided for in the Agreement or the AM Terms the consideration shall be due and payable on a monthly basis in advance and shall be subject to SANDSTORM's price list in place at the time of entering into the Agreement.

- (4) Any objections to invoices and considerations shall unless otherwise provided for within the AM Terms for Software provided through the Atlassian Marketplace be raised by Licensee in writing within four weeks from the delivery of the respective invoice. Following the lapse of such four weeks' period the respective invoice and consideration shall be deemed approved by Licensee. SANDSTORM will notify Licensee of such consequence within its invoice.

## **§ 9 Defects / Liability**

- (1) SANDSTORM ensures functionality of SaaS in accordance with the Agreement and the General Terms.
- (2) Licensee shall be liable for any considerations which are based on the providence of services by SANDSTORM due to access information being used by unauthorized third parties until Licensee informs SANDSTORM of loss or theft of access information, unless such loss or theft was neither directly nor indirectly caused by Licensee or Licensee is otherwise responsible for such loss or theft.
- (3) SANDSTORM is entitled to immediately block or restrict access to SaaS or storage space to the extent that SANDSTORM has reasonable grounds to believe that the use of SaaS or the storage of data is unlawful or infringes any rights of SANDSTORM or third parties.
- (4) Independent of its legal grounds, any liability of SANDSTORM shall be excluded unless SANDSTORM, its representatives or agents are acting based on gross negligence or wilful misconduct. For slight negligence, liability of SANDSTORM shall only be permissible if SANDSTORM, its representatives or agents have breached a material contractual obligation. SANDSTORM shall in any case only be liable for predictable damages which are typical for the contractual performance obligations and are related to SANDSTORM's performance.
- (5) SANDSTORM shall not be liable for the loss of data if the loss of data is caused by an omission of Licensee to secure data and respectively to ensure that data may be recovered with reasonable efforts or the loss of data is permitted under these General Terms or the Agreement.
- (6) SANDSTORM shall be liable without limitation for any damages based on harm to life, bodily injuries or health caused by SANDSTORM, its representatives or agents.

## **§ 10 Term and Termination**

- (1) Unless otherwise defined within the Agreement or the AM Terms for Software provided over the Atlassian Marketplace or resulting from the nature of the Agreement (e.g., on a pay-per-use basis) the Agreement between SANDSTORM and Licensee shall be entered into for a period of at least one month. It shall automatically renew for another period of one month unless terminated by either party with a notice period of one month to the end of the respective contractual period.
- (2) Either party's right to terminate the Agreement for cause shall remain unaffected. SANDSTORM shall in particular be entitled to terminate the Agreement for cause if Licensee fails to pay its due consideration following a payment reminder or is in breach of the contractual provisions set in the Agreement or the General Terms for the use of SaaS and/or Software.

## § 11 Data Protection / Confidentiality

- (1) Licensee shall be solely responsible to obtain any consent declarations of its contractual partners or employees which are required pursuant to applicable data protection regulations such as the Federal Act on Data Protection (*BDSG – Bundesdatenschutzgesetz*) or the General Data Protection Regulation (*DSGVO-Datenschutzgrundverordnung*).
- (2) Software is not specifically certified to process special categories of personal data according to Articles 9 and 10 General Data Protection Regulation (*DSGVO-Datenschutzgrundverordnung*).
- (3) SANDSTORM and Licensee agree to treat procedures as well as trade or business secrets which the respective party has become aware in the preparation, conduction, or satisfaction of the Agreement confidential and shall not transfer nor likewise use such information with the exception that it is necessary under the Agreement.

## § 12 Open Source Licences

SANDSTORM may use certain components within Software which are third party licenced, e.g., open-source software components ("**Open-Source Software**"). A list of the Open-Source Software and, as the Open-Source Software licence so requires, related licence conditions of Open-Source Software may be provided by SANDSTORM to Licensee at its discretion within the Agreement or be published on its website under [www.exply.io](http://www.exply.io). Licensee agrees to be bound by any licence conditions arising from Open-Source Software related to the use of the Software by Licensee.

## § 13 Applicable Laws, Venue

- (1) The Agreement and the General Terms are subject to German laws. The United Nations Convention on the International Sale of Goods shall be excluded.
- (2) Exclusive venue for any disputes arising out of or in connection with the Agreement or these General Terms shall be Dresden, Germany.

## § 14 Miscellaneous

- (1) Side agreements to the Agreement and the General Terms do not exist. Any amendments or changes to the Agreement and the General Terms shall require written form. This shall also apply to this written form requirement.
- (2) In case one or several provisions of the Agreement or the General Terms shall be invalid or unenforceable the remaining provisions shall not be affected thereby. The invalid or unenforceable provision shall be replaced by such provision which comes closest to the economic intent of the invalid or unenforceable provision. The same shall apply in case of contractual gaps.