**Terms of Service**

Subscription Agreement for CustomerGauge®

*This Agreement was last updated on 23 May 2018. These terms and conditions (the “Terms”) for services govern the provision of services by CustomerGauge to you. You agree that these Terms prevail over any of Your general terms and conditions and provision of services by CustomerGauge does not constitute acceptance of any of Your terms and conditions and does not serve to modify or amend these Terms.*

THIS SUBSCRIPTION AGREEMENT (“AGREEMENT”) GOVERNS YOUR ACQUISITION OF CUSTOMERGAUGE SERVICES AND ONLINE CUSTOMER LOYALTY APPLICATIONS (INCLUDING THE SERVICES “CUSTOMERGAUGE FOUNDATION”, “CUSTOMERGAUGE ENTERPRISE”, “CUSTOMERGAUGE ENPS”, “EMPLOYEEGAUGE” ) FROM US AND YOUR USE OF THOSE CUSTOMERGAUGE SERVICES.

If you subscribe for a Proof Of Concept (POC) for the CustomerGauge Services, this agreement will also govern that POC.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, OR BY USING THE CUSTOMERGAUGE SERVICES, OR BY EXECUTING AN ORDER FORM, OR BY SIGNING A MASTER SERVICES AGREEMENT THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT OR ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, AND IN SUCH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE CUSTOMERGAUGE SERVICES.

You may not access the CustomerGauge Services if You are Our competitor, except with Our prior written consent. In addition, You may not access the CustomerGauge Services for purposes of monitoring the CustomerGauge Services’ availability, performance or functionality, or for any other benchmarking or competitive purposes.

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1. DEFINITIONS

“Additional Products and Services” means any, some, or all of the following that You acquire from a Provider for use with the CustomerGauge Services and are not governed by the terms of this Agreement including:

(a)  Non-CustomerGauge Applications and other online applications and/or offline software products (including but not limited to integrations between the CustomerGauge Services and other online applications and/or off-line software products), that interoperate with the CustomerGauge Services; and/or

(b) Consulting services relating to the deployment, implementation, enhancement and/or customization of the CustomerGauge Services and/or the integration of the CustomerGauge Services with Additional Products and Services.

“Affiliate” means any entity which 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.

“CustomerGauge Services” means the products and services under the name “CustomerGauge” or “EmployeeGauge” that are ordered by You that are subject to the terms of this Agreement including assisted Service applications (including specifically “CustomerGauge Foundation” and “CustomerGauge Enterprise”) ordered by You under a Master Services agreement made available by Us online via the customer login link at [http://www.customergauge.com](http://www.customergauge.com/) and/or other web pages designated by Us, including associated offline components.

“Non-CustomerGauge Applications” means online applications and offline software products that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services.

"Customer Data" means, other than Resultant Data, information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from You or Your authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services.

“Data Controller” (“You”, the User, Client) means a person or entity who determines the purposes for which and the manner in which any personal data (“Survey Users”) are, or are to be, processed.

“Data Processor” (“Us”, CustomerGauge) means the entity that processes the data on behalf of the data controller.

“DPA” (Data Processing Agreement) is an amendment to the Agreement. It includes the Standard Contractual Clauses adopted by the European Commission, as applicable, reflects the parties’ agreement with respect to the terms governing Data Processing under the [CustomerGauge Terms of Service](https://legal.hubspot.com/terms-of-service). Once executed the DPA will form a part of the Agreement. A Model Agreement is available on request.

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

“Harmful Code” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby, or (b) prevent Customer or any authorized User from accessing or using the Services or as intended by this Agreement.

“Order Form” means the documents for placing orders for certain Purchased Services, including addenda thereto, that are entered into between You and Us or any of Our Affiliates from time to time, including addenda and supplements thereto. Order Forms shall be deemed incorporated herein by reference.

“Provider” means the party offering Additional Products and Services to You under terms and conditions that are separate and apart from this Agreement.  Depending on the circumstances, the Provider may be (i) an individual or entity unrelated to Us or (ii) Us (or one of Our Affiliates).

“Purchased Services” means CustomerGauge Services that You purchase.

"Resultant Data" means information, data and other content that is derived by or through the Services from processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content.

“Users” or “Client Users” means the individuals authorized by You to use the CustomerGauge Services who have been supplied user identifications and passwords by You (or by Us at Your request) to access CustomerGauge Services purchased by You . Users are your agents and may include but are not limited to Your employees, consultants, contractors, and third parties with which You transact business.

“Survey Users” means the individuals who You invite to complete CustomerGauge surveys . You are limited by the terms of this agreement to contact your customers and third parties with which You transact business and comply with all privacy requirements in your jurisdiction.

“We,” “Us” or “Our” means the CustomerGauge company described in Section 13.

“You” or “Your” means you as an individual, or the company or other legal entity for which you are authorized to accept the terms of this Agreement.

“Your Data” means all electronic data or information submitted by You to the Purchased Services.

2. PURCHASED SERVICES

2.1. Provision of Purchased Services. We shall make the Purchased Services available to You during a subscription term pursuant to the terms of this Agreement and the relevant Order Form(s). You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. Subscriptions. Unless otherwise specified CustomerGauge Services are purchased as Company subscriptions and may be accessed by a limited number of Users for the applicable CustomerGauge Service. User logins are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the CustomerGauge Services. There are limitations to the number of records, emails and other items that may be processed. Additional item or user upgrades may be purchased.

2.3 Order Form / Quote. In order for the Order Form and Order to be valid it must be signed by You before the expiration date. Beyond the expiration date We have the right to update prices taking into account e.g. newly released product features.

2.4 Price Adjustments. We are entitled to update prices relating to an existing contract after the initial contract period (default 24 months).

3. USE OF THE CUSTOMERGAUGE SERVICES

3.1. Our Responsibilities. We shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, and (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime less than 15 minutes not more than once per 24 hour period (and of which We shall endeavor to give at least 24 hours notice via the Purchased Services and which We shall schedule to the extent practicable from 02.00 a.m. to 07.15 p.m. Eastern Standard Time), (b) planned downtime greater than 15 minutes (of which We shall endeavor to give at least 48 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 10:00 p.m. Friday to 02:00 a.m. Monday Eastern Standard Time), or (c) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks.

3.2. Our Protection of Your Data. We shall not (a) modify Your Data; (b) disclose Your Data to third parties except as compelled by law in accordance with Section 8.3 (Compelled Disclosure) or unless expressly permitted in writing by You, or (c) access Your Data except as necessary to provide the CustomerGauge Services, to prevent or address service or technical problems, or at Your request in connection with Your customer support matters.

3.3. Your Responsibilities. You shall (i) be responsible for Users’ compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the CustomerGauge Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the CustomerGauge Services only in accordance with the terms of this Agreement and any other agreements between Us and applicable laws and government regulations. You shall not (a) make the CustomerGauge Services available to anyone other than Users, (b) sell, resell, rent or lease the CustomerGauge Services, (c) use the CustomerGauge Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the CustomerGauge Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the CustomerGauge Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the CustomerGauge Services or their related systems or networks.

3.4 Data Permissions. CustomerGauge acts in the role of the Data Processor on behalf of You (Data Controller) that has provided information to CustomerGauge and will consume the data collected. If you process any Data relating to EU citizens, You must have an executed GDPR-Compliant Data Processing Agreement in place with Us. In all cases, you warrant that you have obtained permission from the “Client Users” in order to contact them. CustomerGauge will provide information via the System in case of “Unsubscribe” or “Do not contact” notifications, or by email in the case of questions over your Data Privacy Policy.

3.5 Unsubscribe: You must include our “Unsubscribe” function and a link to the CustomerGauge privacy policy in emails sent from the system. CustomerGauge Enterprise systems may be allowed to have a different setup when agreed in writing.

3.6 Monitor Direct Email Contacts by Survey Users: You must monitor customer response directly to you by providing a valid email address to a monitored account. You may not provide a false or non-existent email address which is not live (example “do-not-reply@…”). CustomerGauge Enterprise systems may be allowed to have a different setup when agreed in writing.

3.7 Spam or Unsolicited Email. You may only use CustomerGauge for purposes relating to Customer Feedback and/or Net Promoter System. It is not for general email marketing, or for sending “bulk unsolicited email” ie Spam (as defined by Spamhaus).

3.7.1 CustomerGauge is committed to preventing spam-related abuse.

You may only use CustomerGauge to send Emails or SMS to people and entities that you have a “business relationship” with – i.e. where you have been given their name and email address in connection with a purchase, or negotiations to purchase, a product or service from you, have not opted out from receiving your emails, and either:

3.7.1.1    Have purchased something from you or negotiated a purchase from you in the past 12 months; or

3.7.1.2    Did not object to email content you sent them in the past 12 months.

3.7.2     You must comply with all local laws on Email Spam, for example CAN-SPAM in the USA. (a list of SPAM legislation by country is available here:   <https://en.wikipedia.org/wiki/Email_spam_legislation_by_country> )

3.7.3   If Our Emailing sending on your behalf results in a significant amount of Spam complaints (above 0.1% of sending), we reserve the right to terminate any and all services under clause 12.3. You should have proof every recipient on your list meets the requirements listed in Section 7.1 above.

3.8.   Continual Improvement Program: You agree that CustomerGauge may schedule regular Account Reviews (“Customer Success Account Reviews”) with You in order to promote best quality of service and improved product performance for You and other Clients. To facilitate these reviews You consent to allow CustomerGauge to analyze User login patterns, Services utilization, to survey You and other Client Users of The Services. You further consent to endeavor to attend joint Account Reviews (“QBR”, “Quarterly Business Review”, normally held up to 4 times a year between You and CustomerGauge. You agree that anonymized statistics on certain benchmarks which may include scores and response rate can be shared to provide a “Benchmark Service” for You and other CustomerGauge Clients provided they are not attributed to individual Clients.

1. ADDITIONAL PRODUCTS AND SERVICES

4.1. Acquisition of Additional Products and Services.  From time to time, We or other Providers may make Additional Products and Services available to You. Any acquisition by You of such Additional Products or Services, and any exchange of data between You and the applicable Provider of the Additional Products or Services, is solely as agreed between You and the applicable Provider and is not subject to the terms of this Agreement.  We do not warrant or support Additional Products and Services under this Agreement, even if We are the Provider or the Additional Products and Services are designated by Us as “certified,” “authorized” or otherwise.  Subject to Section 5.3 (Integration with Non-CustomerGauge Services), no purchase of Additional Products and Services is required to use the CustomerGauge Services. A computing device, operating system, web browser and Internet connection are supported by the CustomerGauge Services.

4.2. Additional Products and Services and Your Data. If You install or enable any Additional Products and Services for use with CustomerGauge Services, You acknowledge that We may enable the Additional Products and Services to access Your Data as required for interoperation between the Additional Products and Services and the CustomerGauge Services; we shall not be responsible under this Agreement for any disclosure, modification or deletion of Your Data resulting from such access.

4.3. Integration with Non-CustomerGauge Services. The CustomerGauge Services may contain features designed to interoperate with CustomerGauge.com Applications (e.g., SalesForce, SAP, Magento, Google or Slack applications). To use such features, You may be required to obtain access to such Non-CustomerGauge Applications from their Providers. If the Provider of any such Non-CustomerGauge Application ceases to make the Non-CustomerGauge Application available for interoperation with the corresponding CustomerGauge Service features on reasonable terms, We may cease providing such CustomerGauge Service features and You agree that You will have no recourse against Us as a result.

1. FEES AND PAYMENT FOR PURCHASED SERVICES

5.1. Fees. You shall pay all fees for Purchased Services as specified in the billing section of the CustomerGauge Order Form which is incorporated herein by reference.  Except as otherwise provided herein payment obligations are non-cancelable and fees paid are non-refundable. Subscriptions cannot be decreased during the relevant subscription term as such term is defined in the Order Form.

5.2. Invoicing and Payment. Payment details are stated on each Invoice you will receive. It is your obligation to pay us within the stated time. In case of payment through a credit card, You will provide Us with valid and updated credit card information, or in the case of a Master Services Agreement, You will make alternative payment arrangements with Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased CustomerGauge Services. Company Subscription Terms are charged In Advance in Periods of Monthly, Quarterly or Yearly as indicated on your Order Form. Ad hoc Flex usage or Overage Charges (i.e., additional email, users etc) subscriptions will be charged at the end of each month of the applicable subscription period in arrears. If you add services or features, charges will be prorated over the remaining term of the subscription period and charged at the time you make the conversion or add the subscription. If You have pre-paid in advance, charges for Purchased Services will be subtracted from the pre-paid balance first, and any remaining amounts will be charged to Your credit card. Subscriptions for any pre-paid bundles where You have purchased a monthly block of items including Emails, Translations or SMS etc in advance, and unused items expire at the end of each calendar month and do not roll into subsequent months, You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, (a) such charges 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, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).

5.4. Overage Charges. Overage Charges are billed for services used that are outside your purchased package limits. Overage Charges are disclosed to You on the initial Order Form. Unless otherwise stated, any Overage Charges incurred by you will be billed in arrears on a Quarterly basis. Overage Charges which remain unpaid for 30 days after being billed are considered overdue. Failure to pay Overage Charges when due may result in your Service being terminated.

5.4.1 CustomerGauge reserves the right to adjust Overage Charges with notification and will charge the current rate at the time of billing.

5.5. Suspension of CustomerGauge Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 7 days’ prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice), before suspending services to You.

5.6. Payment Disputes. We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of CustomerGauge Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.7. Taxes. Unless otherwise stated, Our 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 Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

1. PROPRIETARY RIGHTS

6.1. Reservation of Rights in CustomerGauge Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the CustomerGauge Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein. You hereby unconditionally and irrevocably grant to Us an assignment of all right, title and interest in and to the Resultant Data.

6.2. Restrictions. You shall not (i) permit any third party to access the CustomerGauge Services except as permitted herein, (ii) copy, modify or create derivative works or improvements of CustomerGauge Services, (iii) copy, frame or mirror any part or content of the CustomerGauge Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the CustomerGauge Services in whole or in part, (v) remove any proprietary notices within the CustomerGauge Services;  (vi) access the CustomerGauge Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the CustomerGauge Services; (vii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any CustomerGauge Services provided to You by Us; (viii) input, upload, transmit or otherwise provide to or through the CustomerGauge Services any information or materials that are unlawful or injurious or contain, transmit or activate any Harmful Code;

6.3. Your Data. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

6.4. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the CustomerGauge Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the CustomerGauge Services.

1. CONFIDENTIALITY

7.1. Definition of Confidential Information. As used herein, “Confidential Information” means all confidential information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether 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 the circumstances of disclosure. Your Confidential Information shall include Your Customer Data; Our Confidential Information shall include the CustomerGauge Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party shall 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 commercially reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates and their legal counsel and accountants without the other party’s prior written consent.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such 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 such Confidential Information.

1. WARRANTIES AND DISCLAIMERS

8.1. Mutual Warranties. Each party represents and warrants to the other party that: (i) if other than an individual, it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction or its incorporation or other organization; (ii) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder.

8.2. Disclaimer. Except as expressly provided herein, all services and materials provided by CustomerGauge are provided “AS IS” and CustomerGauge hereby disclaims all warranties, whether express, implied, statutory or otherwise, and specifically disclaims all warranties of merchantability,fitness for a particular purpose, title, and non-infringement, and all warranties arising from course of dealing, usage or trade practice. Without limiting the foregoing, CustomerGauge makes no warranty of any kind that the Services or materials or any products or results of the use thereof, will meet Your or any other person’s requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system or other services or be secure, accurate, complete, free of Harmful Code or error free. All third-party materials are provided “AS IS” and any representation or warranty of or concerning any third party materials is strictly between you and the third party owner or distributor of the third party materials and We disclaim to the maximum extent permitted by applicable law all liability for any harm or damages caused by any Third-Party Hosting Providers.

1. ANNOUNCEMENTS

CustomerGauge may send You and Client Users relevant messages regarding the Services, Usage, training notes, news, tips and other items which it believes may find of interest to the Users or to improve User experience. You understand and agree that CustomerGauge may: (i) publicly list You as a recipient of the Services on its website and in its marketing materials; (ii) publicly announce the fact that You are using CustomerGauge services; and (iii) use Your Marks in the course of doing the aforementioned. For the purpose of this section, “Your Marks” shall mean the service mark(s), service or trade name(s), logo(s), and other designations associated with the URLs that You use the Services to support, enable or promote.

1. MUTUAL INDEMNIFICATION

10.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the CustomerGauge Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a “Claim Against You”), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the CustomerGauge Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the CustomerGauge Services so that they no longer infringe or misappropriate, (ii) obtain a license for Your continued use of the CustomerGauge Services in accordance with this Agreement, or (iii) terminate Your Company subscription for such CustomerGauge Services upon 30 days’ written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

10.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the CustomerGauge Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a “Claim Against Us”), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

10.3. Exclusive Remedy. This Section 10 (Mutual Indemnification) states the indemnifying party’s sole liability to, and the indemnified party’s exclusive remedy against, the other party for any type of claim described in this Section.

1. LIMITATION OF LIABILITY

11.1. Limitation of Liability/Cap on Liability. IN NO EVENT WILL WE OR ANY OF OUR LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE FOR ANY (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (C) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (D) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBLITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. YOU AGREE THAT OUR AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE SHALL NOT EXCEED THE AMOUNT PAID BY YOU TO US IN THE PRECEDING 12 MONTHS.THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

1. TERM AND TERMINATION

12.1. Term of Agreement. This Agreement commences on the date You accept it for a minimum of two (2) years and continues until the Company subscriptions for Purchased Services granted in accordance with this Agreement have expired or been terminated. Subscriptions shall automatically renew for additional periods as stated on the Order Form, unless either party gives the other written notice of non-renewal 90 days before the end of the Subscription Term. Written Notices of Termination should be emailed or posted to CustomerGauge with a valid receipt acknowledgement.

12.2. Proof of Concept (POC). The POC is valid during the period as stated on the Order Form. After the POC period has lapsed Your access to the System is deactivated until a new Order Form / Contract is signed. In case you do not enter into a new Order Form / Contract your data will be completely removed from our System after 15 days.

12.3 Payment Terms. CustomerGauge applies a 30 calendar day payment term as from the invoice date mentioned on the invoice. We may suspend or cancel the CustomerGauge Services if we do not receive an on time, full payment from you. Suspension or cancelation for non payment could result in a loss of access to and use of your account and its content. Invoices and related payments are for 6 months upfront unless otherwise agreed on the signed Order Form.

12.4 Contract Start Date. Your contract starts as per the start date on the Order Form / Agreement and We will commence invoicing you as per the contract starting date.

12.5 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governme ntal demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) You become the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (c) Provider believes, in its sole] discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 12.5 does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

12.6. Refund or Payment upon Termination.  Upon any Termination by Us pursuant to Section 12.5, You shall pay any unpaid fees covering the remainder of  Your subscription term after the effective date of termination. In no event shall any Termination under Section 12.5 relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

12.7. Return of Your Data. For 30 days after the effective date of Termination of a Purchased Services Subscription, and upon Your request, We will make available to You for download via our API or other means a file of Your Data along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data.

12.8. Surviving Provisions. Section 6 (Fees and Payment for Purchased Services), 7 (Proprietary Rights), 8 (Confidentiality), 9.3 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Refund or Payment upon Termination), 12.5 (Return of Your Data), 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and 14 (General Provisions) shall survive any termination or expiration of this Agreement.

1. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

13.1. General. Who the CustomerGauge contracting entity is under this Agreement, where direct notices should be sent under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts can adjudicate any such lawsuit, depend on where You, the Customer, are domiciled.

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| --- | --- | --- | --- | --- |
| If You are domiciled in: | You are contracting with: | Notices should be addressed to: | The governing law is: | The courts having exclusive jurisdiction are: |
| The United States of America, Mexico or a Country in Central or South America or the Caribbean, or Canada | CustomerGauge USA LLC, a corporation | 3 Burlington Woods Drive, MA 01803, United States of America | Commonwealth of Massachusetts | Boston, Massachusetts, U.S.A. |
| A Country in Europe, the Middle East or Africa, or Japan, or A Country in Asia or the Pacific region, or Australia. | CustomerGauge/Directness BV, a Netherlands private limited liability company | Van Diemenstraat 182B, Amsterdam 1013CP, The Netherlands | Netherlands and EU | Amsterdam, NL |

13.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing by registered mail, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant CustomerGauge Services system administrator designated by You.

13.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law as set forth in section 13.1 above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of those applicable courts.

13.4. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

1. GENERAL PROVISIONS

14.1. 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.

14.2. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

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

14.4. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court 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 this Agreement shall remain in effect.

14.5. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 6.2 (Invoicing and Payment).

14.6. Assignment. Neither party may assign 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). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party’s sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party’s election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.7. Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

23 May 2018

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