**CustomerGauge®** **Terms of Service**

*These Terms were last updated on August 10th, 2021. These terms and conditions (the “Terms”) govern the Services, as well as your use of the CustomerGauge (“CustomerGauge”, “Our”, “Us”, “We”) website or related media (collectively, the “Site”) and any Pilot Program involving CustomerGauge or its Services. You agree that these Terms prevail over any of general terms and conditions you may have. 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.*

**IF YOU DO NOT AGREE WITH ANY PROVISION OF THESE TERMS, YOU MAY NOT ACCESS THE SITE OR OUR SERVICES.**

THESE TERMS GOVERN CUSTOMERGAUGE SERVICES AND ONLINE CUSTOMER LOYALTY APPLICATIONS (INCLUDING WITHOUT LIMITATION THE SERVICES “CUSTOMERGAUGE PILOT”, “CUSTOMERGAUGE SPRINT”, “CUSTOMERGAUGE ENTERPRISE”, “CUSTOMERGAUGE ENPS”, “EMPLOYEEGAUGE”) AND YOUR USE OF THOSE CUSTOMERGAUGE SERVICES OR THE SITE OR ANY PILOT PROGRAM INVOLVING CUSTOMERGAUGE INCLUDING ALL PURCHASED SERVICES (COLLECTIVELY, THE “SERVICES”).

If you subscribe for or engage in a Pilot Program with CustomerGauge, these Terms will also govern that Pilot Program.

BY ACCEPTING THESE TERMS, 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 OR BY USING THE SITE OR BY ENGAGING IN A PILOT PROGRAM OR BY ENGAGING IN ANY ACTIVITY OR SERVICE THAT REFERENCES THESE TERMS, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU ARE 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, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE CUSTOMERGAUGE SERVICES OR THE SITE.

You may not access the CustomerGauge Services or Site if You are a competitor of CustomerGauge or if You intend to compete with Us or if you intend to access the Site or Services for any competitive purpose, 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, reverse engineering or competitive purposes.

Table of Contents

1. Information About Us and Definitions
2. Purchased Services
3. Use of CustomerGauge Services
4. Additional Products and Services
5. Fees and Payment for Purchased Services
6. Proprietary Rights
7. Confidentiality and Non-Solicitation
8. Warranties and Disclaimers
9. Announcements
10. Mutual Indemnification
11. Limitation of Liability
12. Term and Termination
13. Who You Are Contracting With, Notices, Governing Law and Jurisdiction
14. General Provisions
15. INFORMATION ABOUT US AND DEFINITIONS

1.1 ABOUT US

 1.1.1 Who we are**.** We are CustomerGauge (Directness B.V.) the operator of [www.customergauge.com](http://www.customergauge.com) and related media (collectively, the “Site”). Our company headquarters are: van Diemenstraat 182, 1013 CP Amsterdam, The Netherlands.

 1.1.2 How to contact us. You can contact us by writing to support@customergauge.com

 1.1.3 How we may contact you. If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provide to us.

 1.1.4 Access or Use. These Terms govern your use of the Site and the Services, both as a visitor and as a subscriber or registered user. By accessing or using the Site or Services and/or by registering and/or subscribing for our Services, you agree to these Terms. You consent to the information practices disclosed in our Privacy Policy and Cookies Policy which are incorporated herein by reference. Please note that we offer the Site “AS IS” and without warranties.

1.2 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 these Terms 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.

“Aggregated Statistics” means data and information related to Your use of the Services that is used by CustomerGauge in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“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 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.

“CustomerGauge IP” means the Services, the Documentation, and any and all Intellectual Property provided to you or any User in connection with the foregoing. For the avoidance of doubt, CustomerGauge IP includes Aggregated Statistics, Resultant Data and any information, data, or other content derived from CustomerGauge’s monitoring of Your access to or use of the Services, but does not include Customer Data.

"Customer Data" means (other than Resultant Data or Aggregated Statistics) information, data and other content, in any form or medium, that is collected, downloaded or otherwise received by CustomerGauge, 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.

“Documentation” means CustomerGauge user manuals, handbooks, guides or any other content relating to the Services provided by CustomerGauge to You either electronically or in hard copy.

“DPA” (Data Processing Agreement) is an agreement between CustomerGauge and You that includes the Standard Contractual Clauses adopted by the European Commission, as applicable, and reflects the parties’ agreement with respect to the terms governing data processing. Once executed the DPA shall be deemed incorporated herein by reference. A model DPA is available upon 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 You or any authorized User from accessing or using the Services or as intended by these Terms.

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

“Order Form” or ”Contract” means the documents for placing orders for certain Services which documents shall include order forms, addenda and supplements, any form of purchase order (PO), and any email confirmation from You to Us or any of Our Affiliates from time to time of an Order Form. Order Forms shall be deemed incorporated herein by reference. Order Forms are not required to be signed by both parties so long as you have confirmed your acceptance of an Order Form via email or other writing or so long as you have submitted a purchase order. Once an Order Form is accepted by You, You are subject to these Terms no matter the duration of the Order Form.

“Provider” means the party offering Additional Products and Services to You under terms and conditions that are separate and apart from these Terms.  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.

“Services” means the products and services under the name “CustomerGauge” including any Purchased Services.

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

“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. Users are agents and may include but are not limited to Your employees, consultants, contractors, and third parties with which You transact business.

“We,” “Us” or “Our” means CustomerGauge.

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

“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 these Terms and the relevant Order Form(s) or other agreement between Us and You. 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, Purchased Services are purchased as subscriptions and may be accessed by a defined 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 or we must receive an email or other communication from You confirming Your intent to place the order. Beyond the expiration date We have the right to update prices taking into account any applicable updates including, for example, newly released product features.

2.4 Price Adjustments. We are entitled to update prices relating to an existing Contract after the initial Contract period.

3. USE OF THE CUSTOMERGAUGE SERVICES

3.1. Our Responsibilities. We may: (i) provide Our basic support for the applicable Services to You at no additional charge, and/or upgraded support if purchased separately, and (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week with a greater than 99.5% target service availability, except for: (a) planned weekly downtime no more than 30 minutes. We shall endeavor to give at least 24 hours notice of such downtime being taken., (b) planned downtime greater than 30 minutes of which We shall endeavor to give at least 72 hours notice via the Purchased Services or (c) any unavailability caused by circumstances beyond Our commercially 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. With the exception for Aggregated Statistics and Resultant Data, we shall not (a) modify Your Data; (b) disclose Your Data to third parties except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or unless expressly permitted in writing by You or as otherwise described in these Terms, 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 these Terms, (ii) be responsible for the accuracy, quality and legality of Customer 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 these Terms 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, (f) attempt to gain unauthorized access to the CustomerGauge Services or their related systems or networks, or (g) use the CustomerGauge Services for purposes of directly or indirectly competing or preparing to compete with CustomerGauge.

You and Your Users are subject to these Terms when you use the Site and the Services. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any portion of our Site, except as follows:

* Your computer may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
* You may store files that are automatically cached by your Web browser for display enhancement purposes.
* If we provide social media features with certain content, you may take such actions as are enabled by such features.

You must not:

* Modify copies of any materials from this Site.
* Use any illustrations, photographs, video or audio sequences or any graphics separately from the accompanying text.
* Delete or alter any copyright, trademark or other proprietary rights notices from copies of materials from this Site.

If you wish to make any use of material on the Site other than that set out in this section, please address your request to: Support@CustomerGauge.com

If you provide any other person with access to any part of the Site in breach of the Terms, Your right to use the Site and the Services will cease immediately and You must, at our option, return or destroy any copies of the materials you have made. All rights to the Site and the Services not expressly granted are reserved by CustomerGauge. Any use of the Site or the Services not expressly permitted by these Terms is a breach of these Terms and may violate copyright, trademark and other laws.

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 pursuant to clause 3.10.

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.

3.8.1 Net Promoter Program: You agree that CustomerGauge may send surveys to You and selected team members at regular intervals in order that we can measure our Net Promoter Score. On our side we will endeavor to follow up comments and be transparent with our scores.

3.9 Use Restrictions. You shall not use the Services for any purposes beyond the scope of the access granted to you through these Terms or through an agreement including an Order Form between You and CustomerGauge. You shall not at any time, directly or indirectly, and shall not permit any Users to (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any CustomerGauge IP or the intellectual property right or other right of any person or that violates any applicable law.

3.10 Suspension and Early Termination. Notwithstanding anything to the contrary in these Terms, CustomerGauge may at any time without derogating from our other rights under these Terms, applicable law or otherwise, terminate or suspend all Services or any User’s access to any portion or all of the Services for any reason effective immediately upon issuance of a written notice to You. You agree CustomerGauge shall have no liability for any damage, liabilities, losses or any other consequences that You or your User may incur as a result of a Service termination or suspension. Such Client Users whose Services have been terminated or suspended, may, at CustomerGauge’s sole discretion, be given up to thirty (30) days after notice of suspension or termination of their user account of Purchased Services to back up the data stored in their account prior to CustomerGauge removing it from its servers.

3.11 Links from the Site. If the Site contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party websites linked to this Site, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

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.  We do not warrant or support Additional Products and Services under these Terms, even if We are the Provider or the Additional Products and Services are designated by Us as “certified,” “authorized” or otherwise.

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 these Terms 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, Microsoft Dynamics, 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. 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.

5.2.1 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 Services including charges prior to the rendering of such Purchased Services.

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 5.2 (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 or suspended pursuant to Section 3.10.

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. 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 13.2 (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 5.5 (Acceleration) if You are disputing the applicable charges reasonably and in good faith as determined by CustomerGauge in its sole discretion 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 of any Services. 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 relating to the CustomerGauge IP. 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 and the Aggregated Statistics.

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 these Terms in or to Customer 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 and NON-SOLICITATION

7.1. Your Confidential Information shall include Your Customer Data; Our Confidential Information shall include the CustomerGauge Services and CustomerGauge IP; and You shall treat all Order Forms as Confidential Information.

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) and not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Services or these Terms.

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.

7.4. Non-Solicitation. Each Party agrees not to solicit for employment or consulting or advisory or other similar service any employees of the other Party or its affiliates or any of the other Party’s customers for a period of twelve (12) months from the termination of CustomerGauge’s Services for any reason; provided that neither Party shall be restricted in any general solicitation for employees (including through the use of employment agencies) not specifically directed at any such persons.

1. WARRANTIES and DISCLAIMERS

Except as expressly provided herein, all Services and Documentation 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 when allowed under law. Without limiting the foregoing, CustomerGauge makes no warranty of any kind that the Services or Documentation 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 Providers or third-party hosting providers.

You understand that we cannot and do not guarantee or warrant that files available for downloading from the internet or the Site will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our Site and Services for any reconstruction of any lost data. WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY SITE LINKED TO IT.

YOUR USE OF THE SITE, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE IS AT YOUR OWN RISK. THE SITE, ITS CONTENT AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER CUSTOMERGAUGE NOR ANY PERSON ASSOCIATED WITH CUSTOMERGAUGE MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE SITE. WITHOUT LIMITING THE FOREGOING, NEITHER CUSTOMERGAUGE NOR ANYONE ASSOCIATED WITH CUSTOMERGAUGE REPRESENTS OR WARRANTS THAT ITS SITE OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVICES OR THE SERVER THAT MAKES THESE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE ITEM OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE SITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

CUSTOMERGAUGE HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

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 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 these Terms, or (iii) terminate Your 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 these Terms, 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 liability to, and the indemnified party’s 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 THESE TERMS 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 THESE TERMS 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. These terms commence on the date You access our Services or visit our Site and remain in full force and effect for a minimum of three (3) years. Subscriptions shall automatically renew for additional periods as stated on the Order Form or as otherwise agreed in writing between You and Us, unless either party gives the other written notice of non-renewal 90 days before the end of the Subscription Term or other period as prescribed in such Order Form. If no term is stated in the Order Form, then the term shall be the minimum term of three (3) years and shall automatically renew for additional one year periods unless either party gives the other written notice of non-renewal 90 days before the end of the term. Written Notices of Termination should be emailed or posted to CustomerGauge with a valid receipt acknowledgement.

12.2. Pilot Program. The Pilot Program is valid during the period as stated on the Order Form. After the Pilot Program 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 Customer Data will be completely removed from our System after 30 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 including Your Customer Data.

12.4. 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 Customer 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 Customer Data.

12.5 Early Termination. CustomerGauge may terminate its Services pursuant to Section 3.10 (Suspension and Early Termination).

12.6 Deactivation. Immediately upon termination for any reason, Your access to the Services shall be deactivated by CustomerGuage.

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

13.1. General. Which CustomerGauge contracting entity is under these Terms, where direct notices should be sent, which law applies in any dispute arising out of or in connection with these Terms, and which courts can adjudicate any lawsuit, depend on where You, the Customer, are domiciled.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 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 these Terms, 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 these Terms.

1. GENERAL PROVISIONS

14.1. Relationship of the Parties. The parties are independent contractors. These Terms do 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 these Terms.

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

14.4. Severability. If any provision of these Terms 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 these Terms 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.

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).. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.7. Entire Agreement. These Terms, any agreements between you and CustomerGauge regarding the Services, the Documentation and all Order Forms, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. To the extent any conflict or inconsistency exists between these Terms and any other fully executed agreement between you and CustomerGauge including without limitation any fully executed Order Form, the terms of such fully executed agreement shall prevail.

14.8 Copyright and Limited Use. The Site and its entire contents, features and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by CustomerGauge, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

14.9 Trademarks. The term and servicemarks “CustomerGauge” and “Account Experience” name, logo and all related names, logos, product and service names, designs and slogans are trademarks of CustomerGauge or its affiliates or licensors. You must not use such marks without the prior written permission of CustomerGauge. All other names, logos, product and service names, designs and slogans on this Site are the trademarks of their respective owners.

14.10 Survival. Upon any termination of the Services for any reason, all provisions regarding indemnification, warranty, liability and limits thereon, and confidentiality and protection of proprietary rights and trade secrets, and any provisions which expressly or by their nature are required to survive such termination in order to achieve their purpose, shall so survive until it shall no longer be necessary for them to survive in order to achieve their purpose.

August 10th, 2021

You may download this as a Word Document here: CustomerGauge Terms of Service 10 August 2021