

Terms of Service Agreement

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Last Revised July 1st, 2017

Welcome to Suurge.io, the website and online service of Suurge, Inc. ("Suurge," "we," or "us"). This page explains the terms by which you may use our software as a service, web sites, and APIs provided on or in connection with the service (collectively the "Service(s)"). By accessing or using the Service, you agree to be bound by these Terms of Service ("TOS"), and to the collection and use of your information as set forth in the Suurge Privacy Policy, whether or not you are a registered user of our Service. This TOS and any applicable Order Form that you may enter into are deemed to be the agreement governing the Services (this "Agreement").

This TOS applies to all visitors, users, and others who access the Service ("Users").

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

1. Use of Our Service

Suurge provides a service for assessing and improving pricing effectiveness.

A. Eligibility

You may use the Service only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. Any use or access to the Service by anyone under 13 is strictly prohibited and in violation of this Agreement.

B. Member Accounts

You will need to register with Suurge and create an account. Your account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion.

You must provide accurate and complete information at all times. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Suurge immediately of any breach of security or unauthorized use of your account. Suurge will not be liable for any losses caused by any unauthorized use of your account.

By providing Suurge your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal

mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out or change your preferences in your Account Page. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability if in our sole determination you violate any provision of this Agreement.

2. Use of Service; Restrictions

Use of Services. During the Term and subject to the terms of this Agreement, You may access and use the Service solely:

- for Your own use of the specific Services we provide
- via the Suurge API in compliance with its accompanying documentation, and any reasonable rules or guidelines that Suurge may provide, and only on applications or web sites owned, operated or controlled by you ("Customer Apps").

Restrictions. You agree to:

- not, nor allow any third party to: (i) copy, distribute, rent, lease, lend, sublicense or transfer the Services, or make the Services available to any third party without Suurge's consent, (ii) decompile, reverse engineer, or disassemble the Services or otherwise attempt to discover any underlying source code, ideas, algorithms, file formats or programming interfaces, (iii) create derivative works based on the Services; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Services; or (v) use the Services to develop a competitive product offering; and
- not use any agents, robots, scripts, spiders, or other automated means to access or manage the Services.

Suurge reserves all rights not expressly granted herein in the Service and the Suurge Content (as defined in Section 3).

3. Ownership Rights

A. Suurge's Proprietary Rights

As between you and Suurge, Suurge and its licensors exclusively own all right, title and interest in and to the Service, including without limitation any improvements thereto, Updates, and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, and copyrights (the "Suurge Content"), and all Intellectual Property Rights (as defined below) related thereto and derivative works of the

foregoing. Except as expressly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights (as defined below), and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Suurge Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other

B. Your Proprietary Rights

Customer Apps. As between you and Suurge and subject to Section 3(C), you own all right, title and interest in and to the Customer Apps and all data and content embedded thereon or contained therein (excluding the Service), and any Intellectual Property Rights for any of the foregoing embodied therein.

Customer Data. Customer Data (as defined herein) is your property. "Customer Data" means any profile information, data, and other content or information provided by you, directly or indirectly, to Suurge in connection with your use of the Service, including without limitation such data, content, and information related to your business or the users of the Customer Apps. You agree that Suurge may use Customer Data in aggregate form to create reports, provide and improve the Service, and provide better functionality to our customers.

Licenses to Suurge

Customer Data. You grant to Suurge, a royalty-free, sublicensable, transferable, perpetual, non-exclusive, worldwide license to use, develop, transmit, distribute, modify, reproduce, publicly display, and create derivative works of any Customer Data for the purposes of (a) providing the Services (b) developing, maintaining, supporting, and improving the Services; (c) marketing, promoting and advertising the Services; and (d) creating and distributing reports – provided that none of the foregoing uses identifies Customer or its end users.

Feedback and Improvements. You may choose to or we may invite you to submit comments, suggestions, feedback, or ideas about the Service, including without limitation about how to improve the Service or our products ("Ideas"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Suurge under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Suurge does not waive any rights to use similar or related ideas previously known to Suurge, or developed by its employees, or obtained from sources other than you.

4. Billing Policies

Accepted Payment Methods. You must provide valid credit card or ACH debit information to Suurge for your account, before you can use the Services. You are solely responsible for ensuring that your payment information is complete and accurate at all times. If you fail to do so, Suurge reserves the right to suspend or terminate your Service without notice at any time.

Automatic Payment Terms . Unless otherwise specified in an Order Form, after the close of each billing period, you will receive an invoice for the fees that you incurred that billing period. Immediately thereafter, Suurge will automatically charge your credit card or withdraw from your bank account for the fees on each invoice. All payments must be made in the currency specified by Suurge. Any amounts due to Suurge under this Agreement not received by the date due will be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. You are responsible for paying any withholding, sales, value added or other taxes, duties or charges applicable to this Agreement. You agree to pay any reasonable attorneys' fees required for collection of late payment.

No Refunds. There are no refunds or credits for any unused fees if applicable (e.g., prepayment amounts).

Taxes. You are solely responsible for paying all applicable sales, excise, service, use or other taxes imposed on or required to be collected by Suurge by any authority in connection with or arising from the Service and/or this Agreement, excluding taxes based upon Suurge's net income.

5. Consent to the Collection and Use of Customer Data; Security

A. Consent to Collection and Use of Customer Data

You represent and warrant that (a) you have obtained all necessary rights, releases, and permissions to provide such Customer Data to Suurge, and (b) the collection, use, and disclosure of such information does not violate any laws or rights of any third party, including without limitation any Intellectual Property Rights, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies.

Suurge takes no responsibility and assumes no liability for any Customer Data that you or any other User or third party provides, posts, publishes or transmits over the Service. You shall be solely responsible for Customer Data and the consequences of using, disclosing, or transmitting it.

B. Security

We have implemented commercially reasonable and industry standard technical and organizational measures designed to secure Customer Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, you acknowledge that Suurge cannot guarantee that unauthorized third parties will never be able to defeat those measures.

6. Representations and Warranties

Each party warrants and represents that such party has full right, power, and authority to enter into and perform this Agreement without the consent of any third party. You hereby represent, warrant, and covenant to use the Service in accordance with all applicable laws.

7. Indemnity

Each party will indemnify and hold harmless the other party and its successors and their respective affiliates, officers, directors and employees against and from all third party: claims, actions, demands, damages, liability and expenses (including, without limitation, court costs and reasonable attorneys' fees) (together, 'claims') arising out of or in connection with the indemnifying party's breach or alleged breach of Sections 5(A) or 6 of this Agreement. You will further indemnify and hold harmless Suurge and our successors and our affiliates, officers, directors and employees against and from all Claims arising out of or in connection with the Customer Apps, including without limitation any violation or alleged violation of any law or third-party rights by the Customer Apps or any data, content, or information contained therein or transferred thereby. The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any Claim for which the indemnified party is seeking indemnity (provided however, the failure to give timely notice shall not relieve the indemnifying party of its obligations under this section except to the extent that such untimely notice materially impairs the ability of the indemnifying party to defend); (ii) granting complete control of the defense and settlement to the indemnifying party (provided however, the indemnified party may participate with counsel of its choosing at its own expense); and (iii) reasonably cooperating with the indemnifying party, at the indemnifying party's expense, in defense and settlement of such Claim. The indemnifying party shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect to which indemnified party is or could be indemnified hereunder unless such settlement either (a) includes an unconditional release of the indemnified party from all liability on all Claims that are the subject matter of such proceeding or (b) is consented to in writing by the indemnified party (which consent shall not be unreasonably withheld).

8. No Warranty

EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 6, THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM SUURGE OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, SUURGE, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT

ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICE. SUURGE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SUURGE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND SUURGE WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

9. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SUURGE, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE. UNDER NO CIRCUMSTANCES WILL SUURGE BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SUURGE ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE. IN NO EVENT SHALL SUURGE, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNTS PAID BY YOU TO SUURGE UNDER THIS AGREEMENT DURING THE MOST RECENT TWELVE (12) MONTHS.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF SUURGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE

FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

The Service is controlled and operated from facilities in the United States. Suurge makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

10. Confidentiality

'Confidential Information' of either party will mean information disclosed to or learned by the receiving party concerning the disclosing party's business, customers, products, proposed products, plans, inventions, processes and techniques, which is designated as 'confidential', 'proprietary' or some similar designation or should reasonably be considered to be confidential or proprietary due to its nature or the context of its disclosure. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach on the part of the receiving party; (ii) the receiving party obtains from a third party rightfully, without breach of nondisclosure obligations and without restriction on disclosure; or (iii) the disclosing party regularly provides to others without restriction on disclosure. Except as explicitly authorized in writing by this Agreement or otherwise, each party will: (a) not use, for its own benefit or the benefit of any third party, the other party's Confidential Information; and (b) use all reasonable care, but in no event less care than it takes to protect its own Confidential Information of similar importance, to protect the other party's Confidential Information from unauthorized use, disclosure and publication. Both parties acknowledge that the breach of this Section 11 could cause great or irreparable injury to the disclosing party and that pecuniary compensation would not afford adequate relief, and therefore, that upon any such unauthorized disclosure by the receiving party, the disclosing party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law. Within five (5) days after termination of this Agreement, each receiving party shall destroy or deliver to the disclosing party, at the disclosing party's option, all materials in receiving party's possession or control that contain or disclose any Confidential Information of the disclosing party.

11. Termination

Suurge, in its sole discretion, may terminate or suspend your account at any time without prior notice or liability to you if you violate any term or provision of this Agreement. including without limitation any payment obligations due under Section 4. Upon termination of your account, your right to use the Service will immediately cease and all amounts due under Section 4 shall become immediately due and payable. Sections 3, 4 (to the extent not satisfied), 5, and 8-14 shall survive any termination or expiration of this Agreement. Upon termination of this Agreement for any reason, you shall cease all use of the Service and you shall destroy and remove from all computers, hard drives, networks,

and other storage media all copies of the Service and any the data, and shall so certify, if requested, to Suurge that such actions have occurred.

12. Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Suurge without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

13. General

A. Independent Contractors

Neither party has the ability to bind the other party to any agreements or other obligations and will not attempt to do so. Suurge and you are independent contractors, and nothing in this Agreement creates any partnership, joint venture or agency relationship. As between each other, each party is fully responsible for all persons and entities it employs or retains.

B. Use of Your Name

You agree that Suurge may use your name, logo, or any other identifying words or marks used by and/or associated with you to identify you as a customer of Suurge, for use in connection with marketing, promoting, and advertising the Service, for use in customer references and case studies involving you, and for use in other activities related to Suurge's business.

C. Governing Law

This Agreement shall be governed by the laws of the State of California, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of a state court located in San Francisco County, California or the United States District Court for the Northern District of California, for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a our Intellectual Property Rights, as set forth in the Arbitration provision below.

D. Arbitration

In the unlikely event that Suurge has not been able to resolve a dispute it has with you after attempting to do so informally, we each agree to resolve any claim, dispute, or controversy (excluding any Suurge claims for injunctive or other equitable relief) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, 'actions'), by binding arbitration. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this

Section shall be deemed as preventing Suurge from seeking injunctive or other equitable relief from the courts as necessary to protect any of Suurge's Intellectual Property Rights or other proprietary interests.

ALL ACTIONS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND SUURGE ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

E. Notices.

All notices required under this Agreement will be deemed given if:

To Suurge, in writing, three business days after deposit in the mail, registered or certified, with postage prepaid and return receipt requested, to Suurge, Inc. 5 Claver Pl. Brooklyn, NY, 11238, with copy to the Legal Department at team@suurge.io

To you via the Service portal or platform, or to the physical or email address you provide in the Order Form.

F. Entire Agreement/Severability

This Agreement, together with any Order Forms, shall constitute the entire agreement between you and Suurge concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

G. No Waiver

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Suurge's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

Suurge may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change this Agreement, we will update the 'last revised' date at the top of this page. If there are material changes to this Agreement, we will notify you either by posting a notice of such changes prior to implementing the change or by directly sending you a notification. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to any of these terms or any future Terms of Service, do not use or access (or continue to access) the Service.