

Ongage

Privacy and Data Protection Notice

This Privacy and Data Protection Notice (“**Notice**”), as well as Ongage's Terms of Use (“**Terms**”), available on: www.ongage.com/wp-content/terms-of-services.pdf and incorporated herein by reference, govern the transfer, collection and Processing of Personal Data (as such terms are defined below), pursuant to the engagement between Ongage LTD. (“**Ongage**”), and any User using Ongage's Site, Services or Software (each of Ongage and User shall be referred to as a “**Party**” and collectively the “**Parties**”). The Parties hereby agree to the following terms and conditions, which will be in effect upon the earlier of: (i) the Effective Date of the Terms, and (ii) the date of first transfer or disclosure of Personal Data by User to Ongage (“**Effective Date**”). Any capitalized terms not defined herein shall have the meaning ascribed to such terms in the Terms.

1. DEFINITIONS

- 1.1. The terms “**Personal Data**”, “**Processor**”, “**Controller**”, and “**Processing**”, “**Special Categories of Personal Data**”, shall have the meaning ascribed to such terms in the GDPR.
- 1.2. “**Data**” means Personal Data and Non-Personal Data.
- 1.3. “**Data Subject(s)**” means natural persons regarding whom Data is Processed by User through or on the Site and Software, or otherwise in connection with the Services, or disclosed to Ongage by User pursuant to this Notice and the Terms, including without limitation, User's employees, customers and end-users.
- 1.4. “**Ongage's Services**” means the products and/or services provided by Ongage to User under the Terms.
- 1.5. “**GDPR**” means 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, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.6. “**New Instructions**” shall have the meaning set forth in Section 4.2 below.
- 1.7. “**Non-Personal Data**” means any data or information of any kind relating to Data Subjects which is not Personal Data.
- 1.8. “**Sub-Processors**” shall mean any Processor Ongage has engaged in connection with the Processing of Personal Data on behalf of User.

2. DATA PROCESSING

- 2.1. In rendering Ongage's Services to User, User may from time to time upload Personal Data to the Site or Services, or otherwise disclose Personal Data to Ongage, as required and appropriate in connection with the provision of Ongage's Services to User.

- 2.2. User shall only upload, transfer Process or disclose Personal Data pursuant to the terms and conditions specified herein. In the event User considers any upload, Processing, transfer or disclosure of Personal Data to be inconsistent with the provisions herein, User shall notify Ongage and shall obtain Ongage's prior written consent to such transfer, Processing or disclosure.
- 2.3. Ongage may Process Personal Data for the following purposes:
 - 2.3.1. The provision, render, support, maintenance and development of Ongage's Site and Services;
 - 2.3.2. As otherwise required and appropriate for the fulfilment of the Terms and exercising Ongage's rights and obligations thereunder.

3. REPRESENTATIONS AND UNDERTAKINGS OF THE PARTIES

- 3.1. In connection with the transfer, Processing or disclosure of Personal Data by User and any and all Processing of such Personal Data by Ongage, the Parties hereby agree and represent, that as between the Parties:
 - 3.1.1. User shall be regarded as the Controller of such Personal Data, and shall solely and fully assume any and all responsibilities, obligations and liabilities imposed on User as a Controller of Personal Data under applicable law;
 - 3.1.2. Ongage shall be regarded as the Processor of such Personal Data, and shall solely and fully assume any and all responsibilities, obligations and liabilities imposed on Ongage as a Processor of Personal Data under applicable law.
- 3.2. The Parties shall each implement appropriate technical and organizational measures to

ensure a level of security appropriate to the risks from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data.

- 3.3. Ongage represents and warrants that Ongage's employees, authorized by Ongage to Process Personal Data on behalf of User, are committed to customary confidentiality undertakings, or are under an appropriate statutory obligation of confidentiality.
- 3.4. Ongage shall only Process Personal Data on behalf of User and pursuant to the instructions as set forth herein, pursuant to the Terms, or otherwise agreed to between the Parties.
- 3.5. User undertakes that User shall Process Personal Data only as lawful and compliant with applicable law, including the GDPR, and that User shall be responsible to implement measures ensuring and demonstrating that Processing is made in accordance with the GDPR. User's use of the Services must comply with all applicable laws, including laws relating to spam or unsolicited commercial emails, privacy, security, obscenity, defamation, child protection, and other applicable laws.
- 3.6. Without derogating from the generality of the above, User acknowledges that such actions as, *inter alia*, the collection and Processing of Personal Data, the use of Personal Data in connection with profiling or tracking of Data Subjects, the use of cookies or similar technologies in connection with the above, and the sending of unsolicited commercial communications to Data Subjects, may be restricted or prohibited under applicable law, or may be conditioned upon the explicit prior consent of the Data Subjects, and User undertakes not to engage in any such activities except as lawful under applicable law. In the event User uses the Site, Services or Software in violation of any applicable laws, including the GDPR, User shall be fully liable towards Ongage for any such violations and any damages Ongage incurred as a result of such violations.
- 3.7. User can only use Ongage Services to send marketing materials to Data Subjects who provided User with explicit prior consent to receive such communications.
- 3.8. The User is responsible that the processing activities relating to the Personal Data, as specified in this Notice and the Terms, are lawful, fair and transparent in relation to the Data Subjects

- 3.9. User represents and warrants, that User shall not upload, Process, transfer, disclose or otherwise make available to Ongage any Personal Data included in Special Categories of Personal Data. If User, in contradiction to User's undertaking herein, transfer or disclose to Ongage any Personal Data included in Special Categories of Personal Data, User hereby represents that:

- 3.9.1. User has any and all required authorizations, including Data Subjects' explicit consent, for the transfer of such data to Ongage;

- 3.9.2. User has or shall promptly inform Data Subjects that such data may be transferred to a third country not providing adequate protection.

- 3.10. Ongage reserves the right to use or disclose Personal Data to Sub-Processors, law enforcement, regulatory or other government agencies, or third parties if we reasonably believe that use or disclosure is necessary to protect Users, Data Subjects or Ongage's rights and/or to comply with a judicial proceeding, court order, or a legal process.

4. INSTRUCTIONS

- 4.1. User hereby instructs Ongage to Process, on behalf of User, Personal Data, uploaded, transferred or disclosed to Ongage by User or Processed through the Site, Services or Software..
- 4.2. In the event User wishes to instruct Ongage to Process Personal Data in deviation from its instructions pursuant to this Notice and the Terms ("**New Instructions**"), User shall provide Ongage with explicit prior written notification containing the New Instructions. New Instructions shall be in force after approved in writing by Ongage.
- 4.3. Ongage shall only Process Personal Data pursuant to User's documented instructions, including as referenced herein.
- 4.4. Notwithstanding the above, Ongage will not be obligated to perform any instruction or Processing, which in Ongage's reasonable opinion, infringes applicable law.
- 4.5. In the event Ongage determines any instruction or Processing to be infringing of applicable law, the Terms or this Notice, Ongage shall notify User without delay.
- 4.6. The provisions set forth in this Notice, the Terms, the Site, and as otherwise agreed to between the Parties shall constitute User's

documented instructions to Ongage under the meaning of Article 28 of the GDPR.

5. AUDTIS

- 5.1. Upon User's reasonable request, Ongage will provide User with relevant documentation or records (which may redacted to remove confidential commercial information not relevant to the requirements of this Notice) which will enable it to verify and monitor Ongage's compliance with its data protection and security obligations under the terms of this Notice, not less than thirty (30) days of receipt of such request.
- 5.2. Where, in the reasonable opinion of User, such documentation is not sufficient in order to meet the obligations of Article 28 of the GDPR, User may, upon reasonable prior written notice to Ongage and upon reasonable grounds, conduct, at User's expense, an on-site audit of Ongage's premises only as used in connection with the services provided to User, solely to confirm compliance with Ongage's data protection and security obligations under this Notice.
- 5.3. Any audit carried out by User will be conducted in a manner that does not disrupt, delay or interfere with Ongage's performance of its business in any way. User shall ensure that the individuals carrying out the audit are under appropriate confidentiality obligations as determined by Ongage.

6. DATA SUBJECTS' RIGHTS

- 6.1. User shall have sole liability to comply with obligations in connection with the rights and freedoms of Data Subjects pursuant to applicable laws.
- 6.2. For the sake of clarification, the Parties agree that as Ongage does not have any direct access to or contact with the Data Subjects, Ongage shall not be required to process requests and instructions provided by Data Subjects. In the event Ongage receives written requests or instructions from Data Subjects, Ongage's sole responsibility shall be to communicate such requests or instructions to User.
- 6.3. Ongage shall make reasonable commercial efforts to assist the User by appropriate technical and organizational measures, insofar as possible, for the fulfilment of the User's obligations to respond to requests for exercising the Data Subjects' rights pursuant to applicable laws.

7. DATA REGARDING USER AND NON-PERSONAL DATA

- 7.1. Ongage only collects Personal Data regarding its Users which the User has provided Ongage voluntarily. User is not required by any law to provide Ongage with Personal Data regarding User or the Data Subjects.
- 7.2. In connection with User's interaction with the Site and Services, we also collect the following Data:
 - 7.2.1. We log visitor's domain and IP address automatically; this information identifies the device that is being used to access the Site and/or Services;
 - 7.2.2. We also use cookies (small text files stored in a User's browser) or Web beacons (electronic images that allow the website to count visitors who have accessed a particular page and to access certain cookies) to gather non-Personal Data. User may at any time program its browser to block cookies, but be aware that such blocking may prevent us from providing some or all of the Services.
 - 7.2.3. Other than in respect of Personal Data, User agrees that Ongage has unlimited rights to such information and that Ongage may use such information without limitation. Such information shall be deemed to be non-confidential.
- 7.3. Non-Personal Data is collected and processed mainly for click stream analysis in order to constantly improve and maintain our Services, Software and Site, including among others, for ensuring the technical functioning of our network, to help prevent fraudulent use of our Services and for developing new services.
- 7.4. Personal Data regarding the User may be processed and used for the following purposes:
 - 7.4.1. to provide and improve our Site and Services;
 - 7.4.2. to contact you in connection with the Site and certain Services, notifications, programs or offerings that you may have registered for;
 - 7.4.3. to send you updates, promotional materials and newsletters that you have registered for; Users may choose to opt-out and to not receive these communications.

7.4.4. to identify and authenticate User's access to the parts of the Site and Services that User are authorized to access;

7.4.5. to protect the security or integrity of our databases or the Site, to take precautions against legal liability, and to analyze and improve the Service and Site.

7.5. We may share non-personal, aggregate data regarding Site and/or Services usage with our affiliates, partners and advertisers. From time to time, we may release non-Personal Data in the aggregate, e.g., by publishing a report on trends in Ongage usage.

7.6. User is entitled to review its Personal Data, and may exercise such right through the Site or by sending us a request to: dataprivacy@ongage.com. In the event any Personal Data is incorrect or outdated, User may update and correct such data by providing us with appropriate information.

7.7. User may also be entitled to request the erasure or the restriction of Personal Data, and Ongage will comply with such requests, to the extent required under applicable law.

7.8. To the extent processing of Personal Data is conducted on the basis of User's consent, User may rescind such consent, by sending us an email to: dataprivacy@ongage.com. Please note that in the event you rescind your consent to the processing of Personal Data, we may not be able to provide you with some or all of the Services and the Site.

7.9. To the extent applicable to you, the Services and/or the Site, you may request the portability of your Personal Data.

7.10. Ongage retains Personal Data for the duration necessary in order to: (i) fulfill the purposes of Processing described herein, and (ii) defend or assert legal claims and liability, or as otherwise permitted under applicable law.

8. USE OF COOKIES

User hereby explicitly authorizes Ongage to “drop” cookies to Data Subjects' browsers in connection with the provision of the Services, and represents and warrants that User has all requisite rights to grant such authorization to Ongage.

9. SUBPROCESSING

User hereby grants Ongage specific and unequivocal authorization to engage with Sub-Processors for the provision of the Services, as determined by Ongage.

10. INTERNATIONAL TRANSFERS OF DATA

10.1. User acknowledges that Ongage is an international corporation, and that Personal Data may be transferred to a country other than the country where Data Subjects are located in connection with the provision of Ongage's Services to User.

10.2. In the event Ongage transfers Personal Data across international boundaries, Ongage will use appropriate safeguards to ensure a level of security appropriate to the risks from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data transferred.

10.3. User shall have sole responsibility to obtain and document all necessary consents from Data Subjects to the transfer of Personal Data if required under applicable law.

10.4. Unless User notifies Ongage in writing that the transfer of Personal Data is prohibited, any such transfer shall be regarded as permitted explicitly by User.

11. REPORTS AND NOTIFICATIONS

11.1. Ongage shall provide User, upon User's reasonable request, made in connection with User's obligations towards a competent supervisory authority, with information necessary to demonstrate compliance with obligations pursuant to applicable law.

11.2. Ongage shall notify User in writing upon an event of data breach that affected User's Personal Data, and/or as otherwise required under applicable law.

11.3. Ongage shall notify User in writing regarding any legally binding request for disclosure of Personal Data by a law enforcement authority, unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation.

12. LIABILITY AND INDEMNIFICATION

The User will defend, indemnify, and hold harmless Ongage, and its officers, directors, employees, successors, and agents, from all claims, damages, liabilities, assessments,

losses, costs, administrative fines and other expenses (including, without limitation, reasonable attorneys' fees and legal expenses), arising out of or resulting from any claim, allegation, demand, suit, action, order or any other proceeding by a third party (including supervisory authorities) that arises out of or relates to a violation of the User's representations and/or obligations under this Notice and/or the Terms.

13. **TERM**

The term of this Notice shall start on the Effective Date and continue until the later of: (i) termination or expiration of the engagement between the Parties; or (ii) the date of last transfer, Processing or disclosure of Personal Data by User to Ongage or through the Site or Services.

14. **GENERAL TERMS.**

- 14.1. In the event of inconsistencies between the provisions of this Notice and the Terms, the provisions of this Notice shall prevail with regard to the Parties' data protection obligations.
- 14.2. The waiver by either Party of a breach of any of the terms and conditions of this Notice must be in writing and will not be construed as a waiver of any subsequent breach of such term or condition or the waiver of the provision itself. A Party's performance after

the other Party's breach shall not be construed as a waiver of that breach.

- 14.3. Neither party shall assign this Notice (or any part thereof) without the advance written consent of the other Party, except that Ongage may assign this Notice in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities.
- 14.4. If any provision of this Notice shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Notice shall otherwise remain in effect.
- 14.5. This Notice shall be governed by and construed in accordance with the same laws as the Terms, except as otherwise stipulated by applicable data protection laws. Any claim under this Notice may be solely brought to the competent courts as specified in the Terms, except as otherwise stipulated by applicable data protection laws.
- 14.6. Ongage may amend this Notice from time to time, and post the amended Notice on the Site or otherwise make the amended Notice available to User.