

ONGAGE MASTER SERVICE AGREEMENT

Recently Updated: February 2022

This Master Service Agreement ("**MSA**") together with the Data Processing Agreement ("**DPA**") (collectively shall be referred to as "**Agreement(s)**") form a legally binding and enforceable agreement between **Ongage Ltd.** ("**Ongage**", "**Company**" or "**we**") and the customer, a legal entity or an individual entering this Agreement on behalf of and under the authorization of the legal entity ("**Customer**").

If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the terms and conditions of this Agreement. If you do not have such authority, you may not enter this Agreement. If you are entering this Agreement on your behalf, you undertake that you are at least 18 years old. Otherwise, do not register or use the Services.

BY CLICKING ON THE "SIGN UP" BUTTON (OR SIMILAR WORDING), YOU AGREE TO BE BOUND BY THIS AGREEMENT AND ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THEM. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCEPTING IT. IF YOU DO NOT AGREE TO ALL OR PART OF THIS AGREEMENT, YOU ARE NOT ALLOWED TO USE ONGAGE PLATFORM OR SERVICES IN ANY MANNER.

If you do not agree with any of the terms of contained herein, or do not meet the qualifications included herein for registering or using the Services, do not access or use the Services.

Ongage reserves the right to update and change the Agreements from time to time, by posting the updated MSA and any applicable Agreement on the Company's website available at: <https://www.ongage.com/> or by notifying you through dashboard or by e-mail, changes to these Terms shall become effective upon the completion of the 30 days' notice or upon your continuance of use of the Service following such change was made available. It should be noted that changes to this Agreement or the Services, will take effect immediately without prior written notice where such changes are exclusively to your benefit, where they are of a purely administrative nature and have no negative effect on you, or where they are directly imposed by law.

1. DEFINITIONS

- 1.1. "**Account**" means the Customer's online account enabling the use of the Service.
- 1.2. "**Account Information**" means information provided by Customer during the registration and creation of the Account, including without limitation, contact information, company names, company's contact information and billing information associated with the Account.
- 1.3. "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by the Customer to access and use the Services in accordance with the Agreements. Except as expressly stated herein and for the purpose of this Agreement, "Customer" shall mean "Customer and its Authorized Users".
- 1.4. "**Confidential Information**" means all nonpublic information, in whatever form disclosed, provided by or on behalf of either party ("**Disclosing Party**") to the other party ("**Receiving Party**"), that is designated as confidential or that, given the nature of the information or circumstances surrounding its disclosure, can reasonably be understood to be confidential, including, without limitation the Ongage technology. The Confidential Information shall not include information which (a) is at the time of disclosure or subsequently becomes generally available to the public, other than as a result of a breach of the Agreements; (b) was previously in the possession of the Receiving Party prior to its disclosure

hereunder; (c) is independently developed by the Receiving Party without reliance on, use of or reference to the Confidential Information and without any breach of the terms of the Agreements; (d) was lawfully received by the Receiving Party from a third party having rights to disclose, and under no confidentiality obligations with respect to, such Confidential Information.

- 1.5. **"Content"** means all text, files, images, graphics, illustrations, information, data, software including machine images, audio, video or images.
- 1.6. **"Customer Data"** means all data, information and other content of any type and in any format, provided by the Customer to Ongage or uploaded by the Customer to the Ongage platform for the purpose of receiving the Services. Customer Data may include, where applicable, Personal Data (as defined under applicable data protection regulation) and Confidential Information.
- 1.7. **"Documentations"** means set of digital or printed technical user manuals, notes, instruction, summary and any other supporting documentation provided by Ongage to the Customer.
- 1.8. **"Intellectual Property"** means all intellectual property rights of every kind and description, including without limitation: (i) rights in or to trademarks and service marks (whether or not registered), trade names, logos, and other designations of the source of origin, together with all goodwill related to the foregoing, (ii) patents and patent applications, (iii) rights in or to copyrights, whether or not registered, (iv) rights in or to trade secrets and confidential information, including without limitation know-how, technology methods, ideas, and inventions, (v) rights in the software and computer code (whether in source code, object code or any other form) and (vi) all applications and registrations of any of the foregoing;
- 1.9. **"Ongage Platform"** means Ongages' developed and owned technology, online email marketing platform, that enables Customers' to manage their contacts, send and manage certain email marketing campaigns (**"Campaign(s)"**). The Ongage Platform includes the Ongage Website, the Account and the dashboard available through the Account.
- 1.10. **"Ongage Website"** means <https://www.ongage.com/> and the <https://connect.ongage.net/login>.

2. SCOPE OF SERVICES AND REGISTRATION

- 2.1. Ongage enables Customers to use the Ongage Platform for the purpose of creating Campaigns as well as managing the Customers' contacts and send marketing materials (**"Services"**). Ongage may offer additional features and services which include marketing tools such as behavior targeting segments and insights, personalization, send time optimization, and others (collectively, and as may be updated from time to time, the **"Marketing and Optimization Tools"**). The Marketing and Optimization Tools may be changes from time to time, they may be offered for free, as a free trial or subject to subscription fees, all as detailed here: <https://www.ongage.com/pricing/> under the **"Modules and Services"**.
- 2.2. In order to use the Services, the Customer shall register and create an Account. The Customer warrants and represent and that the Account Information provided at the time of registration is complete, truthful and accurate and is kept up to date during the Term. The Account Information shall be processed in accordance with the [Ongage Privacy Policy](#). Ongage may, in its sole discretion, refuse to offer access to or use of the Services to any person or entity, and change its eligibility criteria at any time. This provision is void where prohibited by law and this right is revoked in such jurisdictions.

- 2.3. THE CUSTOMER IS OBLIGED TO KEEP THE LOGIN DETAILS (E.G., PERSONAL PASSWORD AND USER NAME) CONFIDENTIAL AND TO PROTECT SUCH DETAILS AGAINST THIRD-PARTY USE. THE CUSTOMER IS SOLELY RESPONSIBLE FOR ALL ACTIVITIES THAT OCCUR UNDER THE ACCOUNT AND TO INFORM ONGAGE IMMEDIATELY IF IT SUSPECTS THAT A THIRD-PARTY MIGHT HAVE HAD OR MIGHT HAVE ACCESS TO THE CUSTOMER ACCOUNT OR LOGIN CRIDENTIALS.
- 2.4. Customer is solely responsible for all activities in its Account, including its Authorized User, and Ongage will not be held responsible for any unauthorized access to the Account. The Customer is solely responsible for identifying the authentication of the Authorized Users and for approving the access by such Authorized User.

3. LICENSE AND INTELLECTUAL PROPERTY RIGHTS

- 3.1. Subject to compliance with this Agreement and the Documentation, from the earlier between the date of the subscription purchase or the date the Customer first used the Services ("**Effective Date**") and continuing thereafter for the term of the subscription (unless terminated earlier pursuant to the Agreements), a non-exclusive, payment-bearing, non-transferable, non-sublicensable, worldwide, limited license to make use of the Ongage Platform and Services, solely for the Customer's own use, in connection with its own business.
- 3.2. Except as permitted in the Agreement, Customer or any Authorized User shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Ongage Content, the Service or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Service or Documentation to a third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Service or the Ongage Platform, in whole or in part; (iv) remove any proprietary notices from the Ongage Platform, Service or Documentation; (v) create a database by systematically downloading and storing all or any content from the Service; or (vi) use the Service for any illegal, immoral, or unauthorized purpose (including that which would infringe upon the rights of a third party) or that is in breach of applicable law.
- 3.3. Except as expressly provided herein, Ongage reserves all rights, title, interest in and to Services and Content, the Ongage Platform or Documentation. You may not use our tradenames and logos, unless Ongage provides prior written consent.

4. REPRESENTATIONS AND WARRANTIES

- 4.1. Each party hereby represents and warrants that: (i) it has the full legal authority to be engaged by and perform its obligations under the Agreements; and (ii) nothing contained in the Agreements nor the performance thereof shall place the relevant party in breach or default of any obligation or other agreement, law or regulation by which it is bound or to which it is subject, or requires the consent of any person or entity.
- 4.2. Ongage hereby represents and warrants that: (i) it owns or has the legal rights in the Ongage Platform and the Service; and (ii) it will provide the Services in a timely and professional manner which will conform to and operate in accordance with the Documentation and the subscription terms. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREUNDER, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICES, THE ONGAGE PLATFORM AND THE FEATURES OR RELATED DOCUMENTATION, SOFTWARE OR COMPONENT THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY

OF ANY KIND. ONGAGE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, REGARDING THE ONGAGE PLATFORM AND SERVICES (INCLUDING ONGAGE CONTENT, PRODUCTS, INFORMATION, SOFTWARE, AND LINKS), INCLUDING ANY IMPLIED WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, RESULTS, ACCURACY, COMPLETENESS, ACCESSIBILITY, COMPATIBILITY, SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, QUALITY, OR LACK OF VIRUSES. IF APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OF SOME OR ALL OF THE ABOVE IMPLIED WARRANTIES, THE ABOVE EXCLUSIONS WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

4.3. Customer represents and warrants that: (i) the Customer Data will not violate any applicable law and that the Customer has all required rights and authorizations to upload Customer Data to the Ongage Platform for the purpose of receiving the Service; (ii) it will use the Services in compliance with this MSA, the [Acceptable Use Policy](#), and the Documentation, specifically each Campaign will comply with the [Acceptable Use Policy](#); (iii) it is solely responsible for any content or data uploaded, processed, submitted or transmitted by it through the Services, including any Campaign. It is hereby clarified that Ongage has no obligation or responsibility to review the Customer Data or any Campaign or any other content uploaded through the Services.

5. FEES AND PAYMENTS

5.1. The Services are provided in different packages, prices and payment terms all as detailed on the Pricing Page: www.ongage.com/pricing/. We may offer distinctive features or services in each subscription, add new features or change or cancel any existing features or functionalities at our sole discretion. We further reserve the right to change the subscription fees at our sole discretion. If you are a paid Customer at the time of such change, the new rate will be affected upon your next subscription period; otherwise, you may choose to cancel your subscription, in which case you will be refunded on a pro-rata basis.

5.2. Ongage may offer, at its sole discretion, a free trial ("**Free Trial**"), when you sign up for a Free Trial, you acknowledge and agree that unless you actively cancel your subscription by the end of the Free Trial, you will be automatically billed subject to the then-current terms of the applicable subscription you have chosen.

5.3. Once you purchase a subscription, your subscription will renew automatically and your selected payment method will be charged the applicable fees, unless you actively cancel your subscription as detailed below.

5.4. All amounts shall be exclusive of any tax, levy or similar governmental charge, and will be expressed and paid in US Dollars. The payment shall be made either by Credit Card or any other method approved by Ongage, and shall be charged on a monthly basis at the beginning of each subscription period. Please note that we have a strict no refunds policy.

5.5. If your billing information and payment source is invalid, if charges billed to you are declined or not paid or if you fail to pay charges for a paid version of Ongage Services when due, your Account may be downgraded, suspended or cancelled, at Ongage sole discretion. If an Account is suspended, Ongage may, but is not obligated to, maintain the Account or related content and information, in order to allow the Customer to pay the past-due charges and restore the Account. All unpaid amounts will bear 1.5% interest per month or the maximum amount permitted under applicable law.

6. TERM AND TERMINATION

- 6.1. This Agreement shall automatically become effective upon the Effective Date, and continue indefinitely until terminated as further detailed herein below.
- 6.2. Ongage reserves the right to suspend the Services and terminate this Agreement at any time, in its sole discretion, upon providing prior written notice to the Customer through the Account Information provided during the registration process. The Customer may terminate this Agreement by providing at least thirty (30) days' prior written notice, communicated through the support or contact information provided, requesting to terminate the Agreement and cease the use of the Services ("**Termination for Convenience**"). Following Termination for Convenience, the fees will be stopped in the billing cycle following the end of the 30-day notice period. Both parties may terminate the Agreement immediately following a material breach by the other party that was not cured within reasonable time ("**Termination for Cause**"). To clarify, the breach of the Customer's payment obligations will be considered a material breach of the Agreement.
- 6.3. Subject to compliance with the DPA, Ongage will retain Customer Data for up to 24 months. After this time period we cannot promise to save any Customer Data and the client will take full responsibility for doing so.
- 6.4. All sections detailed herein which by their nature are intended to survive termination shall survive termination or expiration for any reason.

7. DATA PROTECTION

For the purpose of providing the Service, Ongage shall process Personal Data on the Customer's behalf pursuant to the terms and conditions of the Data Processing Agreement available, at [Data Processing Agreement](#).

8. Support and Safety

A number of factors may impact the quality of the communications and use of the Services, and may result in the failure of the communications. Ongage takes no responsibility for any disruption, interruption or delay caused by any failure of or inadequacy in any of these items or any other items over which we have no control. From time to time, Ongage may need to perform maintenance on or upgrade the Service or the Ongage Platform. This may require Ongage to temporarily suspend or limit the use of the Service, until such time as this maintenance or upgrade can be completed. The Customer waives the right to claim damages for such suspension or limitation of the use. We will make best efforts to ensure such maintenance is done not during the business days and hours. In need of support please contact Ongage at: support@ongage.com

9. CONFIDENTIALITY

Except as set for the herein, and to the extent required under applicable law, the Receiving Party agrees to keep confidential and not disclose, use, copy, or distribute any Confidential Information to anyone, other than to those of its employees and contractors, if and to the extent that such employees and contractors have a need to know such Confidential Information for the purpose of Receiving Party's performance of the Agreements, and provided that such employees and contractors are bound to abide by all the obligations concerning such Confidential Information contained in the Agreements. The obligations outlined in this Section shall survive the termination or expiration of the Agreements for a period of 3 years following the termination. All Confidential Information shall be and remain the

property of the Disclosing Party. The disclosure of the Confidential Information shall not be construed as granting the Receiving Party any right, title, or license, whether express or implied, with respect to the Confidential Information or to its related Intellectual. Each party acknowledges that its breach of this Section may cause the other party extensive and irreparable harm and damage, and agrees that the other party shall be entitled to injunctive relief, without bond, to prevent use or disclosure of its Confidential Information not authorized by this Agreement, in addition to any other remedy available to the other party under applicable law

10. LIMITATIONS ON LIABILITY

ONGAGE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY DISPUTE WITH ONGAGE (INCLUDING WITHOUT LIMITATION YOUR USE OF THE SERVICES) IS TO DISCONTINUE YOUR USE OF THE SERVICES. ONGAGE AND ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS OR AGENTS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING FROM YOUR USE OF THE SERVICES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OR REGISTRATION TO THE SERVICES. THESE EXCLUSIONS FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES INCLUDE, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST DATA, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ONGAGE HAD BEEN ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY UPON WHICH THE CLAIM IS BASED. ONGAGE'S LIABILITY, AND (AS APPLICABLE) THE LIABILITY OF ONGAGE'S SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE AMOUNT OF FEES YOU PAID TO ONGAGE IN THE 3 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH JURISDICTIONS, ONGAGE'S LIABILITY SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. CUSTOMER ACKNOWLEDGES AND AGREES THAT WITHOUT THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY, ONGAGE WOULD NOT BE ABLE TO OFFER THE SITE OR THE SERVICES.

11. INDEMNITY

The Customer agrees to indemnify and hold Ongage and its directors, officers, employees, advisors, subsidiaries, affiliates and agents, harmless from and against all loss, damages, expenses, claims, demands and liabilities incurred to or suffered by Ongage, arising out of (a) any representation made by Customer to third parties creating any obligation or liability regarding Ongage's Services which Ongage has not specifically assumed or approved under this Agreement; (b) Customer's breach of any term or condition of this Agreement or the documents it incorporates by reference, including the DPA, or (c) The Customer failure to comply with all applicable laws, regulations, ordinances and treaty requirements, relating, among others, to data protection, privacy rights, and copyrights., including [Acceptable Use Policy](#).

12. MISCELLANEOUS

12.1. Ongage shall not be liable for any delay or failure to perform its obligations according to the Agreement if and to the extent that such delay or failure to perform is caused or otherwise brought

about by circumstances beyond Ongage's reasonable control, including strikes, lockouts, labor troubles, restrictive government or judicial orders or decrees, riots, insurrection, war, terrorism, Acts of God or inclement weather, which Ongage is unable to prevent by the exercise of reasonable due diligence.

12.2. If any provision of these Terms is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

12.3. Each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, fiduciary or agency relationship between the parties for any purpose.

12.4. You may not assign this Agreement without the prior written consent of Ongage. Ongage may assign this Agreement at any time to the successor in interest in connection with a merger, consolidation or other corporate reorganization at any time without notice.

12.5. The Services and this Agreement and any dispute arising in connection therewith shall be exclusively governed by and construed in accordance with the laws of the State of Israel. You agree that all such disputes shall be brought exclusively in the appropriate courts of Tel Aviv, Israel.

12.6. If you have any questions or comments regarding this Agreement, please contact us at: support@ongage.com. All correspondence, notices and technical documentation exchanged between the parties shall be provided in the English language only.