

# Ongage

## Terms of Services

*Recently Updated: February 2018*

Welcome to Ongage services. These Terms of Service, and the Privacy and Data Protection Notice, available at [www.ongage.com/wp-content/data-privacy.pdf](http://www.ongage.com/wp-content/data-privacy.pdf) (together, the “**Terms**”) govern your relationship with Ongage Ltd. (“**Ongage**” or “**we**”), and set forth the terms and conditions under which Ongage makes available its internet websites, currently available at: [connect.ongage.net](http://connect.ongage.net) and [www.ongage.com](http://www.ongage.com) (together, the “**Site**”) and the services available through the Site or otherwise provided by Ongage (the “**Services**”). Ongage reserves the right to update and change the Terms from time to time, by posting the updated Terms on the Site, please check this page regularly for updates and changes.

By using the Site and/or Services in any manner, including but not limited to submitting an order, you (the “**User**” or “**you**”) agree to be bound by the Terms, and any and all other terms, conditions, rules, policies or procedures published on the Site from time to time, or executed by User, and related to User’s use of the Site and/or Services, as amended from time to time by Ongage.

**If you do not agree with any of the terms of contained herein, or do not meet the qualifications included herein for registering for an account or using the Services, do not access or use this Site or the Services. As long as you do not cease using this Site and the Services, you will be conclusively deemed to have accepted these Terms.**

### 1. ELIGIBILITY AND REGISTRATION

- 1.1. Ongage Services are strictly business to business. By registering as a business entity, representative personally guarantees that s/he is at least 18 years old, and has the authority to bind the entity to the Terms. By registering to the Site or Services and/or placing an order to acquire Services, you warrant and represent and that any information and representations provided by you at the time of registration are complete, truthful and accurate in all respects, and you agree to ensure that such information is kept up to date.
- 1.2. Upon registering for an account, you will receive an account designation and will be asked to choose a password. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the account, username, or password of another User at any time, or to disclose your password to any third party. You agree to notify us immediately if you suspect any unauthorized use of your account or access to your password. You are solely responsible for any and all use of your account. You may not transfer, assign or sell your Ongage account and/or User ID to another party.
- 1.3. Subscriptions to the Ongage Services may be made available in free or paid versions and/or in different service levels. Not all of the features and functionality of the Ongage Services may be available in each version or service level. The features and functionality of each version or service level may be changed from time to time at Ongage's discretion.
- 1.4. If you register to use a paid version of the Ongage Services on a free-trial basis and do not cancel the trial before the expiration of the trial period, then, upon the expiration of the trial period, the account will be automatically converted to a paid account and, unless other payment arrangements have been made in advance and confirmed by Ongage, you will be billed for any paid services.

### 2. FEES AND PAYMENTS

- 2.1. Ongage may charge fees in accordance to the fees presented to you prior to your registration (see our pricing schedule). 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. Please note that we have a strict no refunds policy.

- 2.2. 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's discretion. If a User account is suspended, Ongage may, but is not obligated to, maintain the account and/or related content and information, in order to allow the User to pay the past-due charges and restore the account. If the charges are not paid, such account may be cancelled, and all information therein deleted. Please note that until paid in full, all past due amounts will bear an additional charge of the lesser of 1 1/2% per month or the maximum amount permitted under applicable law.
- 2.3. Prices may vary from time to time. Please ask your Ongage account manager for further details.
- 2.4. Ongage may, in its sole discretion, refuse to offer access to or use of the Site and 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.

### **3. RIGHT TO USE**

- 3.1. Subject to fulfilment of all of User's obligations pursuant to the Terms, and for the subscription duration only, Ongage grants the User, commencing on the earlier of the date of subscription to the Services or User's first use of the Site or the Services (the "**Effective Date**") and continuing thereafter for the term of the subscription (unless terminated earlier pursuant to the Terms), a non-exclusive, payment-bearing, non-transferable, non-sublicensable, worldwide, limited license to make use of the versions of the Ongage Services to which such User has subscribed, as current and provided by Ongage at the Effective Date, solely for the User's own use, in connection with its own business, and for the purposes of utilizing Ongage's solution for User's internal business purposes.
- 3.2. Any software or code available on or for download through the Site or Services (the "**Software**"), and the Ongage Content (as defined below), are protected by intellectual property rights and is owned by Ongage or any of its affiliates or licensors. Ongage grants you a limited, non-exclusive, payment-bearing, non-transferable, non-sublicensable, right to download, install and execute the Software in accordance with the instructions provided on the Site and solely for your own business purposes in connection with your access to and use of the Services, and as otherwise limited hereunder. Except as expressly set forth herein regarding your right to use the Software in accordance with these Terms, you are granted no rights, in or to the Software, the Ongage Content, or any intellectual property rights related thereto or embodied therein or in any part thereto, in any way whatsoever, including by implication, estoppel, or otherwise.
- 3.3. You may not modify, reproduce, perform, display, create derivative works from, republish, post, transmit, participate in the transfer or sale of, distribute, or in any way exploit any portion of the Software or the Ongage Content without the prior written permission of Ongage.
- 3.4. The Services may include services developed, provided or maintained by third-party service providers ("**Third Party Services**" and "**Third Party Service Providers**"). Ongage may change, modify or discontinue any Third Party Services at any time.
- 3.5. Please note, that your access to and use of any Third Party Services may also be subject to any other terms and conditions separate from these Terms relating to the Third Party Services. Third Party Services may be subject to additional fees as set forth on the Site and as stated by the Third Party Service Providers.

### **4. PROHIBITED USES**

4.1. In connection with your use of the Site and/or the Services, and without limiting any other obligations under these Terms or applicable law, you shall not, and shall not permit others to:

- 4.1.1. Use the Ongage Services for any purposes other than those expressly set forth in these Terms;
- 4.1.2. Harvest or collect e-mail addresses or other contact information of third parties by any means for the purposes of sending unsolicited e-mails or other unsolicited communications or communications that comprises or includes any “junk mail”, “spam” or repetitive messages;
- 4.1.3. Any advertisement usage of ongage.net, ongage.com or any other Ongage domain is not allowed. You are not allowed to advertise our website without obtaining prior written permission from Ongage;
- 4.1.4. Upload, post, email, distribute, communicate, transmit or otherwise make available any Content: (i) that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, libelous, vulgar, obscene, offensive, indecent, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable, (ii) that infringes any patent, trademark, trade secret, copyright, or other intellectual property right of any party, or (iii) that you do not have the right to upload or make available by reason of any law or contractual or fiduciary relationship;
- 4.1.5. Modify the Ongage Services, decompile, reverse-engineer, disassemble, or otherwise attempt, directly or indirectly, to obtain or create source code for Ongage Services;
- 4.1.6. Use, sell, distribute, copy, duplicate, or otherwise reproduce all or any part of the Site, Services Software or Ongage Content;
- 4.1.7. Attempt to circumvent or overcome any technological protection measures intended to restrict access to any portion of the Sites, Services, Technology, or any Software;
- 4.1.8. Engage in any deceptive, misleading, unfair, illegal or unethical practices that may be detrimental to Ongage or the Services, and the violation of such representation, warranty or guarantee made by User shall be considered a material breach of this Agreement;
- 4.1.9. Allow any access to or use of the Services by anyone other than your authorized users.

## 5. USER CONTENT

- 5.1. You are solely responsible for any content uploaded, processed, submitted or transmitted by you through the Site or the Services, including, without limitation, any and all Personal Data (as defined in the Privacy and Data Protection Notice), relating to you or any of your users, customers, service providers, employees, contractors, agents or other natural persons (the “**Content**”) and for the consequences and liabilities associated with your use of the Content, including emailing, distributing, posting or publishing it. Ongage does not review or approve any Users’ Content and expressly disclaims any and all liability in connection with such Content. By uploading, processing, communicating or transmitting any Content using the Site or the Services, you further represent and warrant that such Content does not infringe any third party’s rights (including copyrights and privacy rights), is not defamatory or unlawful, and that the use and processing of all Content through the Site and Services is compliant with the Terms and applicable law.
- 5.2. You retain any and all ownership rights in your Content.
- 5.3. By uploading or transmitting any Content using the Site or the Services, you hereby grant Ongage with authorization to process the Content in connection with the provision of the Services to you and as

further specified herein and in the Privacy and Data Protection Notice, and you warrant that you have all necessary rights to grant such authorization to Ongage.

- 5.4. User further acknowledges and agrees that Ongage does not and cannot review User's Content, is not responsible or liable in connection with User's processing of the Content, does not control any User's Content, and does not guarantee the accuracy, integrity, lawfulness or quality of User's Content. Notwithstanding the foregoing, Ongage may, but is not obligated to, review User's Content and block, delete, add clarifications, terminate access to, or remove any such Content that Ongage, in its sole discretion, considers to be non-compliant with any of the requirements of these Terms and/or any law or regulation under applicable jurisdiction.
- 5.5. Ongage reserves the right to purge Content from its databases at any time and from time to time without notice, in its sole discretion. You acknowledge and agree that you are solely responsible for backing up any Content uploaded to the Site by your use of the Services.

## **6. ONGAGE CONTENT**

- 6.1. Certain content and information provided on and through this Site and Services, including, without limitation, Ongage's logo, trademark, graphics, design, information, text, images, data and other material displayed, available or present on the Site or Services, and excluding User's Content (collectively, "**Ongage Content**") are the copyrighted and/or trademarked work of Ongage solely, and may not be used without express written permission from us.
- 6.2. Ongage retains all rights, including any intellectual property rights, in the Ongage Content and the Software. You hereby acknowledge that you have no right, title or interest in or to any Ongage Content and the Software, and that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of the Ongage Content in any manner.

## **7. DATA PROTECTION**

- 7.1. Content you upload or process on the Site or through the Services may include Personal Data (as defined in the Privacy and Data Protection Notice). The policies related to the processing of such Personal Data are specified herein and in the Privacy and Data Protection Notice. Be sure to closely review the Privacy and Data Protection Notice, available at: [www.ongage.com/wp-content/data-privacy.pdf](http://www.ongage.com/wp-content/data-privacy.pdf), before uploading or sharing any Personal Data.
- 7.2. Ongage may reach out to anyone who leaves their contact details on our site, or through our call service, or with any employee or representative of Ongage. Ongage respects Users and their recipients privacy and we do not tolerate spam and will never sell, rent, lease or give away your Personal Data (name, address, email, etc.) to any third party. You can unsubscribe and opt-out from any communication from us at any time.

## **8. TERM AND CANCELTION**

- 8.1. These Terms shall automatically become effective upon the Effective Date, and continue indefinitely until User's account has been terminated.
- 8.2. You are entitled to cancel your account and registration in accordance to the terms of your engagement with Ongage. After cancellation or termination of your account for any reason, you will no longer have access to the account and all information and content in such account or that you have stored on the Ongage Services may be deleted by Ongage unless retained for the purposes further specified in the Privacy and Data Protection Notice. Moreover, all rights and authorizations granted to you under the Terms if any, shall immediately terminate.

- 8.3. The Services are not available to temporarily or indefinitely suspended accounts and Ongage reserves the right, in Ongage sole discretion, to cancel unconfirmed or inactive accounts. Ongage reserves the right at any time and from time to time to modify, suspend, or discontinue, temporarily or permanently, the Services or any part thereof, or User's access thereto, and to modify, suspend or delete the Site or any part thereof. You acknowledge and agree that Ongage shall not be liable to you or to any third party, for any modification, suspension or discontinuance of the Services or any modification, suspension or deletion of the Site
- 8.4. Without limiting any other remedies, Ongage may, without notice, and without refunding any fees, delay or immediately remove any Content, issue a warning to a User, temporarily suspend a User, temporarily or indefinitely suspend a User's account privileges, terminate a User's account, prohibit access to the Site and/or Services, warn third parties of a User's actions, and take technical and legal steps to keep a User off the Site and refuse to provide Services to a User if such User has breached these Terms, the Privacy and Data Protection Notice or any other Ongage policies, or has engaged in improper or fraudulent activity in connection with the Services, or has performed any other acts that may cause legal liability or financial loss to other Users or to Ongage.
- 8.5. Ongage may recover from User any losses, damages, costs or expenses incurred by Ongage resulting from or arising out of User's non-compliance with any provision of these Terms or the Privacy and Data Protection Notice.
- 8.6. In order to provide and improve the quality of our service, Ongage may add a few seed list emails to your account for internal monitoring purposes only.
- 8.7. Ongage will retain full client activity data for up to 24 months. After this time period we cannot promise to save the data and the client will take full responsibility for doing so.

## **9. WARRANTY DISCLAIMER**

USER ACKNOWLEDGES AND AGREES THAT THE SITE, THE SERVICES, THE SOFTWARE, AND ANY OF ITS CONTENT, ARE PROVIDED "AS IS," "AS AVAILABLE," AND "WITH ALL FAULTS," ARE USED ONLY AT USER'S SOLE RISK, TO THE FULLEST EXTENT PERMISSIBLE BY LAW. ONGAGE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, REGARDING THE SITE, SOFTWARE AND SERVICES(INCLUDING ITS 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 TO APPLY TO YOU, THE ABOVE EXCLUSIONS WILL APPLY TO YOU TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

## **10. LIMITATIONS ON LIABILITY AND REMEDIES**

ONGAGE'S ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY DISPUTE WITH ONGAGE (INCLUDING WITHOUT LIMITATION YOUR USE OF THE SITE AND/OR SERVICES) IS TO DISCONTINUE YOUR USE OF THE SITE AND 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 SITE OR SERVICES OR FOR ANY OTHER CLAIM RELATED IN ANY WAY TO YOUR USE OR REGISTRATION TO THE SITE OR 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 GREATER OF (A) THE AMOUNT OF FEES YOU PAID TO ONGAGE IN THE 1 MONTH PRIOR TO THE ACTION GIVING RISE TO LIABILITY, AND (B) \$50. 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. USER 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**

You agree 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 you to third parties creating any obligation or liability regarding Ongage's Services which Ongage has not specifically assumed or approved under these terms, (b) your breach of any term or condition of these Terms or the documents it incorporates by reference, including the Privacy and Data Protection Notice, or (c) your failure to comply with all applicable laws, regulations, ordinances and treaty requirements, relating, among others, to data protection, privacy rights, and copyrights.

## **12. MISCELLANEOUS**

- 12.1. These Terms, the Privacy and Data Protection Notice, and any other PO or agreement between you and Ongage comprise of the entire agreement between you and Ongage relating to the Site and the Services.
- 12.2. Ongage does not guarantee continuous, uninterrupted access to the Site or the Services, and operation of the Site and/or Services may be interfered with by numerous factors outside Ongage's control.
- 12.3. If any provision of these Terms is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of these Terms shall remain in full force and effect.
- 12.4. The Site and communications sent through the Services may contain links to third-party sites that are not under the control of Ongage, and Ongage is not responsible for any content on any linked sites. If you access a third-party site from the Site or from a communication sent through the Services, you do so at your own risk.
- 12.5. You and Ongage are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms.
- 12.6. You may not assign this Agreement without the prior written consent of Ongage. Ongage may assign these Terms at any time to the successor in interest in connection with a merger, consolidation or other corporate reorganization.
- 12.7. The Site, 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.
- 12.8. If you have any questions or comments regarding these Terms, please contact us at: [support@ongage.zendesk.com](mailto:support@ongage.zendesk.com)