

## MOENGAGE SOFTWARE aS a SERVICE LICENSE AGREEMENT

This Software as a Service License Agreement (the “Agreement”) is entered into as of \_\_\_\_ (the “Effective Date”), by and among and MoEngage, Inc., a Delaware corporation (“Company”), and \_\_\_\_\_, (the “Licensee”) (each a “Party” and collectively the “Parties”). 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 these terms and conditions, in which case the terms "you", "your", or “Licensee” shall refer to such entity. If you do not have such authority or if you are not willing to be bound by these terms and conditions do not accept this Agreement and do not use the Platform. By accepting this Agreement or by using or accessing the service, Licensee agrees to be bound by the following terms and conditions.

Company is a provider of a platform for Intelligent Customer Engagement. Licensee operates a mobile application/website/digital platform. Licensee desires to license such platform from Company, and Company desires to grant a license to such platform pursuant to the terms and conditions hereof.

In consideration of the agreements contained below, the parties hereby agree as follows:

**1. Definitions.** For purposes of this Agreement, the following terms will have the meanings ascribed to them below.

**1.1 “Affiliate”** means any company the majority of whose voting shares is now or hereafter, owned or controlled, directly or indirectly, by a Party hereto, or by an entity which owns or controls a Party hereto, as applicable.

**1.2 “Company Service Level Agreement”** means the service level agreement defining the service uptime and support availability attached hereto as Exhibit B.

**1.3 “Company System”** means the Platform operated on Company’s hosting servers or those of its hosting service provider intended to enable the Licensee to interact with the same via the worldwide web.

**1.4 “Confidential Information”** means any information disclosed by one Party to the other, which, (i) if in written, graphic, machine readable or other tangible form is marked “Confidential” or “Proprietary” or which, if disclosed orally or by demonstration, is identified at the time of disclosure as confidential and reduced to a writing marked “Confidential” and delivered to the Receiving Party (as defined below) within thirty (30) days of such disclosure; or (ii) by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential. Notwithstanding any failure to so identify them, all technology or proprietary information underlying the Platform and the Company System shall be deemed Confidential Information of Company, and the Licensee Data and the existence of this Agreement shall be deemed Confidential Information of Licensee.

**1.5 “Documentation”** means any documentation provided by Company for use with the Platform under this Agreement.

**1.6 “End-User”** means users of Licensee’s mobile application.

**1.7 “Intellectual Property Rights”** means all rights in, to, or arising out of: (i) any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask works registrations, applications, moral rights, trademarks, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise; and (iv) any other similar or equivalent proprietary rights anywhere in the world.

**1.8 “Licensed Materials”** means the Platform.

**1.9 “Licensee Data”** means (a) End-User information, including but not limited to name, address, mobile application/website activity, mobile device identifier/other identifiers as tracked by the Licensee

**1.10 “Marks”** means a Party’s corporate or trade name, trademark(s), logo(s), domain names or other identification of such Party.

**1.11 “Platform”** means the cloud-based interface created by Company where Licensee accesses tools to analyze Licensee Data and to create marketing campaigns based on such analysis, and all changes, corrections, bug fixes, enhancements, updates and other modifications thereto, whether made by or on behalf of Company, Licensee, or any third party.

## **2. Services**

2.1 From time to time, Company and Licensee may execute one or more service orders, substantially in the form attached hereto as Exhibit A, that describe the services and the deliverables the Company will provide to Licensee (each an “SO”). Each SO will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein. An SO may be amended only by written agreement of the Parties.

2.2 Company will perform the services and provide the deliverables described in each SO in accordance with the terms and conditions set forth in each SO and this Agreement. Should any conflict arise between the terms of the SO and this Agreement, the SO shall control only to the extent of the conflict.

## **3. Responsibilities of Company**

3.1 Company will host and maintain the Platform on servers operated and maintained by or at the direction of Company. Company shall provide tools for analysing Licensee Data to enable Licensee to create marketing campaigns based on End-User behaviour. Company shall design the Platform to provide templates to facilitate Licensee’s creation of marketing communication campaigns to be sent to End-Users through Licensee’s mobile application. Company may in its sole discretion modify, enhance or update or otherwise change the Platform, provided that Company agrees to comply with Licensee’s Marks usage policies and ongoing instructions and supervision with respect to Licensee’s Marks.

3.2 Company shall ensure availability of the Platform and necessary Company System and provide technical support of the Platform use in accordance with the Company Service Level Agreement. Company shall not be obligated to provide to the Licensee any new release of the Platform, or module thereof, or other software or services for which Company generally charges a separate fee.

3.3 Company shall provide Licensee with analysis of the use of the marketing communications to End-Users. Licensee shall have access to such results and analysis from a dashboard made available through the Platform.

#### **4. Responsibilities of Licensee.**

4.1 The Licensee will cooperate in integrating the Software development kit (“SDK Library”) into its mobile applications, Javascript into its website(s) and/or other APIs to enable the Platform to access the Licensee Data.

4.2 Licensee will be responsible for providing its own marketing communication content, including, but not limited to, Licensee logos, marks, content, and product descriptions.

4.3 The Licensee will be responsible for obtaining and maintaining at the Licensee’s expense all the necessary computer hardware, software, modems, connections to the Internet and other items required to access the Company System.

4.4 Licensee will provide as true, accurate, current and complete account information as commercially reasonable; and maintain and promptly update all account information to ensure same.

**5. Right to Monitor.** Company will have the right to review and monitor all use of the Platform to ensure compliance with all of the terms of this Agreement.

#### **6. License Grant.**

**6.1 Grant.** Subject to the terms and conditions of this Agreement, Company grants to Licensee a limited, non-exclusive, non-transferable, worldwide license, without the right to sublicense, to use the Platform via the Company System solely for use consistent with the terms of this Agreement.

**6.2 License Restrictions.** Licensee shall not, and shall not permit any third party to: (i) use the Licensed Materials except to the extent permitted in Section 6.1; (ii) modify or create any derivative work of any part of the Licensed Materials; (iii) permit any third parties to use the Licensed Materials other than contractors with a Licensee-specific business need; or (iv) market, sublicense, publish, distribute, reproduce, assign, transfer, rent, lease or loan the Licensed Materials.

**6.3 Reservation of Rights.** Company reserves all rights to the Licensed Materials not otherwise expressly granted in this Section 6.

#### **7. License to Company.**

**7.1 Limited Licensee Data License.** Subject to the terms and conditions of this Agreement, the Licensee hereby grants Company a limited, worldwide, non-transferable, non-exclusive, non-sublicensable, royalty-free license during

the Term to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and make derivative works of the Licensee Data solely in order to enable the Platform to use the Company System. Company shall have the right to aggregate and anonymize Licensee Data and to publish such aggregated and anonymized (non-personally identifiable) data (or) benchmark studies. Company shall have no right to use the Licensee Data for any other purpose or share the Licensee Data with anyone other than the Licensee.

**7.2 Limited Trademark License; Marketing Materials.** Licensee hereby grants Company a royalty-free, non-exclusive, non-transferable, non-sublicensable, limited term license to use Licensee's Marks solely for the purpose of enabling the creation of marketing communications through the Platform and only as specifically authorized by, and subject to any restrictions stated in, this Agreement. Such license shall be limited to the duration of this Agreement. During the Term of the Agreement, Company may include Licensee in any of Company's customer lists and testimonials, solely for the purpose of identifying Licensee as a customer of Company. Company shall not use any of Licensee's Marks in any manner that Licensee, in its sole discretion, deems to be an explicit or implicit endorsement of Company, or which is likely to cause confusion as to Licensee's relationship to Company's Services. Any such usage of the Licensee's Marks is permissible only with Licensee's prior written consent. Company's use of Licensee's Marks shall inure to the benefit of Licensee. Licensee and Company acknowledge that the provisions of this paragraph do not convey any right, title or ownership interest in Licensee's Marks to Company.

## **8. Payment; Taxes.**

**8.1 License Fees.** In consideration for the license granted by Company under this Agreement, Licensee shall pay Company the license subscription fees in the amount set forth in the SO (the "License Subscription Fees") in accordance with the terms set forth therein. License Subscription Fees are subject to change with each new SO. License Subscription Fees are non-refundable except as expressly provided in this Agreement or any SO.

**8.2 Taxes.** Licensee shall, in addition to the other amounts payable under this Agreement, pay all applicable customs, duties, sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement, excluding only taxes based on Company's net income. Licensee agrees to indemnify, defend, and hold Company, its officers, directors, consultants, employees, successors and assigns harmless from all claims and liability arising from Licensee's failure to report or pay any such taxes, duties or assessments.

**8.3 Payment Terms.** All undisputed amounts payable to Company under this Agreement will be due within thirty (30) days from receipt of an invoice. Overdue payments will be subject to interest at the rate of 1% per month, or the maximum allowable under applicable law, whichever is less. Prepayment of up to one year of License Subscription Fees will be discounted at a rate set forth in the applicable SO. No reimbursements shall be made for terminations mid-month for the remaining unused portion of the month except as expressly provided in this Agreement or any SO.

## **9. Ownership.**

**9.1 Licensee.** As between Licensee and Company, the Licensee shall retain all right, title and interest in and to the Licensee Data, Licensee's Marks and all Intellectual Property Rights therein. Nothing in this Agreement will confer on Company any right of ownership or interest in the Licensee Data, Licensee's Marks or the Intellectual Property rights therein.

**9.2 Company.** As between Licensee and Company, Company shall retain all right, title and interest in and to Company Marks, the Platform, the Company System, any changes, corrections, bug fixes, enhancements, customizations, updates and other modifications thereto, and all Intellectual Property Rights therein, and as between the parties all such rights shall vest in and be assigned to Company including any modifications, derivations, enhancements, compilations or changes to or from any of the foregoing by or on behalf of Licensee in relation to Licensee's use of the Platform. Nothing in this Agreement will confer on Licensee any right of ownership or interest in the Company Marks, Platform, the Company System, or the Intellectual Property rights therein.

## **10. Limited Platform Warranty.**

**10.1 Scope of Limited Warranty.** Company warrants to Licensee that during the Term, the Platform will perform substantially in accordance with the terms of Company's Documentation. The foregoing warranty shall not apply to performance issues of the Platform (i) caused by factors outside of Company's reasonable control; (ii) that result from any improper actions or inactions of Licensee or any third parties; or (iii) that result from Licensee's data structure, operating environment or equipment.

**10.2 Disclaimer of Any Other Warranties.** EXCEPT FOR THE EXPRESS, LIMITED WARRANTY PROVIDED IN THIS SECTION 10, COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED MATERIALS, THE PLATFORM, COMPANY SYSTEM, OR ANY OTHER ACCOMPANYING MATERIAL PROVIDED HEREUNDER. COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND OF UNINTERRUPTED OR ERROR-FREE SERVICE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND IN ANY SO, THE PLATFORM IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS.

## **11. Term; Termination.**

**11.1 Term.** Unless earlier terminated as per Section 11 of the Customer Agreement, this Order Form will have a term of \_\_\_\_\_, which shall commence as of the Effective Date, and shall thereafter automatically renew for additional periods of one (1) year unless Licensee provides written notice of its intention not to renew to the Company at least thirty (30) days prior to next renewal term.

### **11.2 Termination.**

**11.2.1 By Either Party.** This Agreement or any SO may be terminated by either Party during the Term only

(a) if the other Party fails to perform or observe any material term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching Party; or

(b) if the other Party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any

bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing.

**11.2.2 Effect of Termination.** Upon termination of this Agreement, each Party shall promptly return, or at the other Party's request, destroy (and provide confirmation of such destruction signed by a legal officer), all Confidential Information of the other Party (including without limitation the Licensee Data and the Documentation). Sections 1, 6.2, 9, 10.2, 11.2.2, and 12-15 shall survive termination of this Agreement for any reason. All other rights and obligations of the Parties under this Agreement shall expire upon termination of this Agreement, except that all payment obligations accrued hereunder prior to termination or expiration shall survive such termination.

## 12. Confidentiality

**12.1 Nondisclosure.** Each Party (each a "Receiving Party") agrees that it (i) shall use and reproduce the Confidential Information of the other Party (the "Disclosing Party") only for purposes of exercising its rights and performing its obligations under this Agreement and only to the extent necessary for such purposes, (ii) shall restrict disclosure of such Confidential Information to the Receiving Party's employees, consultants, or advisors who have a bona fide need to know for such purposes, and (iii) shall not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The foregoing obligations shall be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. All third parties to whom the Receiving Party discloses Confidential Information must be bound in writing by obligations of confidentiality and non-use at least as protective of such information as this Agreement. Notwithstanding the foregoing, it shall not be a breach of this Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.

**12.2 Exceptions.** Notwithstanding anything to the contrary herein, neither Party shall be liable for using or disclosing information that such Party can prove: (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party; (ii) was rightfully known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; (v) becomes rightfully known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; or (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement.

**12.3 Remedies.** The Receiving Party agrees that a breach of this Section 12 may result in immediate and irreparable harm to the Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, the Disclosing Party will be entitled to seek equitable relief, including but not limited to a temporary restraining order, temporary injunction or permanent injunction without the posting of a bond or other security.

**13. Limitation on Damages.**

**13.1 EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** EXCEPT FOR BREACH OF SECTION 6, SECTION 7 OR SECTION 12 AND INDEMNIFICATION FOR THIRD-PARTY DAMAGES ARISING UNDER SECTION 14 OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE.

**13.2 MAXIMUM AGGREGATE LIABILITY.** EXCEPT FOR BREACH OF SECTION 6, SECTION 7 OR SECTION 12 AND INDEMNIFICATION LIABILITY ARISING UNDER SECTION 14 OF THIS AGREEMENT, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE DISCRETE VALUE OF SERVICES PROVIDED UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO LIABILITY. LICENSEE ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **14. Indemnification.**

**14.1 Indemnification.** Each Party shall indemnify, defend and hold the other Party and its officers, directors, employees, agents, successors and assigns harmless from and against all third-party claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses resulting from or arising out of (a) any breach of this Agreement by such Party, (b) any negligence or willful misconduct with respect to the provision or use of the Company System by such Party, and (c) any claim that the Platform or Company System (as to Company), or the Licensee Data (as to Licensee) violates any applicable statute, regulation, or law, or infringes any intellectual property right or other legal right of any third party (a "**Claim**"). This indemnity does not apply to, and Company will have no obligation to the Licensee for, any infringement or misappropriation claim that arises from (i) modifications to the Company System by anyone other than Company, (ii) modifications to the Company System based upon specifications furnished by the Licensee, (iii) Licensee's use of the Company System other than as specified in this Agreement or in the applicable Documentation, (iv) use of the Company System in conjunction with third-party software, hardware or data other than that approved by Company, or (v) any combination of the foregoing. Licensee shall indemnify, defend and hold Company and its officers, directors, employees, agents, successors and assigns harmless from and against all third-party claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses to the extent they arise from any Claim based on any of the factors in the foregoing sentence, and shall give Company all reasonable information and assistance regarding such claim.

14.2 The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim; provided that the failure to provide such notice shall not relieve the indemnifying Party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying Party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any Claim; provided, however, that (i) the indemnifying Party shall keep the indemnified Party informed of, and consult with the indemnified Party in connection with the progress of such litigation or settlement and (ii) the indemnifying Party shall not settle any such Claim in a manner that does not unconditionally release the indemnified Party without the indemnified Party's written consent, not to be unreasonably withheld or delayed.

14.3 In the event any portion of the Platform or Company System is held or believed by Company, or any portion of the Licensee Data or Licensee Marks are held or believed by the Licensee, to infringe or misappropriate Intellectual Property Rights of any third party (such portion to be deemed the "Infringing Materials") in any place where the Company System is used or accessed, then in addition to any other rights in this Section 14, Company (where the Infringing Materials are the Company System) or Licensee (where the Infringing Materials are the Licensee Data or Licensee Marks) shall, at its sole expense and at its option: (i) obtain from such third party the right for the other Party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such

infringement or misappropriation, as the case may be; or (iii) upon mutual agreement with the other Party, remove and disable the Infringing Materials; or (iv) if none of the foregoing remedies is commercially feasible, terminate this Agreement, provided that in such case Company shall promptly refund to Licensee all unused License Subscription Fees paid by Licensee to Company.

14.4 THIS SECTION 14 SETS FORTH EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION, AND EACH PARTY'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS.

## 15. Miscellaneous.

**15.1 Assignment.** Neither Party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock, provided that the assignee shall assume all rights and obligations under this Agreement. Any permitted assignment of this Agreement shall be binding upon and enforceable by and against the Parties' successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of this Agreement.

**15.2 Entire Agreement.** This Agreement, any exhibits and amendments thereto, and any SOs constitute the entire agreement between the Parties and supersede all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended without the prior written consent of both Parties.

**15.3 Restricted Rights.** If Licensee is an agency, department or entity of the United States Government ("Government"), Licensee agrees, that (i) use, reproduction, release, modification or disclosure of the Platform, or any part thereof, including technical data, is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies, (ii) the Platform is a commercial product, which was developed at private expense, and (iii) use of the Platform by any Government agency, department or other agency of the Government is further restricted as set forth in this Agreement.

**15.4 Import and Export Requirements.** Licensee acknowledges and agrees that the Licensed Materials are subject to export control laws and regulations. Licensee may not download or otherwise export or re-export the Licensed Materials or any underlying information or technology except in full compliance with all applicable laws and regulations, in particular, but without limitation, United States export control laws. None of the Licensed Materials or any underlying information or technology may be downloaded or otherwise exported or re-exported: (a) into, or to a national or resident of, any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities. Licensee hereby agrees to the foregoing and warrants that Licensee is not located in, or under the control of, or a national or resident of any such country or on any such list.

**15.5 Force Majeure.** Except for payment obligations, if either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (other than those limited to the affected Party) (each, a "Force Majeure Event"), such Party's performance shall be excused and the time for performance shall be extended accordingly provided that the Party immediately takes all reasonably necessary steps to resume full performance.

**15.6 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state of California without giving effect to its conflicts of law rules. Each of the Parties to this Agreement consents to the exclusive jurisdiction and venue of the state and federal courts of Santa Clara County, California.

**15.7 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered by email to the address provided herein, in person (including by overnight courier) or three days after being mailed by registered or certified mail (postage prepaid, return receipt requested), and on the date the notice is sent when sent by verified facsimile, in each case to the respective Parties at the address first set forth hereto. Either Party may change its contact information by providing the other Party with notice of the change in accordance with this section.

**15.8 Relationship of Parties.** The Parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other Party. Neither Party shall hold itself out as an agent of the other Party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

**15.9 Severability.** If any provision of this Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.

**15.10 Waiver.** No delay or failure by either Party to exercise any right or remedy under this Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the Party waiving its rights. A waiver by any Party of any breach or covenant shall not be construed as a waiver of any succeeding breach of any other covenant.

**15.11 Headings.** The headings of the articles and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement.

**15.12 Construction; Advice of Counsel.** Both Parties acknowledge and agree that the Agreement has been jointly prepared and its provisions will not be construed more strictly against either Party as a result of its participation in such preparation. Each Party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement.

In Witness hereof, the parties hereto have executed this Agreement by persons duly authorised as of the date and year first above written.

MoEngage, Inc.:	_____
Signature:	Signature:
Name: I V Narasimha Reddy	Name:
Title: CFO	Title:
Email: <a href="mailto:narasimha@moengage.com">narasimha@moengage.com</a>	Email:
Date:	Date:

**Exhibit A**

**FORM OF SERVICE ORDER**

[As Per AWS Marketplace Private Offer]

MoEngage, Inc.:	_____
Signature:	Signature:
Name: I V Narasimha Reddy	Name:
Title: CFO	Title:
Email: <a href="mailto:narasimha@moengage.com">narasimha@moengage.com</a>	Email:
Date:	Date:

## Exhibit B

### company Service level agreement

**1. Standard Support.** MoEngage, Inc. (“Company”) shall provide Licensee \_\_\_\_\_ support which shall be available Monday through Friday, 9:00 a.m. to 5:00 p.m. India (time-zone), excluding holidays.

**2. Service Availability.** Company will use commercially reasonable efforts to maintain the availability of the Platform to the Licensee and Customers as follows:

Service Category	Availability/Response Time
Monthly Availability <i>The availability percentage does not include interruptions due to Scheduled Downtime or Force Majeure.</i>	99.9% monthly
Scheduled Downtime	1:00 am – 1:15 am Indian Time weekly on Saturdays, or as Company otherwise notifies Licensee no less than twenty-four (24) hours in advance.
Unplanned Outages (other than for system emergency)	Maximum 15 minutes over a reference period of 1 month, excluding Force Majeure.
Unplanned Outages for system emergency	Maximum 1 hour over a reference period of 1 month, excluding Force Majeure. Company will promptly notify Licensee of any Unplanned Outage (whether or not for system emergency), including a description of the Unplanned Outage and the expected or estimated time until normal operations will resume.
Frequency of back-ups of Customer data and configuration data	One incremental back-up every 6 hours until 30 days after the end of an active event. All the data is retained for at-least a year and as long as the parties are working together.
Average time for remedy of incidents	< 4 hours for 90% of cases

<i>Calculated as from opening until closing of a case.</i>	
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**2.1 Exclusions.** Company shall have no liability for lack of availability due to: (1) outages caused by the failure of public network or communications components, (2) user errors, or (3) unauthorized use or misuse by Licensee or anyone using any of the Licensee passwords, provided that Company has taken industry standard steps to protect the Platform from unauthorized access, intrusion, and disruption.

**2.2 Licensee Reporting.** Licensee shall report any unscheduled system downtime and any error, bug, or defect in the Platform by emailing support@moengage.com within a reasonable amount of time upon becoming aware or receiving notice of such system downtime, error, bug, or defect.

**2.3 Sole Remedies for Failure to Meet the Service Availability Level Commitment.** For each calendar month in which Company has Uptime of:

(a) less than 99.5% but above 95%, Company shall upon Licensee's request made within thirty (30) days of the end of the calendar month, provide Licensee with a written plan for improving Company's Service Availability to attain the 99.9% Service Availability and Company shall promptly implement such plan;

(b) between 95% and 90%, Company shall, upon Licensee's request made within thirty (30) days of the end of that calendar month, provide Licensee with a service credit in an amount equal to \$500 and the action plan under subpart (a) above; or

(c) less than 90%, Company shall, upon Licensee's request made within thirty (30) days of the end of that calendar month, provide Licensee with a service credit in an amount equal to \$1000 and the action plan under subpart (a) above. Licensee may also terminate this Agreement upon thirty (30) days' written notice (which notice must be given within sixty (60) days of the end of the calendar month in which the Service Availability was less than 90%).

Licensee shall not exercise the rights in this Section 2.3 without a reasonable basis or belief that the applicable Service Availability commitment was not satisfied. If Licensee believes that Company has failed to achieve an Uptime commitment in any given month, Company shall, promptly following Licensee's request, promptly provide a report that contains true and correct information detailing Company's actual Service Availability performance. THIS SECTION 2.3 SETS FORTH LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND COMPANY'S ENTIRE LIABILITY, FOR ANY FAILURE TO MEET THE SERVICE AVAILABILITY COMMITMENT.

### **3. Error Corrections and Updates.**

#### **3.1 Definitions.**

(a) **"Error"** means a failure of the Platform to conform to the documentation, resulting in the inability to use, or material restriction in the use of, the Platform.

(b) **"Maintenance Release"** means a revision of the Platform released by Company to its Licensees generally, to correct Errors in the Platform or to maintain the operation of the Platform in accordance with the documentation.

(c) **“Update”** means either a Platform modification or addition that, when made or added to the Platform, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Platform, eliminates the practical adverse effect of the Error.

(d) **“Upgrade”** means a revision of the Platform released by Company to its end user Licensees generally, to add new and different functions or to increase the capacity of the Platform. Upgrade does not include the release of a new product or added features or modules for which there may be a separate charge.

**3.2 Updates.** Company will make commercially reasonable efforts to provide an Update designed to solve or by-pass a reported Error. Company shall reasonably determine the priority level of Errors, pursuant to the following protocols and take the following actions during the Licensee Support Center Hours.

**3.3 Errors.**

(a) **Severity 1 Errors:** Company promptly initiates the following procedures: (1) assigns specialists to correct the Error on an expedited basis; (2) provides ongoing communication on the status of an Update; and (3) begins to provide a temporary workaround or fix. A Severity One Error means the (i) Company System is severely impacted or completely shut down, or (ii) system operations or mission-critical features are down.

(b) **Severity 2 Errors:** Company assigns a Company specialist to begin an Update, and provides additional, escalated procedures as reasonably determined necessary by Company Support Services staff. Company exercises commercially reasonable efforts to provide a workaround or include a fix for the Severity 2 Errors in the next Maintenance Release. A Severity Two Error means (i) the Company system is functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical feature, while not being affected, has experienced system interruptions.

(c) **Severity 3 Errors:** Company may include an Update in the next Maintenance Release. A Severity Three Error means there (i) are errors in fully operational Company systems, (ii) is a need to clarify procedures or information in documentation, or (iii) is a request for a product enhancement.

**3.4 Response Times.** Company will respond to Licensee reports of a problem based on the severity. Upon receipt of a request for support or report of a problem, Company will respond to Licensee with an assigned level of priority based on the response times shown in the following table.

Priority	Examples	Initial Response Time
<p><b>Priority One: Emergency</b> A crisis has occurred - a system is down, a major operational function is unavailable or a critical interface has failed</p>	<p>Company system is down or crashing frequently A business critical operation cannot be performed</p>	<p>&lt; 1 hour</p>
<p><b>Priority Two: Critical</b></p>	<p>Company system functioning with limited capabilities System unstable with periodic interruptions</p>	<p>&lt; 4 hours</p>

Any problem critical to Company success and requiring immediate resolution		
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Priority	Examples	Initial Response Time
<p><b>Priority Three: High</b></p> <p>Priority three situations include problems to be resolved as soon as possible. Most of these have acceptable workarounds, or the Product recovers by itself</p>	<p>Errors in Company systems but still fully functional. Malfunction in non-critical functions</p>	<p>&lt;1 business day</p>
<p><b>Priority Four: Normal</b></p> <p>Priority four situations are technical questions or problems requiring resolution - many of which are of “how to” nature</p>	<p>Need clarification of procedures or information in documentation</p> <p>Attributes or options do not operate as stated</p> <p>Platform enhancement requests</p> <p>Documentation is incorrect</p>	<p>&lt;2 business days</p>

**3.5 Maintenance Releases and Upgrades.** During the Term, Company shall make the Maintenance Releases available to Licensee if, as and when Company makes any such Maintenance Release generally available to its Licensees. If a question arises as to whether a product offering is an Upgrade or a new product or feature, Company’s opinion shall prevail, provided that Company treats the product offering consistently for its Licensees generally.

**4. Conditions for Providing Support.** Company’s obligation to provide Support Services is conditioned upon the following: (a) Licensee makes reasonable efforts to solve the problem after consulting with Company; and (b) Licensee provides Company with sufficient information and resources to correct the problem, as well as access to the personnel, hardware, and any additional systems involved in discovering the problem.

**5. Exclusions from Company’s Support Services.** Company is not obligated to provide Support Services in the following situations: (a) the problem is caused by Licensee’s negligence, hardware malfunction or other causes beyond the reasonable control of Company; (b) the problem is with third party software not licensed through Company; (c) the problem is with individual user’s desktop or browser software; or (d) Licensee has not paid License Subscription Fees under the Agreement when due.