

Subscription Terms of Use

BY ACCEPTING AN ORDER FORM OR CLICKING “CONFIRM PURCHASE” OR BY OTHERWISE ACCESSING, DOWNLOADING, INSTALLING OR OTHERWISE USING ANY OF THE SUBSCRIPTION SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS, DOWNLOAD, INSTALL, OR OTHERWISE USE ANY OF THE SUBSCRIPTION SERVICES.

This Master Subscription Agreement (“*Agreement*”) is an agreement by and between Valimail Inc., a Delaware corporation (“*Valimail*”) and the customer accessing, downloading, or using the Subscription Services (“*Customer*”), as follows:

1. DEFINITIONS

1.1. “*Authorized User*” means an individual Customer employee or agent who has been assigned unique credentials to access and use the Subscription Services, whether or not that individual is accessing or using the Subscription Services at any particular time.

1.2. “*Customer Data*” means user account information, or any other information provided by Customer or its Authorized Users in the course of accessing and using the Subscription Services.

1.3. “*Documentation*” means the user documentation for a Subscription Services made available to Customer, as revised from time to time.

1.4. “*Exhibit*” means the applicable exhibit (if any), setting forth additional terms applicable to the specific Subscription Service set forth in the Order

Form.

1.5. “*Order Form*” means an online or written ordering document or account setup form or page mutually agreed by the parties, that specifies the Subscription Services being selected, the subscription period, fees payable, and other commercial terms, and which is issued under and references this Agreement.

1.6. “*Subscription Service(s)*” means the web-based service(s) to which Customer has a subscription, as specified in the Order Form, that are facilitated by Valimail’s cloud platform.

1.7. “*Subscription Term*” means the period identified in the Order Form during which Authorized Users are permitted to use or access the Subscription Services pursuant to the terms set forth in this Agreement.

1.8. “*Valimail Technical Data*” means the aggregate, transactional, and analytic data used by the Subscription Services which is anonymized and generated for analytics purposes.

2. SUBSCRIPTION SERVICES

2.1. Authorization. Subject to Customer’s compliance with the terms and conditions of this Agreement and the applicable Order Form, Valimail will provide Customer’s Authorized Users a non-exclusive, non-transferable right to access and use the Subscription Services, during Customer’s subscription period set forth in the applicable Order Form and, if applicable, any Renewals (as defined below), solely for Customer’s internal business purposes in accordance with the relevant Documentation.

2.2. Usage Limits. The use of the Subscription Services is further subject to the usage limitations indicated in the applicable Order Form or in the Documentation for such Subscription Services.

2.3. Customer Responsibilities. Customer is responsible for: (a) maintaining the confidentiality of any user IDs, passwords and other credentials associated with Customer's account, (b) all activities that occur with respect to Customer's account, and (c) ensuring that Customer's and Authorized Users' use of the Subscription Services is in compliance with this Agreement and applicable laws.

2.4. Restrictions. Customer is not permitted to, and will not knowingly allow others to: (a) copy, reproduce, modify, decompile, disassemble, or reverse engineer the Subscription Services or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (b) provide any third parties with access to any of the Subscription Services, or use any of the Subscription Services for time sharing or similar purposes for the benefit of any third party; (c) remove any copyright or proprietary notices contained in the Subscription Services or any output thereof; (d) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the Subscription Services; (e) access the Subscription Services via any bot, web crawler or non-human user; (f) access or use (or permit a third party to access or use) the Subscription Services for any unlawful purpose or for any other benchmarking or competitive purposes; or (g) attempt to circumvent authentication or security of any host, network or account or use or knowingly permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of Subscription Services, except as expressly permitted hereunder.

2.5. Security. Valimail will take any technical and organizational measures to protect information, as required under the Agreement and as appropriate given the nature of the information concerned.

3. TERM AND TERMINATION

3.1. Duration and Renewal. Customer's subscription for the Subscription Services will remain in effect throughout the subscription term specified in the Order Form, unless terminated as set forth below; provided however, that this Agreement shall survive with respect to any Order Form in effect at the time of such termination until expiration or termination of such Order Form. Except as otherwise specified in the Order Form, Customer's subscription to the Subscription Services will automatically renew for successive one-year periods (each, a "*Renewal*"), unless either party gives the other party written notice of non-renewal at least 30 days in advance prior to the end of the then current Subscription Term. For purposes of providing the aforementioned notice, notice provided via email to support@valimail.com, with finance@valimail.com copied, will suffice. For avoidance of doubt, this Agreement will automatically expire at the end of the last of Customer's Subscription Term.

3.2. Termination. A party may terminate this Agreement upon (i) material breach by the other party that remains uncured more than 30 days after receiving written notice of the breach or (ii) immediately if a party is the subject of a bankruptcy order or becomes insolvent. In addition, Valimail may suspend the provision of Subscription Services ten (10) business days following Customer's receipt of written notice that it is late in paying an invoice (which notice shall also serve as notice that Customer is in material breach of this Agreement). All Order Forms and Customer's subscription(s) for all Subscription Services will automatically terminate upon any termination of this Agreement.

3.3. Survival. The following provisions will survive expiration or termination of

this Agreement: Section 1, Section 2.4, Section 4.3, Section 5, Section 6, and Sections 8-10.

4. FEES AND PAYMENT

4.1. Fees. In consideration for Valimail providing the Subscription Services, Customer shall pay to Valimail the fees as set forth in the Order Form (“Fees”). Valimail will invoice or charge Customer in advance at the beginning of each Subscription Term or Renewal. Except as set forth in this Agreement or as required by law, Fees paid are non-refundable and payment obligations are non-cancelable.

4.2. Renewal Fees. For each Renewal, Customer will pay the Fees or, if applicable, such other rates as Valimail may establish by written notice to Customer at least 60 days prior to the first day of the Renewal, email to either the Primary Contact or Billing Contact listed on the Order Form to suffice. If the use of the Subscription Services under Customer’s account exceeds any usage limitations that apply to Customer’s subscription, then in addition to in-term overage charges (and without limiting Valimail’s other remedies) the Renewal fee will be increased to cover the higher level of usage at Valimail’s then-current rates.

4.3. Payment. All applicable Fees will be paid when due, as set forth in the Order Form. Overdue payments will accrue interest at the rate of 1.5% per month, but in no event greater than the highest rate of interest allowed by law. If Fees are being paid via credit card or other electronic means, Customer authorizes Valimail to charge the Fees using Customer’s selected payment method.

4.4. Taxes. The fees specified in this Agreement and each Order Form are exclusive of taxes, duties, levies, tariffs, and other governmental charges

(including, without limitation, VAT) (collectively, “Taxes”). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than Valimail’s U.S. federal and state income taxes. Such Taxes will be itemized in the applicable invoice.

5. OWNERSHIP

As between Valimail and Customer: (a) the Subscription Services, Valimail Technical Data, and all software, data and technologies embodied in or used to provide the Subscription Services, and all intellectual property rights therein or relating thereto, are and shall remain the exclusive property of Valimail; and (b) the Customer Data and all intellectual property rights therein or relating thereto, are and shall remain the Customer’s exclusive property. Valimail hereby grants Customer a nonexclusive, non-transferable, perpetual, worldwide license to reproduce and use, solely for Customer’s internal business purposes, the Valimail Technical Data made available to Customer through the Subscription Services. Valimail reserves all other rights.

6. CONFIDENTIALITY

6.1. Obligations. “*Confidential Information*” means (subject to the exclusions below) any non-public information relating to or disclosed in the course of the Subscription Services that should be reasonably understood to be confidential, which includes Customer Data. The receiving party will use the same care to protect Confidential Information as it uses for its own similar information, but no less than reasonable care, will not disclose Confidential

Information to any third party without prior written authorization, and will use Confidential Information only for the purpose of fulfilling its obligations or exercising its rights expressly reserved or granted under this Agreement. The receiving party will promptly return or destroy the other party's Confidential Information upon request. The parties acknowledge and agree that any unauthorized disclosure or use of a party's Confidential Information or intellectual property would cause such party irreparable harm for which monetary damages would be inadequate. Accordingly, in the event of such a disclosure or use, the aggrieved party may seek injunctive or other equitable relief to enforce this Agreement in addition to any available legal remedies.

Exclusions. Confidential Information does not include information that: (a) is or becomes publicly available through no fault of the receiving party; (b) was already in possession of the receiving party without confidentiality restrictions at the time of receipt from the other party, as evidenced by written records; or (c) was independently developed by the receiving party without violation of this Section. If a receiving party is required to disclose Confidential Information by law, the receiving party will promptly notify the disclosing party and reasonably cooperate with its efforts to limit or protect the required disclosure, but will otherwise not be in violation of this Section on account of making the required disclosure.

7. REPRESENTATIONS AND WARRANTIES;

DISCLAIMER

Each party represents and warrants that it has full power and authority to enter into this Agreement, and to carry out its obligations hereunder. Valimail also represents and warrants that it will not materially decrease the

functionality of the Subscription Services during a Subscription Term. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE SUBSCRIPTION SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. VALIMAIL DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION

8.1. By Valimail. Valimail will defend Customer against any claims, demands, suits or proceedings made or brought by a third party (“*Claims*”) against Customer to the extent based upon an allegation that the Subscription Services, as furnished by Valimail hereunder and used by Customer within the scope of this Agreement, misappropriates any third party trade secret or infringes any third party’s copyright or U.S. patent or trademark rights, and will indemnify and hold Customer harmless against damages awarded by a court or settlements agreed by Valimail in connection with such Claims. Valimail shall have no liability under this Section to the extent that any Claims (a) are presented to Valimail by Customer more than two (2) years after termination or expiration of the Order Form for the subject Subscription Services; (b) are based on any modification or combination of the Subscription Services with products, services, methods, content or other elements not furnished by Valimail; or (c) are based on any use of the Subscription Services in a manner that violates this Agreement or the instructions given to Customer by Valimail. The foregoing states the entire obligation of Valimail with respect to any Claims for alleged or actual infringement or misappropriation of intellectual property rights.

8.2. Mitigation Measures. In the event of any Claim or potential Claim covered by this Section, Valimail may, in its discretion, seek to mitigate the impact of such Claim by modifying the Subscription Services to make them non-infringing, and/or by suspending or terminating Customer's use of the Subscription Services upon reasonable notice to Customer (provided, in the case of such suspension or termination, that Valimail will refund to Customer a portion of fees prepaid by Customer for the then-current subscription period, prorated to the portion of that subscription period that is affected by the suspension or termination).

8.3. Indemnification by Customer. Customer will defend Valimail against any Claims arising Customer's use of the Subscription Services in violation of this Agreement or the applicable Documentation, and will indemnify and hold Valimail harmless against damages awarded by a court or settlements agreed by Customer in connection with such Claims.

8.4. Procedures. Each party's indemnity obligations are subject to the following: (a) the aggrieved party will promptly notify the indemnifier in writing of the applicable Claim; (b) the indemnifier will have sole control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle any Claim in a manner that would impair any of the aggrieved party's rights or interests without prior written consent, which will not be unreasonably withheld); and (c) the aggrieved party will, at the indemnifier's expense, provide all cooperation, information and assistance reasonably requested by the indemnifier for the defense of such Claim.

9. LIMITATION OF LIABILITY

9.1. Waiver of Certain Damages. EXCEPT FOR DAMAGES PAYABLE TO THIRD PARTIES UNDER THE INDEMNIFICATION OBLIGATIONS OF SECTION 8 OR DAMAGES RESULTING FROM BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 6, TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, OR FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR INFORMATION, OR COSTS OF PROCURING SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES TO BE PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. Liability. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 OR DAMAGES RESULTING FROM BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 6, VALIMAIL'S TOTAL LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO VALIMAIL UNDER THIS AGREEMENT FOR THE SERVICE PERIOD TO WHICH SUCH DAMAGES PERTAIN.

9.3. Liability Cap. VALIMAIL'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 OR DAMAGES RESULTING FROM BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 6 SHALL NOT EXCEED THE LESSER OF ONE MILLION DOLLARS (\$1,000,000) OR FIVE (5) TIMES THE AMOUNTS PAID TO VALIMAIL IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

10. MISCELLANEOUS

10.1. Assignment. Neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld.

Notwithstanding the foregoing, each party may transfer this Agreement together with all Order Forms (and subject to any usage limitations therein) upon written notice to the other party: (a) to any entity controlling, controlled by, or under common control with, the transferring party, where "control" means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity; or (b) to any entity acquiring the transferring party, with which the transferring party is merging or to which the transferring party sells all or substantially all of its assets. Any attempt to assign this Agreement except as permitted under this Section, will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

10.2. Publicity; Case Study. Valimail may identify Customer, by name and by logo, as a customer of the Subscription Services on Valimail's website and other marketing materials. Upon Customer's approval, Valimail may develop and publish a case study for public dissemination and marketing use by Valimail describing the benefits Customer has derived from the Subscription Services. Customer will reasonably cooperate with such case study.

10.3. Status of Parties. Neither party has any power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement may not be construed to create or imply any partnership, agency or joint venture between the parties. There are no third party beneficiaries to this Agreement.

10.4. Force Majeure. Neither party shall be liable for any delay or failure in performance due to causes beyond its reasonable control, if the affected party makes reasonable efforts to perform; provided, however, that this

provision does not relieve either party of its obligation to make payments then owing.

10.5. Export Compliance. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Subscription Services, nor any direct product thereof, are: (a) exported or re-exported directly or indirectly in violation of such export laws and regulations; or (b) used for any purposes prohibited by the such export laws and regulations.

10.6. Compliance with Laws. Each party will comply with applicable laws, rules, regulations, decrees and/or official governmental orders of the U.S. and any country in which services are used or provided hereunder relating to anti-bribery, anti-corruption and anti-money laundering. Valimail complies with all laws and regulations related to slavery, forced labor, child labor and human trafficking and shall not use any of the foregoing in its operations or in provision of the Subscription Services.

10.7. Government Rights. If Customer is the U.S. government or any agency or other division thereof, Valimail's services are furnished under this Agreement as a "commercial item," as that term is defined and used in the U.S. Code of Federal Regulations (48 C.F.R. § 2.101) and other applicable regulations, and the government's rights with respect to the services (and to any associated software, technical data or other materials) are limited to those expressly granted in this Agreement.

10.8. Severability. If any part of this Agreement is held to be unenforceable or invalid, in whole or in part, by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

10.9. Waiver. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach of that or any other provision.

10.10. Notices. All notices permitted or required under this Agreement shall be in writing, will reference this Agreement, and shall be delivered in person, by overnight courier or express delivery service, or by first class, registered or certified mail, postage prepaid, with a copy by email delivery (confirmed by a non-automated reply), to the address of the party specified on the Order Form or such other address as either party may specify in writing. Such notice shall be deemed to have been given upon receipt.

10.11. Governing Law. This Agreement will be governed by both the substantive and procedural laws of the State of California, excluding its conflict of law rules and the United Nations Convention for the International Sale of Goods. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the parties irrevocably consent to the personal jurisdiction and venue therein. In any action or proceeding arising under this Agreement, the prevailing party will be entitled to recover reasonable costs and attorneys' fees.

10.12. Entire Agreement. Terms and conditions set forth in any purchase order or other document provided by Customer to Valimail that differ from, conflict with, or are not included in this Agreement shall not apply unless specifically accepted by in writing by an officer of Valimail. This Agreement and its Exhibits, together with the Order Form(s), constitute the entire agreement, and supersedes all prior or contemporaneous oral or written agreements, regarding the subject matter hereof. Valimail reserves the right to change or supplement the terms of this Agreement from time to time at its sole

discretion. Valimail will exercise commercially reasonable business efforts to provide notice to Customer of any material changes to this Agreement. Any other terms or conditions (whether online or otherwise) provided or referenced in any Order Form, purchase order or other written instrument, whether by Customer, Partner or any third party, shall be null and void.