

Valimail Subscription Terms
(GSA Schedule End User)
(last updated July 25, 2016)

The following terms and conditions (the 'Subscription Terms') are incorporated into and are part of the GSA Schedule Contract under which the Authentication Services are purchased.

1. PARTIES

In these Subscription Terms, the words 'Valimail,' 'we,' and 'us' refer to Valimail Inc. The words 'Customer' and 'you' refer to the Ordering Activity identified in an Order and is the subscriber to our authentication services. By entering into an Order, you accepted these Subscription Terms. Any individual using our services in the name of an Ordering Activity are bound by these Subscription Terms.

2. DEFINITIONS

The following terms and any others defined in these Subscription Terms will be interpreted according to the definitions given.

2.1. **'Authentication Services'** means the web-based services included in your subscription plan, as specified in the Order Form (and any applicable service description referenced in the Order Form), that are facilitated by Valimail's cloud platform.

2.2. **'Authorized User'** means you (if you are an individual) or an individual employee or agent of yours who has been assigned unique credentials to access and use the Authentication Services, whether or not that individual is accessing or using the Authentication Services at any particular time.

2.3. **'Order Form'** means Valimail's online or written order form or account setup form, as submitted by Customer and accepted by Valimail, that specifies the trial or paid subscription plan being selected and that references these Valimail Subscription Terms, or, in the case of an order placed with a GSA Schedule prime contractor, the Purchase Order placed with the GSA Schedule prime contractor.

2.4. **'Ordering Activity'** means an entity entitled to order under GSA Schedule contracts as defined in GSA Order OGP 4800.2I, as may be revised from time to time.

3. SUBSCRIPTION SERVICES

3.1. **Authorization.** Subject to your compliance with the terms and conditions of these Subscription Terms, Valimail will provide your Authorized Users with access to and use of the Authentication Services, during your free trial or paid-up subscription period set forth in the Order Form (and, if applicable, any paid-up Renewals under Section 6.1), solely for your internal business purposes related to email authentication in accordance with Valimail's relevant end-user documentation.

3.2. **Usage Limits.** Your and your Authorized Users' use of the Authentication Services is further subject to the usage limitations indicated in the Order Form or in Valimail's applicable service description referenced therein and/or provided by Valimail (for example, limits on the number of domains).

3.3. **Customer Responsibilities.** You are responsible for: (i) maintaining the confidentiality of any user IDs, passwords and other credentials associated with your account, (ii) all activities that occur with respect to your account, (iii) your and your Authorized Users' use of the Authentication Services and compliance with these Subscription Terms, and (iv) any Customer-furnished data. You are also responsible for modifying the DNS records or other necessary settings for your domains, as outlined in Valimail's documentation, in order to enable the Authentication Services for those domains, and, at the end of your subscription, restoring those records or settings to their original state.

3.4. Restrictions. You may not: (i) copy, reproduce, modify, decompile, disassemble, or reverse engineer the Authentication Services or any associated software or materials (except to the extent that applicable law prohibits or restricts reverse engineering restrictions); (ii) provide any third parties with access to any of the Authentication Services, or use any of the Authentication Services for time sharing or similar purposes for the benefit of any third party; (iii) remove any copyright or proprietary notices contained in the Authentication Services or any output thereof; (iv) breach, disable or tamper with, or develop or use (or attempt) any workaround for, any security measure provided or used by the Authentication Services; (v) access the Authentication Services via any bot, web crawler or non-human user; or (vi) access or use (or permit a third party to access or use) the Authentication Services for any unlawful purpose or for purposes of monitoring the availability, performance or functionality of the Authentication Services or for any other benchmarking or competitive purposes.

3.5. Maintenance and Support. If the Order Form or Valimail's associated service description provides for Customer to receive maintenance and/or technical support in connection with the Authentication Services, then (unless otherwise set forth in the Order Form or service description): (i) such maintenance will consist of access to new features or performance improvements in the Authentication Services if and when Valimail makes any such features or improvements generally available to its subscriber base at no additional charge, and (ii) such technical support will consist of first-level telephone or email assistance in accordance with Valimail's Service Level Agreement attached to or referenced in the Order Form.

4. PLATFORM AND DATA SECURITY

Valimail's Authentication Services do not utilize, and do not require, any personally identifiable information or the content of any emails authenticated by the Authentication Services. Valimail will employ commercially reasonable environmental, safety and facility procedures, data security procedures and other safeguards to protect against the unauthorized accessing, use, destruction, corruption, loss or alteration of the Authentication Services and any Customer-furnished data stored on Valimail's servers.

5. PROFESSIONAL SERVICES

5.1. Provision of Services. If indicated in the Order Form, Valimail will provide Customer with the initial assessment and implementation services, consulting services, and/or other professional services that are specified in the Order Form (and any applicable service description referenced therein) in connection with Customer's use of the Authentication Services. Customer will provide such cooperation and assistance as Valimail may reasonably request in order to facilitate the performance of any such professional services.

5.2. Contacts. Each party will designate in writing the individual who will be its primary point of contact for matters relating to any professional services to be performed thereunder. A party may designate replacement contacts by written notice to the other party.

5.3. Deliverables. If any professional services involve the delivery of reports, documents or other deliverables, Customer will be free to use such deliverables for its internal business purposes, subject to the applicable confidentiality provisions of these Subscription Terms. The parties acknowledge, however, that the professional services do not involve any custom development, and will not be construed as transferring (or as requiring Valimail to transfer) to Customer any intellectual property rights in any deliverables or other work product.

6. TERM AND TERMINATION

6.1. Duration and Renewal. If you are using the Authentication Services on a free trial basis, that subscription will expire at the end of the trial period specified in the Order Form or, if earlier, upon commencement of your paid subscription if you purchase one. If you have a paid subscription for the Authentication Services, it will remain in effect throughout the subscription term specified in the Order Form (unless terminated as set forth below). Except as otherwise specified in the Order Form you will have the option to renew your subscription to the Authentication Services for successive one-year periods (each, a '**Renewal**') upon issuance of an Order Form to the GSA Schedule prime contractor or to Valimail at least thirty (30) days in advance of the renewal date unless the parties agree to a shorter period before the renewal date. These Subscription Terms will expire at the end of your subscription as described above.

6.2. Termination. The parties will resolve all breach of contract situations and disputes in accordance with the Contract Disputes Act or other Federal statute. Your subscription for the Authentication Services will automatically terminate upon any termination of these Subscription Terms.

6.3. Survival. The following provisions will survive expiration or termination of these Subscription Terms: Sections 2 (Definitions), 3.4 (Restrictions), 6.3 (Survival), 8 (Ownership), 9 (Confidentiality), 11 (Disclaimer), 12 (Indemnification), 13 (Limitation of Liability) and 15 (Miscellaneous).

7. FEES AND PAYMENT

7.1. Fees. In consideration for Valimail providing the Authentication Services and any agreed-upon professional services, Customer shall pay to the GSA Schedule prime contractor the corresponding fees set forth in the Order Form.

7.2. Renewal Fees. For each subscription Renewal, Customer will pay for the Authentication Services consistent with the subscription-fee rates specified in the GSA Schedule prime contract as indicated on an Order Form or, if applicable, such other rates as Valimail and Customer may mutually agree to, in writing prior to Renewal. If the use of the Authentication Services under Customer's account exceeds any usage limitations that apply to Customer's subscription, then (without limiting Valimail's other remedies) the Renewal fee will be increased to cover the higher level of usage at the GSA Schedule prime contract's then-current rates or as otherwise negotiated and agreed to, in writing, by Customer and Valimail, in writing, prior to Renewal.

7.3. Invoices; Payment. N/A payment will be made by Customer to the GSA Schedule prime contractor.

7.4. Taxes. N/A taxes is addressed in the GSA Schedule prime contract between Customer and the GSA Schedule prime contractor.

8. OWNERSHIP

As between Valimail and Customer, the Authentication Services and all software, data and technologies embodied in or used to provide the Authentication Service, and all intellectual property rights therein or relating thereto, are and shall remain the exclusive property of Valimail. Without limiting the foregoing, Valimail reserves all rights with respect to any technical or analytic data gathered by or used to provide the Authentication Services.

9. CONFIDENTIALITY

9.1. Obligations. '**Confidential Information**' means (subject to the exclusions below) any non-public information relating to or disclosed in the course of the Authentication Services that should be reasonably understood to be confidential. 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 these Subscription Terms. The receiving party will promptly return or destroy the other party's Confidential Information upon request.

9.2. Exclusions. Confidential Information does not include information that: (i) is or becomes publicly available through no fault of the receiving party; (ii) 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 (iii) was independently developed by the receiving party without violation of this Section. If a receiving party is required to disclose Confidential Information by court order or subpoena, 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.

10. SERVICE LEVEL AGREEMENT

If Customer's subscription includes service-level commitments, and the Order Form accordingly specifies that Valimail's Service Level Agreement applies, Customer will be entitled to the commitments and remedies set forth in such Service Level Agreement as attached to or referenced in the Order Form. The remedies expressly provided in the Service Level Agreement are Customer's sole and exclusive remedy, and Valimail's entire obligation, with respect to any service-level violation.

11. DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED FOR IN THESE SUBSCRIPTION TERMS (AND WITHOUT LIMITING REMEDIES TO WHICH CUSTOMER MAY BE ENTITLED UNDER THE SERVICE LEVEL AGREEMENT, IF APPLICABLE), THE AUTHENTICATION SERVICES AND PROFESSIONAL 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 OR FITNESS FOR A PARTICULAR PURPOSE. THIS CLAUSE DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE CONTRACT 70 UNDER FAR 52.212-4(o). IN THE EVENT OF A BREACH OF WARRANTY THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT 41 U.S.C. 7101-7109.

12. INDEMNIFICATION

12.1. By Valimail. Valimail will indemnify, defend and hold harmless Customer against any damages awarded by a court in connection with claims, demands, suits or proceedings ('**Claims**') made or brought by a third party against Customer to the extent based upon an allegation that the Authentication Services, as furnished by Valimail hereunder and used by Customer within the scope of these Subscription Terms, infringe any copyright or any U.S. patent or trademark rights of any third party. THE FOREGOING STATES THE ENTIRE OBLIGATION OF VALIMAIL WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE AUTHENTICATION SERVICES. Valimail shall have no liability under this Section 12.1 to the extent that any Claims are based on any combination of the Authentication Services with products, services, methods, content or other elements not furnished by Valimail unless such combination is necessary for the intended use of the Authentication Services, or any use of the Authentication Services in a manner that violates these Subscription Terms or the instructions given to Customer by Valimail. . Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516 .

12.2. Mitigation Measures. In the event of any Claim or potential Claim covered by Section 12.1, Valimail may, in its discretion, seek to mitigate the impact of such Claim by modifying the Authentication Services to make them non-infringing, and/or by suspending or terminating Customer's use of the Authentication 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 or Reseller for the then-current subscription period, prorated to the portion of that subscription period that is affected by the suspension or termination).

12.3. Indemnification by Customer. Subject to the prohibitions under the Anti-Deficiency Act, Customer will indemnify, defend and hold harmless Valimail against any Claims arising from or related to any Customer-furnished data or Customer's use of the Authentication Services in violation of these Subscription Terms or any applicable Valimail end-user documentation.

12.4. Procedures. Each party's indemnity obligations are subject to the following: (i) the aggrieved party will promptly notify the indemnifier in writing of the applicable Claim; (ii) subject to 28 USC §516, 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 (iii) 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.

13. LIMITATION OF LIABILITY

13.1. Waiver of Certain Damages. 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 THESE SUBSCRIPTION TERMS OR THE USE OF OR INABILITY TO USE THE SERVICES TO BE PROVIDED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS CLAUSE SHALL NOT IMPAIR

THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

13.2. Liability Cap. THE TOTAL LIABILITY OF EACH PARTY FOR DAMAGES ARISING FROM OR RELATED TO THESE SUBSCRIPTION TERMS SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO THE GSA SCHEDULE PRIME CONTRACTOR FOR THE SERVICES ON THE ORDER FORM AND AS LIMITED FOR THE SERVICE PERIOD TO WHICH SUCH DAMAGES PERTAIN. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OR RELATED TO THIS AGREEMENT UNDER ANY FEDERAL FRAUD STATUE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.

13.3. Exceptions. Nothing in this Section 13 shall limit or waive a party's: (i) liability for any breach of its confidentiality obligations under these Subscription Terms; (ii) liability for its infringement or misappropriation of any proprietary rights of the other party; or (iii) indemnification obligations under Section 12.

14. PUBLICITY

14.1. Identification of Customer. Valimail may identify Customer, by name and (upon Customer's approval) by logo, as a customer of the Authentication Services on Valimail's website and other marketing materials. Valimail acknowledges that the ability to use this Agreement in advertising is limited by GSAR 552.203-71

14.2. Case Study. Provided Customer is satisfied with the Authentication Services, Valimail may develop a case study for public dissemination and marketing use by Valimail describing the benefits Customer has derived from the Authentication Services. Customer may, in its sole discretion, agree to reasonably cooperate with such case study. Publishing shall be subject to Customer's prior written approval.

15. MISCELLANEOUS

15.1. Assignment. Neither party may assign these Subscription Terms without the other party's prior written consent, which will not be unreasonably withheld. Any assignment by Valimail is subject to **the Assignment of Claims Act and FAR 42.12 Novation and Change-of-Name Agreements**. Any attempt to assign these Subscription Terms, except as permitted under this Section, will be null and of no effect. Subject to the foregoing, these Subscription Terms will bind and inure to the benefit of each party's successors and permitted assigns.

15.2. Force Majeure. Neither party shall be liable for any delay or failure in performance (other than non-payment of amounts owing) due to causes beyond its reasonable control.

15.3. 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 Authentication Services, nor any direct product thereof, are: (i) exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations.

15.4. Government Rights. The Authentication Services are "commercial items" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Valimail provides the Authentication Services, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Valimail to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Authentication Services and return any software or technical data delivered as part of the Authentication Services, unused, to Valimail. This U.S. Government Rights clause in this Section is in lieu of, and

supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

15.5. Severability. If any part of these Subscription Terms is held to be unenforceable or invalid, in whole or in part, by a court of competent jurisdiction, the remaining provisions of these Subscription Terms 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.

15.6. Waiver. The waiver of a breach of any provision of these Subscription Terms will not operate or be interpreted as a waiver of any other or subsequent breach of that or any other provision.

15.7. Notices. All notices permitted or required under these Subscription Terms shall be in writing, will reference these Subscription Terms, and shall be delivered in person, by overnight courier or express delivery service, or by first class, registered or certified mail, postage prepaid, or by confirmed email delivery, 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.

15.8. Governing Law. These Subscription Terms will be governed by both the substantive and procedural Federal laws of the United States.

15.9. Revisions to Subscription Terms. Valimail may change these Subscription Terms and its policies from time to time. Such changes will be made to the GSA Schedule prime contract to be effective with respect to Customer.

15.10. Entire Agreement. Any amendment or modification to these Subscription Terms must be in writing signed by both parties. As between Valimail and Customer, these Subscription Terms constitute the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. Nothing in these Subscription Terms modifies or alters the GSA Schedule prime contract terms between the prime contractor and Customer.

Valimail Service Level Agreement

This Valimail Service Level Agreement ('SLA') pertains to the subscription agreement for Authentication Services between Valimail and Customer that incorporates this SLA by reference (the 'Agreement'). All capitalized terms not defined herein shall have the meanings given to them in the Agreement. This SLA terminates or expires upon any termination or expiration of the Agreement.

1. Service Availability

We conduct maintenance and upgrades during scheduled times. Outside of these times we guarantee 99.9% uptime for the Authentication Services, excluding downtime outside of Valimail's reasonable control. For any month in which we fail to provide the guaranteed uptime, we will, upon your written request, issue you a service credit against any renewal fees in an amount equal to 10% of the effective monthly Authentication Services subscription fee (equal to 1/12 of any annual Authentication Services subscription fee) that you paid for the affected month.

The scheduled time for maintenance is 9 p.m. to 3 a.m. PST/PDT, and may be used by us with no advance notification to you.

We may expand these scheduled times provided that we notify you at least one day in advance. In addition, in the event that we in our sole discretion determine that any unscheduled maintenance is necessary, we will use commercially reasonable efforts to notify you.

The rights and remedies granted under this SLA apply to you only if you are a current subscriber of the Authentication Services.

This SLA describes your sole remedy, and our entire obligation, if we fail to satisfy our uptime guarantee. This SLA does not diminish or override the disclaimer of warranties in the Agreement to which this SLA is attached (except as expressly stated therein).

2. Technical Support

We will provide commercially reasonable telephone and/or email assistance for general advice and technical support, as well as technical assistance and remediation for operational issues, consistent with the level of support that Valimail generally offers at no additional charge to users of the Authentication Services.