

Appendix: the Supplier/Licensor's Data Processing Agreement

DATA PROCESSING ADDENDUM

This Data Processing Addendum ("DPA") forms part of the forms part of the Terms and Conditions of the Standard Jisc Licence for Software as a Service with variations for Valimail ("Jisc Terms") agreed between Valimail Inc. ("Valimail") and Customer (entity identified as 'Licensee' in the Jisc Terms) with respect to processing Customer Personal Data (as defined below).

1. DEFINITIONS

- a. **"Agreement"** means, as applicable, the master services agreement, or similar commercial agreement by and between Valimail and Customer with respect to the use of the Service.
- b. **"Applicable Privacy Laws"** means all applicable laws concerning privacy, data protection and the cross border transfer of data, including, where applicable: (i) the General Data Protection Regulation (EU) 2016/679 ("GDPR"); (ii) in respect of the United Kingdom any applicable national legislation that replaces or converts into domestic law the GDPR or any other law relating to data and privacy as a consequence of the United Kingdom leaving the European Union ("UK GDPR"); and (iii) the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 et seq. as modified by the California Privacy Rights Act (together, the "CCPA"), in each case each as such laws are amended, superseded, or replaced. The term "Applicable Privacy Laws" excludes any laws of the Russian Federation or the People's Republic of China.
- c. **"Business Purpose"** has the meaning assigned to under CCPA.
- d. **"CCPA Consumer"** means a "consumer" as such term is defined in the CCPA.
- e. **"Controller"** has the meaning assigned to under GDPR and other Applicable Privacy Laws using such terminology, and also means "business" as defined in the CCPA or other Applicable Privacy Laws using such terminology.
- f. **"Customer Data"** means any data, information or other material provided, uploaded, submitted, or made available by Customer to the Service in the course of using the Service.
- g. **"IDTA"** means the then-current International Data Transfer Addendum to the EU Commission Standard Contractual Clauses that was issued by the UK Information Commissioner's Office, a current version found at <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>.
- h. **"Personal Data"** means the Personal Data included within Customer Data.
- i. **"Data Subject"** an identifiable natural person is one who can be identified, directly or indirectly, including without limitation a CCPA Consumer.
- j. **"European Economic Area" or "EEA"** means the Member States of the European Union together with Iceland, Norway and Liechtenstein.
- k. **"Personal Data"** means (a) any information relating to an identified or identifiable natural person where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier or (b) is defined as "Personal Information" or "Personal Data" by Applicable Privacy Laws (e.g., CCPA § 1798.140(o) or GDPR Art. 4).
- l. **"processor" and "subprocessor"** have the meaning set forth in the GDPR and other Applicable Privacy Laws using such terminology, and also mean "service provider" to the relevant party as defined in the CCPA or other Applicable Privacy Laws using such terminology.
- m. **"processing" or "process"** shall have the meaning as set forth in the Applicable Privacy Law.

n. **"Security Incident"** means any unauthorized or unlawful breach of security that leads to the accidental or unlawful destruction, loss, or alteration of, or unauthorized disclosure of or access to, Personal Data on systems managed or otherwise controlled by Valimail.

o. **"selling" or "sell"** have the meaning assigned to them in the CCPA.

p. **"Sensitive Data"** means data revealing a Data Subject's racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, health data, sex life or sexual orientation, or other data that is subject to heightened restrictions relating to the transmission or processing of data for the jurisdictions in which Valimail and Customer operate, such as (by way of example only) the Health Insurance Portability and Accountability Act, the Children's Online Privacy Protection Act, any personal data regarding children under 16, and the standards promulgated by the PCI Security Standards Council.

q. **"Service"** means the Valimail Subscription Service received by Customer under the Agreement as set forth in the corresponding ordering document agreed to in writing by Valimail.

r. **"Standard Contractual Clauses" or "SCCs"** means (i) where the GDPR applies, the standard contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("**EU SCCs**") and (ii) where the UK GDPR applies, the EU SCCs as amended by the IDTA ("**UK SCCs**") incorporated into this Addendum as described in Exhibit A.

2. SCOPE AND APPLICATION.

a. To the extent Valimail processes Personal Data on behalf of Customer in connection with the Agreement, the parties agree to comply with the provisions set forth in this DPA. In this context, Customer may act as "controller" and Valimail may act as "processor" respectively with respect to the Personal Data. Customer shall act as the "data exporter" and Valimail shall act as the "data importer" for the purposes of the Standard Contractual Clauses. Valimail shall be prohibited from selling, retaining, using, or disclosing Personal Data for any purpose other than to perform the Service in accordance with the Agreement and DPA and shall further refrain from collecting, selling or using any Personal Data except as necessary to perform its Business Purpose. For avoidance of doubt, Valimail does not receive any Personal Data as consideration for any Service or other items provided or performed by Valimail. For the purposes of the CCPA, the parties acknowledge and agree that Valimail will act as a "Service Provider" and not as a "Third Party," as such terms are defined in the CCPA, in its performance of its obligations pursuant to the Agreement.

3. DATA PROCESSING

a. Instructions for Data Processing. Valimail will process Personal Data only in accordance with Customer's lawful instructions and in compliance with the Agreement, unless otherwise required by applicable law to which Valimail is subject. Customer hereby instructs Valimail to process Personal Data to provide, maintain, and improve the Service in accordance with the Agreement and this DPA, as such processing initiated by Customer and its users in the use of the Service. Processing outside of the scope of the Agreement will require the prior written agreement of the parties on the additional instructions for processing. Upon notice, Valimail will take reasonable and appropriate steps to stop and remediate unauthorized processing of Personal Data. Notwithstanding anything to the contrary, Customer agrees that it shall not provide, or make available to Valimail any Personal Data except as strictly necessary for Valimail to provide the Services under the Agreement. Notwithstanding anything to the contrary, Valimail shall have no liability or obligation under the Agreement, this DPA, or otherwise, in connection with any Personal Data provided to, disclosed to, or otherwise made available to Valimail in breach of the foregoing.

b. Compliance with Laws. Each party will comply with all applicable laws, rules, and regulations (including Applicable Privacy Laws) in its performance of this DPA. Customer shall be responsible for the accuracy, quality, integrity, and legality of the Personal Data. Valimail certifies that it understands the requirements under this DPA, including without limitation requirements under CCPA and that it will abide by it. For the avoidance of

doubt, Valimail expressly disclaims any compliance with any laws of the Russian Federation or the People's Republic of China.

c. Consents. Customer represents and warrants that it has first obtained all necessary consents under Applicable Privacy Law with respect to the processing or transfer of Personal Data.

d. Processing. The categories and type of data, as well as the description of the Processing procedures are specified in **Annex I** to the Standard Contractual Clauses, attached to Exhibit A hereto. Customer shall not provide (or cause to be provided) any Sensitive Data to Valimail for processing under the Agreement, and Valimail will have no liability whatsoever for Sensitive Data, whether in connection with a Security Incident or otherwise.

4. TRANSFER

a. Valimail will not transfer Personal Data originating from the EEA, the United Kingdom and/or Switzerland, as applicable; and/or relating to natural persons of the EEA, the United Kingdom and/or Switzerland, as applicable, except in accordance with the following: (i) between States of the EEA, the United Kingdom and/or Switzerland, as applicable; or (ii) to the United States as governed by the Standard Contractual Clauses as incorporated by reference to this Agreement. Notwithstanding anything herein to the contrary, the Standard Contractual Clauses and the IDTA shall only apply to transfers of personal data expressly governed by the GDPR or UK GDPR, respectively, or another applicable law or regulation that expressly requires the application of the Standard Contractual Clauses.

5. SECURITY

a. Security Measures. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing, as well as the risk of varying likelihood and severity for impact on the individuals to whom the Personal Data relates, Valimail shall implement and maintain appropriate technical and organizational security measures designed to protect and preserve the security, integrity and confidentiality of the Personal Data, as set forth in **Annex II** to the Standard Contractual Clauses, attached to Exhibit A hereto.

b. Valimail Personnel. Valimail shall restrict access by Valimail personnel to Personal Data (i) to only those personnel who need to access the Personal Data in order to provide the Service; and (ii) to those personnel who have committed themselves to, or are otherwise under, an obligation of confidentiality concerning the Personal Data.

c. Records; Audit Standards. Valimail shall maintain relevant records with respect to Valimail's information security practices. Upon Customer's request, Valimail will make available to Customer, up to once per year, a copy of a third-party audit or assessment reports, such as a Service Organization Controls Type 2 or 3 ("SOC") in accordance with auditing standards in the Statements on Standards for Attestation Engagements No. 18 (SSAE18) or such other alternative standards that are substantially equivalent to ISO 27001 ("Assessments"); or (b) if Valimail is not able to provide such Assessments, Valimail shall provide responses to any questions that Customer may reasonably submit for purposes of verifying Valimail's compliance with this DPA ("Questionnaires"). For avoidance of doubt, any such Assessments and completed Questionnaires will constitute Confidential Information and may not be disclosed to a third party without Valimail's written consent, except as otherwise required by law.

d. Security Incident Notification. If Valimail becomes aware of any Security Incident, then Valimail shall, without undue delay but in any event in no more than 72 hours, notify Customer of such access, and provide to Customer timely information and cooperation, as Customer may be required to address Customer's reporting obligations under the Applicable Privacy Law. Any such notification shall not be construed as an acknowledgement by Valimail of any fault or liability with respect to the unauthorized access.

6. SUBPROCESSORS

a. Authorized Subprocessors. Customer agrees that Valimail may use subprocessors to fulfil its obligations under the Agreement. The current list of subprocessors for the Service who process Personal Data is available upon request. Before authorizing any new subprocessor, Valimail will provide notification to Customer. Customer may object to the change by notifying Valimail within 10 days after the notice and describing the rationale for the objection. Such objection notice shall explain the reasonable grounds for the objection. Upon receipt of such notice, Valimail will use reasonable efforts to make available to Customer a change in the Service or recommend a commercially reasonable change to Customer's configuration or use of the Service to avoid processing of Personal Data by the objected-to new subprocessor without unreasonably burdening Customer.

b. Subprocessor Obligations. Where Valimail authorizes a subprocessor to process Personal Data as described in this DPA, Valimail will enter into a written agreement with each such subprocessor consistent with Applicable Privacy Laws. For avoidance of any doubt, Valimail shall be liable for the acts and omissions of its subprocessors to the same extent it would be liable if performing the services of each subprocessor directly under the terms of this DPA and the Agreement.

7. COOPERATION

a. Valimail shall notify Customer of any requests received directly by Valimail from Data Subjects and shall provide to Customer such reasonable assistance as is required for Customer to comply with such Data Subject requests. Valimail shall only respond directly to such Data Subject requests on receiving Customer's written request and consent, provided that (to the extent permitted by Applicable Privacy Law) Customer shall be responsible for all reasonable costs arising from Valimail's provision of such assistance, and the requests do not disrupt Valimail's business operation.

b. To the extent required under Article 28(3) GDPR, Valimail will assist Customer to comply with Articles 35 & 36 of the GDPR; in particular, Valimail will promptly notify Customer if it believes that its processing of Customer Personal Data is likely to result in a high risk to the privacy rights of Data Subjects, and upon reasonable request, will assist Customer to carry out data protection impact assessments and to consult where necessary with data protection authorities.

c. Following Customer's request, Valimail shall destroy all Personal Data in its possession. This requirement shall not apply to the extent that Valimail is required by any applicable law to retain some or all of the Personal Data, in which case, Valimail shall use reasonable efforts to isolate and protect the Personal Data from any further processing except to the extent required by such law.

8. GENERAL

a. Liability. Each party's liability arising out of or in relation to this Addendum (whether in contract, tort, or under any other theory of liability) is subject to the limitations of liability set forth in the Agreement.

b. Compensation. To the extent legally permitted, Customer shall be responsible for any costs arising from Valimail's provision of any assistance and cooperation required to be provided by Valimail hereunder, including any fees associated with the provision of additional functionality.

c.

d. Termination. This DPA will terminate automatically upon the later of (i) termination of the Agreement; or (ii) Valimail ceasing to process Personal Data.

e. Conflict. In the event of a conflict between the Agreement and this DPA, the terms of this DPA will take precedence to the extent of the conflict.

f. Severability. If any part of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

g. Modification. This DPA may not be modified except by a subsequent written instrument signed by both parties.

