General Terms and Conditions

The Terms and Conditions set out in this Agreement ("**General Terms**") govern the use of Mimecast's products and services (collectively, the "**Services**")

Customer (defined below) and the Mimecast entity providing Services hereunder ("Mimecast") each agree to these General Terms as a condition of the provision of the Services. Customer may contract separately with a reseller ("Reseller") as to the pricing and invoicing for the Services, in which case Section 9 (Payment) of these General Terms will have no effect and any refunds or service credits payable in accordance with these General Terms shall be paid to Reseller.

BY CLICKING 'I ACCEPT' YOU (i) AGREE TO THE GENERAL TERMS WHICH WILL FORM A BINDING CONTRACT BETWEEN MIMECAST AND THE CORPORATION, BUSINESS, OR ENTITY YOU REPRESENT (THE "CUSTOMER"); AND (ii) REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE CUSTOMER TO THESE GENERAL TERMS. IF YOU DO NOT AGREE TO THE GENERAL TERMS, OR YOU DO NOT HAVE THE POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND THE CUSTOMER, DO NOT PROCEED TO ACCEPT THESE GENERAL TERMS OR CONTINUE WITH USE OF THE SERVICES.

1. SERVICES.

1.1 Provision of Services. Mimecast will provide the Services described in the applicable Services Order for the duration of the Subscription Term (both defined below), including any Renewal Term as defined in Section 8.1 herein. The Services will perform materially in accordance with the service performance specific documentation posted at https://community.mimecast.com/community/knowledge-base ("**Documentation**") and as described herein. Some Services are subject to performance targets ("**Service Levels**"). Descriptions of the Support Services ("**Support**") and Service Levels are available at www.mimecast.com/contracts. Some Services are subject to additional terms and conditions ("**Supplemental Terms**"), which are posted to www.mimecast.com/contracts. Any applicable Supplemental Terms, each Services Order, and the Data Processing Terms as set out in Section 2.3 below (as applicable) are each incorporated into these General Terms and form an agreement (hereinafter referred to as this "**Agreement**"). If there are conflicting terms, the order of precedence shall be as follows: (i) mutually signed Services Order (where applicable), (ii) any applicable Supplemental Terms, (iii) these General Terms. If there is any conflict between Sections 2.1 to 2.3 of these General Terms and the Data Processing Terms, the Data Processing Terms shall prevail.

1.2 A "**Services Order**" is a transactional document (such as a customer quote, a statement of work, a purchase order or written (email) confirmation of the transaction either from Mimecast or Reseller) that describes the Services to be provided to Customer (each, a "**Services Description**"), the length of the Services subscription ("**Subscription Term**"), and any pertinent quantities. Notwithstanding the foregoing, no Services Order shall add to or amend these General Terms, unless signed by Mimecast and Customer and no Reseller or Customer standard terms included in a Services Order shall apply to the provision of the Services.

1.3 Usage Metrics. Services may be based on different usage metrics including, but not limited to, Permitted Users, Domains and Takedowns (each as defined in the applicable Supplemental Terms). "**Permitted Users**" means all end users of the Services being individuals employed by or otherwise under Customer's control. Customer will allow only the number of Permitted Users shown in the applicable Services Order to access and use the Services. Customer may add Services or increase the number of Domains, Takedowns, or Permitted Users at any time during the Subscription Term, however, Customer must provide Reseller or Mimecast with advance notice prior to doing so and additional fees may apply. During a Subscription Term, it is not possible for Customer to (i) reduce the number of Domains, Takedowns, or Permitted Users; (ii) downgrade any of the Services ordered; or (iii) remove any of the Services ordered. Any reduction, downgrade, or removal of Services may be made effective at the start of a Renewal Term, but only if Mimecast receives notice of such change not less than ninety (90) days prior to the renewal date.

1.4 Hosting Jurisdiction. The "**Hosting Jurisdiction**" means the country where the Customer Data for each product or service is stored. The Hosting Jurisdiction for each product or services will be identified on the relevant Services Order and shall apply exclusively to that product or service.

1.5 Mimecast Applications. Mimecast makes applications available via various online marketplaces.

Mimecast applications are licensed, not sold, to Customer. Customer's license to use the applications is subject to Customer's compliance with this Agreement and any associated end user license agreement made available via the application/marketplace. The term of Customer's license to use the application is coterminous with the applicable Service Order. For the avoidance of doubt, Mimecast applications fall under the definition of Services hereunder.

1.6   Professional and Managed Services. Mimecast will provide "**Professional Services**" to Customer if noted in the applicable Services Order. Mimecast will perform Professional Services in a professional and workmanlike manner, consistent with industry standards. If Mimecast's performance does not conform as described in the applicable Services Order, Customer will notify Mimecast of such failure within fifteen (15) days of delivery ("**Acceptance Period**"). Promptly after receipt of Customer's notice, Mimecast will re-perform the non-conforming Professional Services at no additional cost to Customer, as Customer's exclusive remedy. After the Acceptance Period, any additional Professional Services will be subject to a new Services Order. Mimecast shall not be deemed in breach of its obligations under this Section 1.6 to the extent that Mimecast is delayed or prevented from performing due to an act or omission of Customer. If Mimecast provides access to the Simply Migrate Software (as such term is defined in the Simply Migrate Software End User License Agreement ("**Simply Migrate EULA**")) as part of a Professional Services project or otherwise, the Simply Migrate EULA, available at www.mimecast.com/contracts, will apply to the installation and use of such software. Customer acknowledges that by subscribing to a managed service offering, it is enabling Mimecast to maintain an assigned role in the Customer's Mimecast account with limited access to certain Customer Data and/or Customer dashboards, necessary for such offering. Mimecast may provide the managed service in any jurisdiction where Mimecast maintains support personnel.

1.7   Trial Services. Where Customer is provided Services by Mimecast for evaluation purposes ("**Trial Services**"), access to the Trial Services will be terminated upon expiration of the Subscription Term for the Trial Services ("**Trial Subscription Term**"), unless Customer enters into a paid subscription for Services on a non-trial basis prior to expiration, or the trial is earlier terminated as provided below. Notwithstanding any provision to the contrary herein, in respect of the Trial Services Customer acknowledges and agrees that: (i) Mimecast has no obligation to retain Customer Data related to the Trial Services after termination or expiration of the Trial Subscription Term; (ii) either party may terminate the Trial Subscription Term immediately and without liability upon written notice to the other party; (iii) Mimecast's Service Levels and Support do not apply to the Trial Services; (iv) the Trial Services are provided "as is"; and (v) notwithstanding anything included in this Agreement to the contrary, Mimecast shall have no indemnification obligations nor any liability of any type with respect to Trial Services.

2.   **SECURITY, DATA PROTECTION, AND CONFIDENTIALITY**.

2.1   Customer Data. "**Customer Data**" means data provided by Customer for processing via the Services including, without limitation, the contents of the files, emails, or messages sent by or to a Permitted User. Customer acknowledges and agrees that it shall be the sole responsibility of the Customer to ensure that Customer retains or extracts a copy of any and all Customer Data which it is obliged to retain under applicable law or regulation.

2.2   Security. Mimecast will implement and maintain appropriate administrative, technical, organizational, and physical security measures for each of the Services, which are designed to protect Customer Data against unauthorized access, disclosure, or loss. Customer acknowledges and agrees that in the course of providing the Services to Customer it may be necessary for Mimecast to access Customer Data to respond to technical problems or Customer queries and to ensure the proper working of the Services; such access may originate from any jurisdiction where Mimecast maintains Support personnel. Additional information about Mimecast security, including the locations from which Support is provided, and Mimecast's certifications, attestations and assessments, is available on https://www.mimecast.com/company/mimecast-trust-center/ ("**Trust Center**"). Mimecast may update the Trust Center from time to time and shall notify Customer of material changes.

2.3   Data Protection. As required by law or as otherwise agreed by the parties, additional data protection terms are outlined in a separate data processing agreement between the parties (referred to herein as a "**Data Processing Terms**"). The Data Processing Terms shall be incorporated into, and form an addendum to, these General Terms. With respect to Customer Data that relates to an identified or identifiable natural person ("**Personal Data**"), Customer shall act as the accountable organization or the data controller, and Mimecast shall act as the service provider or the data processor. Except as may be required by Applicable Data Protection Law, Mimecast will process the Personal Data solely in accordance with Customer's Instructions. The **"Instructions"** are embodied in this Agreement and as may be additionally communicated by Customer to Mimecast in writing from time-to-time. Mimecast will process Personal Data in compliance with Applicable Data Protection Law. Further details regarding the processing of Personal Data are outlined in the Trust Center. For purposes of this Section 2.3, "**Applicable Data Protection Law**" means one or more of the following data protection laws or regulations as applicable to the Processing of Personal Data by Mimecast under this Agreement: (i) Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 ("**GDPR**"); (ii) the United Kingdom ("**UK**") Data Protection Act 2018 and the UK General Data Protection Regulation ("**UK GDPR**"); (iii) the data protection regulations of the United States, including but not limited to, California Consumer Privacy Act of 2018 as

amended by the California Privacy Rights Act of 2020 ("**CCPA**"); (iv) the South Africa Protection of Personal Information Act ("**POPIA**"); (v) the Australia Privacy Act No. 119 1988 (as amended); (vi) Canadian Personal Information Protection and Electronic Documents Act ("**PIPEDA**"); and (vii) any relevant law, statute, regulation, legislative enactment, order or other binding instrument, that implements, supplements, or amends the foregoing. Where permitted by a lawful basis, Mimecast may process Personal Data in the United States or other countries or jurisdictions outside of the country where it was collected, as described on the Trust Center. Customer will comply with its obligations under all laws applicable to it as an employer, the accountable organization, and/or data controller, including the responsibility for providing any requisite notices and obtaining any consents for such collection, processing, and transfer of Personal Data, including international transfers. It is not intended that Customer shall collect or process biometric data through the Services nor make any employment-related decisions of its Permitted Users based solely on information obtained via the Services.

2.4   Confidentiality.

(a)   Definitions. "**Confidential Information**" means information designated by the party disclosing such information ("**Disclosing Party**") as "confidential" or "proprietary" or that a reasonable person would understand to be confidential given the nature of the information and the circumstances of the disclosure and includes information in whatever form (including written, oral, visual, or electronic form). If information is disclosed orally or visually, it must be identified by the Disclosing Party as confidential at the time of disclosure. Customer's Confidential Information includes, but is not limited to, Customer Data. Mimecast's Confidential Information includes, but is not limited to, all information related to the performance, functionality, and reliability of the Services. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of the party that receives such information ("**Receiving Party**") from the Disclosing Party; (ii) is in the Receiving Party's possession prior to receipt from the Disclosing Party; (iii) is acquired by the Receiving Party from a third-party without breach of any confidentiality obligation to Disclosing Party; or (iv) is independently developed by Receiving Party without reference to the Disclosing Party's Confidential Information.

(b)   Obligations. Confidential Information is and will remain the exclusive property of the Disclosing Party. Receiving Party will, in addition to any other obligations outlined in Section 2 herein: (i) use Disclosing Party's Confidential Information solely for the performance of the activities contemplated by this Agreement; (ii) disclose such information only to its employees, agents, and contractors who are bound by obligations of confidentiality at least as strict as those contained in this Section 2.4; and (iii) protect Disclosing Party's Confidential Information against unauthorized use or disclosure using the same degree of care it uses for its own Confidential Information, which in no event will be less than reasonable care. Notwithstanding any provision herein, if lawfully required by judicial or administrative order or otherwise, Receiving Party may disclose Confidential Information of Disclosing Party, provided, where lawfully permitted, Receiving Party provides reasonable prior written notice to Disclosing Party to permit Disclosing Party to seek a protective order. Receiving Party will reasonably cooperate in Disclosing Party's activities in seeking such order, at Disclosing Party's expense. Receiving Party will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

(c)   Injunction. Notwithstanding anything to the contrary, either party may seek equitable, injunctive, or declaratory relief to enforce any of its intellectual property rights or rights in the Confidential Information in any court of appropriate jurisdiction.

3.   CUSTOMER ACTIVITIES.

3.1   Customer Use. Customer will use the Services only for its own internal business purposes and will not transfer, resell, license, or otherwise make the Services, Documentation or Material (as defined below) available to third parties. Customer will use the Services as reasonably directed by Mimecast, subject to Section 2.3 and the provisions of any Data Processing Terms. Customer may not use or access the Services for the purpose of (i) building a competitive service or comparative features; or (ii) comparative analysis (including, but not limited to, benchmarking) intended for use outside Customer's organization. Customer is responsible for obtaining and maintaining any third-party licenses and/or Equipment needed to connect to, access, or otherwise use or benefit from the software and/or Services. "**Equipment**" shall include without limitation, equipment and ancillary services including, but not limited to, modems, hardware, services, software operating systems, networking, web services.

3.2   Required Notification. With regard to Mimecast human risk awareness and training services ("**Human Risk Services**"), Customer shall, where appropriate, provide notice to all employees as to Customer's use of the Human Risk Services and obtain all relevant acceptance for such use. Mimecast shall bear no responsibility or liability for Customer's use of the Human Risk Services in contradiction to this Section.

3.3   Access Control.

(a)   Customer will implement and maintain all reasonable and appropriate controls to ensure that

(i) user accounts are used only by the Permitted Users to whom they are assigned and to manage and monitor Permitted Users, including designating one or more administrators responsible for access control; and (ii) in the case of Services where Permitted User is not the designation, that those accessing the Services are permitted to do so in accordance with Customer's internal policy and applicable law.

(b)   To the extent that the provision of the Services requires download and/or installation of software components such as end-point agents, Customer shall ensure that such components are appropriately deployed to the Permitted Users and Customer hereby acknowledges that failure to do so may impact access to, and efficacy of, the Services.

(c)   Customer is solely responsible for the acts or omissions of any user or Permitted User who obtains access to the Services through Customer or Customer's systems. Customer will notify Mimecast promptly if it becomes aware of any unauthorized access or use.

3.4   Restrictions.

(a)   Customer will not:

(i) use, or permit the use of, the Services in any manner that: (a) amounts to an illegal activity, infringes or violates the rights of others, or violates any applicable law or regulation, including but not limited to where Customer is required to obtain permissions or authorizations to permit Mimecast to perform its obligations hereunder, or where Customer is prevented from transmitting certain information via the Services, or concerning unsolicited email; (b) introduces, distributes or transmits any viruses, malicious code, vulnerabilities, weakness in the computational logic (whether known or latent) or any other items of a harmful nature; or (c) could reasonably be expected to interfere with, impair or disrupt the Services or cause Mimecast to be placed on any blocklist or denylist by an internet service provider;

(ii) upload to Mimecast's platform, Collateral which: (a) infringes on the intellectual property rights or any rights related to publicity or the privacy of any third-party; (b) is defamatory, libelous, threatening or harassing in nature; (c) is in violation of any applicable laws (including those laws relating to obscenity or pornography); and/or (d) purports to be originated from a governmental agency (including, without limitation, agencies related to law enforcement, tax or immigration). **"Collateral"** means Customer's own written, photographic, and/or videographic content or material (including any names, images, or other intellectual property of a third-party, to the extent Customer uses the Service(s) to upload such content or material. In the event Mimecast receives notice from a third-party alleging that any Collateral is in breach of this Section 3.4 (a) (ii) then Mimecast will, to the extent allowable by law, promptly notify Customer and Customer will immediately remove such Collateral from the platform;

(iii) license, sell, rent, lease, transfer, grant rights in, or access to the Services for commercial gain; or

(iv) copy, disseminate, allow unauthorized access to, disassemble, reverse engineer, or decompile the Services, or any components thereof.

(b)   Customer will defend, indemnify, and hold harmless Mimecast in the event of any third-party claim or regulatory action arising out of Customer's breach (or alleged breach) of the terms of Sections 3.2 and 3.4 herein.

3.5   Fair Usage. Some Services are subject to fair usage limits as more particularly specified in the Documentation or otherwise notified to Customer. If Customer exceeds such fair usage limits, Mimecast may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If Customer is unable or unwilling to abide within the required fair usage limit, Mimecast may, at its sole discretion, either reasonably require Customer to pay applicable excess usage fees or suspend or terminate the Services Order in respect of the applicable Service.

3.6   Application Program Interfaces ("**API**") and Third-Party Services.

(a)   Customer can enable certain APIs so that the Services work in conjunction with certain third-party services, systems, and/or applications. Where necessary for applicable Services, the process to gain access to the APIs will be made available to Customer upon request. For the avoidance of doubt, Customer's access and use of such any third-party APIs shall be governed solely by the terms and conditions of such third-party APIs. If a third-party modifies its APIs so that they no longer interoperate with the Services or imposes requirements on interoperability that are unreasonable for Mimecast, Mimecast may cease or suspend its provision of interoperability between the Services and the affected third-party API, without liability.

(b)   Where Mimecast supplies Customer with a Mimecast API, all access keys, authentication procedures, and data to which Customer gains access or which is provided to Customer in connection with Customer's use of the API, excluding Customer Data, is the Confidential Information of Mimecast. Mimecast may revoke access to any API at any time without notice to Customer if Mimecast, in its reasonable discretion, believes necessary or appropriate.

(c)   Customer is responsible for (i) ensuring that the information provided to Mimecast to enable any API, is and remains accurate and up to date; and (ii) ensuring it has valid licences for, and access to, all applicable third-party APIs necessary to access and derive benefit from the applicable Services.

(d)   Customer acknowledges and agrees that Mimecast is not responsible for: (i) any third-party APIs (and no representations, warranties or commitments are made regarding the same); and (ii) the security of Customer Data until such time that the Customer Data enters the Mimecast environment (and all such transfers are conducted on Customer's own volition and risk).

(e)   To the extent Customer Data is retrieved from or provided by Third-Party Services, Mimecast (i) will not be responsible for nor makes any representations, warranties or commitments regarding any Third-Party services; and (ii) shall not be liable for the condition of such Customer Data, including, but not limited to any Customer Data that is unlawful, incorrect, incomplete, corrupt, or missing. Customer hereby irrevocably waives any claim against Mimecast and its affiliates with respect to such Third-Party Services. "**Third-Party Services**" means third-party licenses, products, applications, APIs, web hooks, services, software, systems, directories, websites, databases, and information which Customer may connect to, permit connection to (including without limitation, where such connection is part of the Services provided), or enable in conjunction with Mimecast API connectors and/or the applicable Services.

3.7   Third-Party Content. To the extent Customer or Permitted Users are exposed to third-party content in the use of the Services hereunder, Customer acknowledges and agrees that Mimecast shall not be responsible nor held liable in respect of any such content which may be considered offensive or violates the rights of another.

4.   **OWNERSHIP.**

4.1   Ownership of the Services. Customer's rights in the Services are limited to those expressly stated in this Agreement. Mimecast and its third-party licensors will retain all ownership interest and intellectual property rights in and to the Services and its underlying systems, Mimecast APIs and to any Material. "**Material**" means collateral such as training materials, video training modules, user surveys, and user assessments made available to Customer by Mimecast.

4.2   Licenses. Customer hereby grants to Mimecast all necessary rights and licenses to process Customer Data for the purposes of providing the Services. Customer acknowledges and agrees that improving threat detection, analysis, awareness and prevention is critical to the functionality of the Services; accordingly, Customer further grants to Mimecast the necessary rights and licenses to collect and process limited data for the maintenance, improvement, and enhancement of the Services. Further information regarding the details of such processing is found on the Trust Center and/or in the Data Processing Terms executed by the parties.

4.3   Aggregated Usage Data. Mimecast processes certain aggregated data derived from the Services, including usage data, such as utilization statistics, reports, logs and information regarding spam, viruses and/or other malware ("**Aggregated Usage Data**"). Mimecast owns all Aggregated Usage Data.

4.4   Feedback. Mimecast owns all right, title, and interest in and to any Feedback in any present or future form or format for use in any manner that Mimecast deems appropriate, without monetary or other compensation to Customer. "**Feedback**" means any communications or materials provided to Mimecast by Customer suggesting or recommending changes to the Services howsoever such Services are provided, including without limitation where provided under a trial subscription, paid subscription, free of charge, early release, beta, pilot, or general acquisition.

4.5   References. Customer grants Mimecast a revocable, worldwide, royalty-free, fully paid up, non-exclusive license to use Customer name and/or logo in sales presentations, marketing vehicle and on Mimecast's website, for the purposes of identifying Customer as a customer of Mimecast. Any such use of Customer's logo or trademarks shall be subject to any brand guidelines published by Customer or provided to Mimecast for the purpose of this Section 4.5. Customer may revoke each or all of the permissions granted in this Section 4.5 at any time by contacting references@mimecast.com.

5.   DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND WITHOUT LIMITING MIMECAST'S EXPRESS OBLIGATIONS UNDER THIS AGREEMENT, MIMECAST HEREBY DISCLAIMS ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE CONCERNING ANY SERVICES, SOFTWARE, DOCUMENTATION OR MATERIALS PROVIDED BY MIMECAST, INCLUDING BUT NOT LIMITED TO, THOSE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OF TITLE, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE SERVICES DO NOT QUALIFY AS LEGAL OR EXPERT ADVICE. CUSTOMER SHOULD CONSIDER WHETHER THE SERVICES ARE APPROPRIATE FOR CUSTOMER'S NEEDS, AND WHERE APPROPRIATE, SEEK LEGAL OR EXPERT ADVICE. MIMECAST DOES NOT REPRESENT THAT THE SERVICES WILL ACHIEVE INTENDED RESULTS, BE UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT REPORTS, GRAPHS, ANALYSES OR SIMILAR INFORMATION WHICH MAY BE PROVIDED AS PART OF THE SERVICES (COLLECTIVELY, "INFORMATION"), ARE BASED ON INFORMATION KNOWN TO MIMECAST AT THE TIME AND PROVIDED FOR CUSTOMER'S INTERNAL BUSINESS PURPOSES ONLY. MIMECAST WILL

6. INTELLECTUAL PROPERTY INDEMNIFICATION

6.1   Indemnification. Mimecast will defend, indemnify, and hold harmless Customer, its officers, directors, employees, and consultants against any third-party claim, suit, proceeding, or regulatory action alleging that the Services or the Material infringe any copyright, moral right, trade secret, trade or service mark, or patent issued or enforceable in the applicable Hosting Jurisdiction. Customer will provide prompt written notice of the applicable claim to Mimecast and cooperate in Mimecast's defense, as reasonably requested by Mimecast and at Mimecast's expense. Mimecast will have sole control of the defense and settlement of the applicable matter.

6.2   Resolution of Claim. Mimecast may, at its own expense and in its sole discretion, attempt to resolve any indemnified claim by: (a) modifying the Services or Material to avoid the alleged infringement; (b) obtaining a license to permit Customer's use of the Services or Material as contemplated by this Agreement; or (c) terminating the rights set forth in this Agreement and giving Customer a refund for any fees paid for the remainder of the then-effective Subscription Term. Customer will cooperate fully with Mimecast in the implementation of any of the above-described resolutions. Mimecast will have no liability under this Section 6 to the extent any third-party claim results from the combination of the Services with third-party products, services, data, or business processes used by Customer or from content, instructions, or information supplied by Customer.

6.3   Entire Liability. Section 6 sets forth Mimecast's entire liability and Customer's sole and exclusive remedy for an infringement claim as described in Section 6.1. Mimecast specifically disclaims any and all implied indemnification obligations that may apply to this Agreement.

7. LIMITATION OF LIABILITY

7.1   EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN CONTRACT, EXTRA-CONTRACTUAL LIABILITY, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO (A) SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (TO THE EXTENT DEFINED BY LAW), (B) LOSS OF REVENUE OR PROFITS, (C) LOSS OF ANTICIPATED SAVINGS, (D) DAMAGE TO REPUTATION, (E) LOST MANAGEMENT TIME, (F) LOSS OR CORRUPTION OF DATA, OR (G) INCIDENTAL EXPENSES, OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE SERVICES PROVIDED OR AGREED TO BE PROVIDED BY MIMECAST, IN EACH CASE EVEN IF THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THIS SECTION 7.1 DOES NOT APPLY TO ANY AMOUNTS PAYABLE IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS STATED HEREIN.

7.2   LIABILITY CAP. THE PARTIES ACKNOWLEDGE THAT ANY LIMITATION OF LIABILITY SET FORTH HEREIN IS INTENDED TO APPLY ONLY TO THE EXTENT PERMITTED BY LAW. THE PARTIES AGREE THAT THE ALLOCATION OF RISK IN THIS SECTION 7 IS REFLECTED IN THE SERVICE FEES AND THEREFORE REPRESENTS AN AGREED-TO ALLOCATION OF RISK AND LIMITATION OF LIABILITY. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

(A)   GENERAL. EACH PARTY'S MAXIMUM LIABILITY FOR ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, OR THE MATERIAL (COLLECTIVELY, "GENERAL CLAIMS"), WHETHER IN CONTRACT, EXTRA-CONTRACTUAL LIABILITY, TORT, STATUTE OR OTHERWISE, WILL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY CUSTOMER TO MIMECAST (OR RESELLER) FOR THE APPLICABLE SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE GENERAL CLAIM; PROVIDED THAT THE FOREGOING CAP WILL NOT APPLY TO: (I) THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS AGREEMENT, (II) CUSTOMER'S OBLIGATIONS UNDER SECTION 3.4, (III) CUSTOMER'S PAYMENT OBLIGATIONS, OR (IV) DATA CLAIMS (AS DEFINED IN SUBSECTION 7.2(B)).

(B)   DATA CLAIMS. MIMECAST'S MAXIMUM LIABILITY FOR ANY AND ALL DATA CLAIMS WILL BE LIMITED TO THE GREATER OF: (I) USD $100,000 (ONE HUNDRED THOUSAND US DOLLARS) (OR THE EQUIVALENT IN THE CURRENCY OF THE APPLICABLE HOSTING JURISDICTION AT THE TIME THE CLAIM AROSE) OR (II) TWO TIMES (2X) THE FEES PAID OR PAYABLE BY CUSTOMER TO MIMECAST (OR RESELLER) FOR THE APPLICABLE SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE DATA CLAIM. THE LIABILITY CAP DESCRIBED IN THIS SUBSECTION 7.2(B) IS INTENDED TO COVER DATA CLAIMS ONLY AND MAY NOT BE COMBINED WITH THE CAP DESCRIBED IN SUBSECTION (A) IN CONNECTION WITH THE SAME SET OF UNDERLYING FACTS. CUSTOMER AGREES THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE INTENDED TO APPLY TO ANY DATA PROCESSING TERMS ENTERED INTO BY THE PARTIES AND THAT SUCH LIMITATIONS WILL

CONTROL IF THERE IS A CONFLICT BETWEEN SUCH AGREEMENTS. "DATA CLAIMS" MEANS, COLLECTIVELY, ANY AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO MIMECAST'S BREACH OF THE OBLIGATIONS SET FORTH IN SECTION 2 OR IN ANY DATA PROCESSING TERMS, WHETHER IN CONTRACT, EXTRA-CONTRACTUAL LIABILITY, TORT, STATUTE OR OTHERWISE.

7.3 <u>**EXCLUSIONS.**</u> **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY'S LIABILITY IS EXCLUDED OR LIMITED BY THIS AGREEMENT IN THE EVENT OF: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY WHICH MAY NOT LAWFULLY BE EXCLUDED OR LIMITED.**

8. TERM AND TERMINATION

8.1 <u>Term</u>. This Agreement is valid as of the first date that a Services Order is in effect and will remain in force until the conclusion of all Services Orders between Customer and Mimecast. Other than as set out in Section 1.7 herein, each Subscription Term will renew automatically for terms of the same length as agreed on the original Services Order ("**Renewal Term**"), unless one party gives the other party written notice of its intent not to renew the applicable subscription at least thirty (30) days prior to the end of the then-current Subscription Term. Mimecast shall provide Reseller with notice of renewal and new pricing (if applicable) prior to the end of the then-current Subscription Term to enable Reseller to inform Customer of such renewal within a reasonable time.

8.2 <u>Termination</u>.

(a) <u>For Breach</u>. Either party may terminate this Agreement immediately on giving written notice to the other party if the other party commits any material breach of any term of this Agreement or related Services Orders and has not cured such breach within thirty (30) days of its receipt thereof. Additionally, if Customer has purchased the Services through a Reseller, Mimecast may terminate this Agreement and all related Services Orders if Customer has not paid Reseller in a timely manner and has not cured such non-payment within fifteen (15) days of its receipt of written notice.

(b) <u>For Bankruptcy</u>. Unless prohibited by law, either party may terminate this Agreement immediately on giving written notice to the other party if the other party: (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy pursuant to any insolvency law, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

(c) <u>For Restricted Party Screening</u>. The parties acknowledge that Mimecast on a regular basis conducts a review of its customers to determine whether restrictions or sanctions apply with regard to transacting with them, including but not limited to, those referred to in Section 10.11, ("**Restricted Party Screening**" or "**RPS**"). If Mimecast considers, in its sole discretion, but acting reasonably based on its standard RPS process, that the results of the RPS in relation to Customer are unsatisfactory, Mimecast may terminate this Agreement and any Services Order related hereto with immediate effect upon written notice to Customer. Upon termination pursuant to this Section 8.2(c), Mimecast shall have no further obligations to Customer hereunder.

(d) <u>No Other Rights of Termination</u>. Customer acknowledges that it has no rights of termination other than those specifically set out in this Agreement.

(e) <u>Waiver.</u> Where applicable, to the extent permitted by applicable law, the Parties hereby agree to waive any provisions under the relevant laws and regulations which require a court decision to terminate this Agreement.

8.3 <u>Changes to Services</u>. Customer acknowledges that the Services are offered as software-as-a-service and that the details of the offerings themselves, including the terms of the Service Levels and Support, will change over time. If such changes result in a material degradation of the Services, Service Levels or Support, then Customer may provide written notice to Mimecast, which shall include a description of the degradation. If the identified material degradation is not corrected by Mimecast within thirty (30) days of Mimecast's receipt of such notice from Customer, then Customer may terminate this Agreement and all applicable Services Orders and receive a refund of any fees paid for the remainder of the then-effective Subscription Term.

8.4 <u>Suspension of Services</u>. Mimecast may suspend the Services if Customer fails to pay any undisputed amount within fifteen (15) days (or such longer period as Mimecast may decide from time-to-time) of Mimecast's (or Reseller's) notice to Customer of such failure to pay. Additionally, if Customer's account is the subject of denial-of-service attacks, hacking attempts, or other malicious activities, or Customer's activities reasonably appear to be in breach of Section 3.4, Mimecast will work with Customer to resolve such matters as soon as possible. In such circumstances, to

protect Mimecast's own systems, Customer acknowledges that Mimecast may be required to suspend the Services until the issues are resolved. Mimecast will provide advance notice to Customer of such suspension, where reasonably practicable.

8.5   Survival. Customer's payment obligations, the provisions of this Section and the provisions of the following Sections will survive any termination of this Agreement: Section 2.4 (*Confidentiality Obligations*), Section 3.4 (*Restrictions*), Section 4 (Ownership), Section 5 (*Disclaimer*), Section 6 (*Intellectual Property Indemnification*), Section 7 (*Limitation of Liability*), Section 10 (*General*), and Section 11 (*Regional Terms*).

9.   **PAYMENT**. **THIS SECTION 9 DOES NOT APPLY IF CUSTOMER HAS CONTRACTED SEPARATELY WITH A RESELLER AS TO THE PRICING AND INVOICING FOR THE SERVICES. THIS SECTION 9 WILL ONLY APPLY IF THE CUSTOMER WILL BE INVOICED FOR THE SERVICES DIRECTLY BY MIMECAST.**

9.1   Fees and Payment Terms. Customer will pay any fees set forth in any agreed Services Order. Fees are due net thirty (30) days from the invoice date. Mimecast will provide instructions for payment in the applicable invoice or through some other reasonable means. No less than one hundred (100) days prior to the start of each Renewal Term Mimecast shall provide notice of the fees payable for the upcoming Renewal Term. If Customer is contracting with Mimecast South Africa (Pty) Limited, then recurring fees will increase at a rate of up to eleven percent (11%) at the start of each Renewal Term. If Customer is contracting with any other Mimecast entity, then recurring fees will increase at a rate of up to eight percent (8%) at the start of each Renewal Term.

9.2   Professional Services Fees. Fees for any Professional Services to be performed by Mimecast shall be invoiced in full promptly upon execution of an applicable Services Order. Pricing for Professional Services that include import of historical Customer Data into the Services assumes that the quantity of Customer Data specified on the applicable Services Order will be provided to Mimecast within twelve (12) months of the commencement of the Professional Services engagement. Customer Data received for import after that twelve-month period will be subject to additional fees.

9.3   Disputed Invoices. If Customer disputes any portion of an invoice, then Customer will notify Mimecast in writing within fifteen (15) days of receipt of the applicable invoice. Such notice will include a description of the basis for Customer's dispute. If only part of an invoice is disputed, then Customer will pay the undisputed amount as provided herein. The parties will work together in good faith to resolve any such dispute promptly.

9.4   Late Payment. Customer will be notified if payment has not been received in accordance with the terms of Section 9.1. If any undisputed amount due is not paid within fourteen (14) days of such notice, then to the extent permitted by law, Mimecast may charge a late payment fee on any unpaid amount due at the rate of one percent (1%) per month (or at the maximum rate permitted by law, whichever is lower) from the date such payment was due until the date such amount is paid. For Customers located in France, the late payment fee shall be calculated by the European Central Bank's interest rate at its most recent refinancing operation, increased by ten percent (10%). In the event any action is taken to pursue collection of any fees payable hereunder, Customer will reimburse Mimecast for Mimecast's costs associated with such collection, including reasonable legal fees where applicable, in line with the statutory lump sum indemnity for recovery charges.

9.5   Taxes. The fees and any other charges hereunder do not include any taxes, withholdings, levies, or duties of any nature (including without limitation, local, state, provincial, federal, VAT or foreign taxes) that may be assessed at any time in connection with the Services during the term of this Agreement. Customer is responsible for paying any such taxes, excluding taxes based on Mimecast's net income. If applicable, Customer shall provide Mimecast with US sales and use tax exemption certificates in accordance with local laws and requirements. Provided however, that if there have been any withholding taxes paid on behalf of Mimecast by Customer, then Customer shall provide Mimecast with copies of tax receipts or other evidence of payment of such withholding taxes sufficient to permit Mimecast to support a claim or credit for such taxes withheld (to the extent applicable).

10.   **GENERAL**

10.1   Transition from Reseller. If Customer wishes to transition from its then-current Reseller to a new, authorized Mimecast Reseller, Customer will notify Mimecast in writing. In that event, Customer agrees that the terms and conditions of this Agreement will continue to apply to Customer's use of the Services (in addition to the pricing and other terms provided by Customer's new Reseller). If Mimecast terminates its relationship with Customer's then-current Reseller, Mimecast will notify Customer in writing and will provide a description of the plan to maintain the Services through the end of the applicable Subscription Term. At the end of such term, Customer may continue to receive the Services through Mimecast or an authorized Reseller of its choice.

10.2   Force Majeure. With the exception of Customer's payment obligations hereunder, neither party will be liable for any delay in performance or failure to perform its obligations under this Agreement due to any cause or event outside its reasonable control including, acts of God, civil or military authority, acts of war, cyber warfare, pandemics,

accidents, third-party computer or communications failures, natural disasters or catastrophes, strikes or other work stoppages or any other cause beyond the reasonable control of the affected party.

10.3   Assignment. Customer may assign this Agreement in whole or in part to a successor in interest in the event of a sale or merger of Customer. Otherwise, Customer may not assign this Agreement or any Services Orders in whole or in part without Mimecast's prior written consent, which consent will not be unreasonably withheld. Mimecast may assign this Agreement without the consent of the Customer. This Agreement will be binding upon the parties hereto and any authorized assigns.

10.4   Notices. Any communications in connection with this Agreement may be provided by email. Legal notices relating to this Agreement may be provided by email to the receiving party with read receipt enabled. If (i) no confirmation of receipt is received for such notice, or (ii) the notice concerns the commencement of legal proceedings, notice must be sent to the receiving party in **writing** at the address provided or at the registered address of the receiving party and sent by major commercial delivery courier service or mailed in a manner that requires signature by the recipient.

10.5   Entire Agreement. Each party hereby acknowledges that: (i) no reliance is placed on any representation not provided in this Agreement; and (ii) agreement to this Agreement is not conditioned on any promise made by Mimecast to deliver any future deliverable such as a feature or functionality. The parties agree that this Agreement shall constitute the entire agreement between Customer and Mimecast with respect to the subject matter hereof and supersedes all prior or contemporaneous oral and written agreements, proposals, negotiations, representations, commitments, and other communications between the parties, including fixed terms and conditions on any purchase order. All prior negotiations between the parties have been merged into this Agreement and there are no understandings, representations, or agreements, oral or written, express or implied, regarding the subject matter described herein other than those expressly set forth herein.

10.6   Modifications and Severability. Except as expressly provided herein, any modification to this Agreement must be made in writing and signed or accepted via auditable digital means, by an authorized representative of each party. Any purchase order or other terms provided by Customer will be accepted by Mimecast for invoicing purposes only and will not add to or vary this Agreement. The parties further acknowledge that no Reseller is entitled to modify this Agreement, including the Service Levels or Support or to otherwise make promises, representations, or warranties on behalf of Mimecast. The parties understand that the provisions of this Agreement apply in the context of a global agreement intended for use in multiple jurisdictions. If any provision of this Agreement is held to be unenforceable, or not recognized in accordance with applicable law, such provision will be reformed to the extent necessary to make it enforceable or, where it cannot be reformed, severed from the remaining provisions and such holding will not impair the enforceability of the remaining provisions.

10.7   Waiver. The failure by a party to exercise any right hereunder or to insist upon or enforce strict performance of any provision of this Agreement will not waive such party's right to exercise that or any other right in the future.

10.8   Violation of Intellectual Property Rights. Notwithstanding any provision herein to the contrary, nothing in this Agreement is intended to limit Customer's liability in the event of Customer's violation of Mimecast's ownership or intellectual property rights, and any claim with respect to such violation will not be governed by this Agreement.

10.9   No Third-Party Beneficiaries. This Agreement is entered into solely between and may be enforced only by Mimecast and Customer. This Agreement will not be deemed to create any third-party rights or obligations and any person who is not a party to this Agreement shall not have any rights or remedies under or in connection with it.

10.10   Independent Contractors. Each party to this Agreement will be acting as an independent contractor, and nothing herein will be construed to create a partnership, joint venture, or any type of agency relationship between Mimecast and Customer or any Permitted User.

10.11   Restrictions. Each party agrees to comply with all applicable laws and regulations with respect to the export and import of the Services, including, but not limited to the regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Department of Commerce's Bureau of Industry and Security, the U.S. Department of State, the United Nations Security Council, the European Union or any member state, or His Majesty's Treasury of the United Kingdom (collectively, the "**Export and Sanctions Laws**"). Customer hereby warrants that Customer will not access or use (nor procure or facilitate the access or use of) the Services, or allow the export or re-export of anything related to the Services: (i) in any region that is the subject or target of territory-wide financial and economic sanctions or trade embargoes under the Export and Sanctions Laws; (ii) with any person identified on (or directly or indirectly owned 50% or greater, or otherwise controlled by, a person or persons identified on) a list of prohibited, sanctioned, debarred, denied, or otherwise restricted parties, including those imposed, administered or enforced from time to time in connection with the Export and Sanctions Laws; or (iii) in any manner which would result

in a violation of the Export and Sanctions Laws by Customer or Mimecast. Customer further agrees that Customer will not place any information in the Services that is controlled under the U.S. International Traffic in Arms Regulations or other export control laws, without having first obtained any required license or governmental authorization or otherwise confirming that Customer's use of the Services would not result in a violation of applicable laws by Customer or Mimecast.

10.12   Headings; Construction. The headings in this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement will be interpreted equitably without regard to which party drafted this Agreement or any provision thereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement.

11.   **Governing Law.** Governing Law shall be in accordance with the table set out below.

Country (Customer registered address)	Mimecast Entity	Governing Law
UNITED STATES MEXICO	Mimecast North America, Inc.	This Agreement and any disputes hereunder will be governed by the **laws of the Commonwealth of Massachusetts,** without regard to its conflict of law principles. Any litigation concerning this Agreement shall be submitted to and resolved by a court of competent jurisdiction in **Boston, Massachusetts.** Notwithstanding the foregoing, either party may seek equitable, injunctive, or declaratory relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction. Where applicable, each party hereby waives its respective rights to a jury trial of any claim or cause of action relating to or arising out of this Agreement. This waiver is intended to encompass any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement or any applicable Order, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party further represents and warrants that it has consulted with legal counsel concerning this waiver and that it provides this waiver knowingly and voluntarily.
CANADA	Mimecast Canada Inc.	This Agreement shall be governed by and construed in accordance with the **laws of the province of Ontario and the federal laws of Canada.** Any legal action or proceeding arising out of or based upon these General Terms will be instituted in the courts of the province of **Ontario,** and each party irrevocably submits to the jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally (i) waive any objection to the laying of venue of any action or any proceeding in such courts; and (ii) agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

UNITED KINGDOM **CENTRAL EUROPE** (excluding GERMANY, NETHERLANDS) **UNITED ARAB EMIRATES** **SAUDI ARABIA** **ISRAEL** **PHILIPPINES**	**Mimecast Services Limited**	This Agreement and any court proceedings shall be governed by the **laws of England and Wales** and held in **England.** Notwithstanding the foregoing, either party may seek equitable, injunctive or declaratory relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction. With regard to any dispute, action or claim arising from this Agreement any Customer in any Middle East territory, if the United Kingdom courts refuse jurisdiction, the parties agree that such dispute shall be subject to the exclusive jurisdiction of the court of the Dubai International Financial Centre ("DIFC"). Where such a dispute relates to a claim for a sum within the limits specified by the DIFC Small Claims Tribunal, then the dispute may be referred to the said Tribunal.
INDONESIA	**Mimecast Services Limited**	This Agreement shall be governed by and construed in accordance with the **laws of Indonesia.** The Indonesian courts shall have exclusive jurisdiction in relation to all disputes under this Agreement. Where applicable, to the extent permitted by applicable law, the parties hereby agree to waive any provisions under the relevant laws and regulations which require a court decision to terminate this Agreement
AUSTRALIA **NEW ZEALAND**	**Mimecast Services Limited**	This Agreement and any arbitration and court proceedings shall be governed by the **federal laws of Australia and the State of Victoria and held in Melbourne, Australia**. Any restriction herein on liability will apply only to the extent that they are consistent with non-excludable Australian laws and nothing in this Agreement limits any consumer guarantees or other rights Customer may have under non-excludable Australian laws. Customer hereby consents to the jurisdiction of such courts over Customer and stipulates to the convenience, efficiency, and fairness of proceeding in such courts, and covenant not to assert any objection to proceeding in such courts based on the alleged inconvenience, inefficiency or unfairness of such courts. THE DISCLAIMER SET FORTH HEREIN DOES NOT EXCLUDE OR LIMIT ANY STATUTORY OR IMPLIED GUARANTEE, CONDITION OR WARRANTY THAT MAY NOT BY OPERATION OF LAW BE EXCLUDED OR LIMITED. TO THE EXTENT PERMITTED BY LAW, MIMECAST LIMITS ITS LIABILITY UNDER ANY STATUTORY OR IMPLIED CONDITION, WARRANTY OR GUARANTEE THAT CANNOT BE EXCLUDED TO, AT THE OPTION OF MIMECAST, THE RESUPPLY OF THE SERVICES OR THE PAYMENT OF THE COST OF DOING THE SAME.
SINGAPORE **HONG KONG** **MALAYSIA**	**Mimecast Services Limited**	This Agreement shall be governed by and construed in accordance with the **laws of Singapore**. The **Singapore** courts shall have exclusive jurisdiction in relation to all disputes under this Agreement. For these purposes each party irrevocably submits to the jurisdiction of the Singapore courts and waives any objection to the exercise of that jurisdiction.
REPUBLIC OF SOUTH AFRICA	**Mimecast South Africa (Pty) Limited**	This Agreement and any disputes hereunder will be governed by the **laws of the Republic of South Africa,** without regard to its conflict of law principles. The parties hereby consent and submit to the non-exclusive jurisdiction of the Gauteng Division, Pretoria for the purpose of all or any legal proceedings arising from or concerning this Agreement.

12. **Governing Language.** This Agreement may be made in the local language and English language. If there is any conflict or discrepancy in interpretation between the local language and English version, the English version shall prevail.