



## General Terms and Conditions

These General Terms and Conditions (“**General Terms**”) govern the use of Mimecast’s products and services (collectively, the “**Services**” unless a separate written agreement has been agreed to by the parties for the provision of Services, in which case such agreement will prevail.

**BY CLICKING ‘I ACCEPT’ YOU (i) AGREE TO THE TERMS AND CONDITIONS OF THESE GENERAL TERMS WHICH WILL FORM A BINDING CONTRACT BETWEEN MIMICAST AND THE CORPORATION, BUSINESS OR ENTITY YOU REPRESENT (THE “CUSTOMER”); AND (ii) YOU 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 TERMS AND CONDITIONS OF THESE 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.**

“**Mimecast**” means the Mimecast entity providing the Services to you.

A “**Services Order**” is a transactional document (such as a customer quote, a partner quote, a purchase order or a statement of work) that describes the Mimecast Services to be provided to Customer (each, a “**Services Description**”), the length of the Services subscription (“**Subscription Term**”), and any pertinent quantities. No Services Order shall add to or amend these General Terms, unless signed by both parties.

In addition to the Services Order, some Services are subject to additional terms and conditions (“**Supplemental Terms**”) which are posted to [www.mimecast.com/contracts](http://www.mimecast.com/contracts). The Supplemental Terms and each Services Order are each incorporated into these General Terms. In the event that there are conflicting terms, the order of precedence shall be as follows: signed Services Order, applicable Supplemental Terms, and these General Terms.

Customer and Mimecast each agree to these General Terms as a condition of the provision of the Services by Mimecast. However, Customer may opt to 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.

### **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 (including any Renewal Term as defined in Section 8 herein). The Services will perform materially in accordance with the service specific documentation posted at <https://community.mimecast.com/community/knowledge-base> (“**Documentation**”) and as described herein. In addition, some Services are subject to performance targets (“**Service Levels**”). Support Services (“**Support**”) and Service Levels descriptions are available at [www.mimecast.com/contracts](http://www.mimecast.com/contracts).

1.2 Usage Metrics. Services may be based on different usage metrics, including Domains (as defined in the applicable Supplemental Terms), Takedowns (as defined in the applicable Supplemental Terms), or Permitted Users. Where “**Permitted Users**” is the usage metric, all Permitted Users of the Services must be individuals employed by or otherwise under Customer’s control. Customer may increase the number of Domains, Takedowns, or Permitted Users listed in a Services Order or add Services at any time during the Subscription Term. However, Customer must provide Reseller or Mimecast with advance notice prior to adding additional Domains, Takedowns, or Permitted Users to Customer’s account, 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. Such changes may be made effective at the start of a Renewal Term, but only if Mimecast receives notice of such change not less than thirty days prior to the renewal date.

1.3 Hosting Jurisdiction. The “**Hosting Jurisdiction**” means the country where the datacentre hosting the Customer Data is located and will be noted on the relevant Services Order or Supplemental Terms. Please note, the Hosting Jurisdiction may differ dependant on the Service provided.

1.4 Professional Services. Mimecast will provide professional services to Customer (“**Professional Services**”) if noted in the applicable Services Order. Mimecast will perform such Professional Services in a professional and workmanlike manner, consistent with industry standards. In the event Mimecast’s performance does not conform as described in the applicable Services Order, Customer will notify Mimecast of such failure within fifteen days after delivery of the Professional Services (“**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 1.4 to the extent that Mimecast is delayed or prevented from performing due to an act or omission of Customer. In the event that 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, such access shall not be covered by these General Terms, instead the Simply Migrate EULA at [www.mimecast.com/contracts](http://www.mimecast.com/contracts) will apply to the installation and use of such software.

1.5 Trial Services. Where Customer is provided Services by Mimecast for evaluation purposes only (“**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 the Trial Services on a non-trial basis prior to expiration of the Trial Subscription Term 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 notice to the other party; (iii) Mimecast’s Service Levels and Support does not apply to the Trial Services; and (iv) Mimecast’s maximum liability for any and all causes of action arising out of or relating to the Trial Services, whether in contract, tort, statute or otherwise, will be limited to \$100 (or the equivalent in the currency of the applicable Hosting Jurisdiction at the time the claim arose).

1.6 Mimecast Applications. Mimecast makes applications available to use with the Services 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 these General Terms and any associated end user license agreement made available via the application/marketplace. The term of Customer’s license to use the application is co-terminous with these General Terms. For the avoidance of doubt, Mimecast applications fall under the definition of Services hereunder.

## 2. Data Protection and Confidentiality.

2.1 “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.

2.2 Security. Mimecast will implement and maintain appropriate administrative, technical, organizational and physical security measures for each of the Services 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 Laws. As required by law or as otherwise agreed by the parties, data protection measures may be described in more detail in an executed data processing agreement between the parties, which will be made supplementary to these General Terms (“**Data Processing Agreement**”). In the event of any conflict between these General Terms and the Data Processing Agreement, the Data Processing Agreement shall prevail. With respect to any Customer Data that relates to an identified or identifiable natural person (“**Personal Data**”), Customer acts as the accountable organization or the data controller and Mimecast acts as a service provider or the data processor. Except as may be required by applicable law, Mimecast will process the Personal Data solely in accordance with Customer’s Instructions. The “**Instructions**” are embodied in these General Terms and any applicable Data Processing Agreement, and as may be additionally communicated by Customer to Mimecast in writing from time-to-time. Mimecast will collect and protect Personal Data in compliance with Applicable Law. “**Applicable 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 GDPR as incorporated into United Kingdom (“**UK**”) law by the Data Protection Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments, etc.) (EU Exit) Regulations 2019 (“**UK GDPR**”); (iii) California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 et seq. (“**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 law, regulation or order that implements 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 is responsible for providing any requisite notices and obtaining any consents (if required) for such processing and transfer of Personal Data, including international transfers.

### 2.4 Confidentiality Obligations.

(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. Customer’s Confidential Information includes Customer Data. Mimecast’s Confidential Information includes 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 required of it under Section 2 herein: (i) use Disclosing Party’s Confidential Information solely for the performance of the activities contemplated by these General Terms or any applicable Services Order; (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 be 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.

2.5 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 or the 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 Agreement. Customer will allow only the number of Permitted Users shown in the applicable Services Order to access and use the Services. 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.

3.2 Access Control. Customer will implement and maintain reasonable and appropriate controls to ensure that 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. 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.

3.3 Restrictions. Customer will not use the Services in any manner that: (a) infringes or violates the rights of others or that 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 any viruses, malicious code, or any other items of a harmful nature or failure to take reasonable measures to secure user accounts to prevent such compromises; or (c) could reasonably be expected to interfere with or disrupt the Services (for example, an activity that causes Mimecast to be blacklisted by an internet service provider). 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 this Section 3.3.

3.4 Application Program Interfaces (“API”). Customer can enable certain Mimecast APIs by requesting a Customer specific application key (“**Application Key**”). In order to gain access to an Application Key, Customer must register with Mimecast and provide the information requested. Customer is responsible for ensuring that the information provided to Mimecast is and remains accurate and up-to-date. Mimecast can revoke the Application Key at any time without notice to Customer, to protect Mimecast services and customers. 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. In the event Customer chooses to transfer Customer Data via Mimecast APIs to third-parties, whether or not such third-parties are Mimecast technology partners, Mimecast is not responsible for the security of the Customer Data upon the Customer Data leaving the Mimecast environment and such transfer is on Customer’s own volition and risk. To the extent Customer uses the Mimecast APIs the provisions of this Section 3.4 shall apply to such use as if such APIs were included in the Services.

Mimecast is not responsible for, and no representations or warranties are made regarding, Third Party Services (as defined in Section 3.5 below).

3.5 Third-Party Services. To the extent Customer Data is retrieved from or provided by Third Party Services, Mimecast will not be liable for the condition of such Customer Data, including, but in no way limited to any such Customer Data that is retrieved from or provided by Third Party Services that is incorrect, incomplete, corrupt, or missing. **“Third Party Services”** means third party 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 Service provided), or enable in conjunction with Mimecast Services or Mimecast API connectors.

#### 4. **Ownership.**

4.1 Ownership of the Services. Customer’s rights are limited to those expressly stated in these General Terms. 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. Notwithstanding any provision herein to the contrary, nothing in these General Terms 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 these General Terms.

#### 4.2 Threat Data, Machine-Learning Data and Aggregated Usage Data.

(a) Customer Data. The parties acknowledge and agree that Mimecast has no ownership rights to Customer Data. In accordance with this Agreement, Customer hereby grants to Mimecast a worldwide, irrevocable license to collect and process Customer Data, including certain Customer Data within Machine-Learning Data (as defined below), as well as Threat Data (as defined below) for the purposes of: (i) providing the Services; (ii) improving threat detection, analysis, awareness, and prevention; and/or (iii) improving and developing the Services.

(b) Threat Data. As part of the Services, Mimecast processes certain data reasonably identified to be malicious, including, without limitation, data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity (collectively, **“Threat Data”**). Mimecast processes Threat Data primarily through automated processes and may share limited Threat Data with third parties within the cybersecurity ecosystem for the purpose of improving threat detection, analysis and awareness. Threat Data is not Customer Data but may include Personal Data.

(c) Machine-Learning Data. Through automated processes designed to develop and improve our machine learning algorithms within Services, Mimecast processes certain Customer Data and other data that describes and/or gives information about Customer Data, including but not limited to metadata, files, URLs, derived features and other data (**“Machine-Learning Data”**). We do not share Machine-Learning Data with Third Parties. Machine-Learning Data does not include full message content of Customer Data.

(d) 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.

4.3 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.

4.4 References. Customer grants Mimecast a revocable, non-transferable, 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 4.4. Customer may revoke each or all of the permissions granted in this Section 4.4 at any time by contacting [references@mimecast.com](mailto:references@mimecast.com).

5. **Disclaimer**. WITHOUT LIMITING MIMICAST’S EXPRESS OBLIGATIONS UNDER THESE GENERAL TERMS, MIMICAST HEREBY DISCLAIMS ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE CONCERNING ANY SERVICES, SOFTWARE, DOCUMENTATION OR MATERIALS PROVIDED BY MIMICAST, 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. MIMICAST DOES NOT REPRESENT

THAT THE SERVICES WILL ACHIEVE INTENDED RESULTS, BE UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS.

## 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 expense and 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 these General Terms; or (c) terminating the rights set forth in these General Terms 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 remedy for an infringement claim as described in Section 6.1. Mimecast specifically disclaims any and all implied indemnification obligations that may apply to these General Terms.

## 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 (A) INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, (B) LOSS OF REVENUE OR PROFITS, (C) LOSS OF ANTICIPATED SAVINGS, (D) DAMAGE TO REPUTATION; OR (E) LOST MANAGEMENT TIME OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THESE GENERAL TERMS 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 applicable law.

(a) General. Each party's maximum liability for any and all causes of action arising out of or relating to these General Terms, 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 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 these General Terms, (ii) Customer's obligations under Section 3.3, (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 the fees paid or payable by Customer to Mimecast (or Reseller) for the applicable Services during the twelve 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 these General Terms are intended to apply to any Data Processing Agreement entered into by the parties and that such limitations will control in the event of any 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 Agreement, whether in contract, extra-contractual liability, tort, statute or otherwise.

7.3 Exclusions. Notwithstanding any other provision of these General Terms, neither party's liability is excluded or limited by these General Terms 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 Term. These General Terms are 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 1.5 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 days prior to the end of the then-current Subscription Term.

8.2 Termination.

(a) Opt-out. Customer may terminate its initial Services Order during the first thirty days of the initial Subscription Term. If any fees have been paid in advance, such fees will be promptly refunded. If notice of termination is not received within the thirty-day time period, then the initial Subscription Term described in the initial Services Order will continue unaffected.

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

(c) For Bankruptcy. Either party may terminate these General Terms 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.

(d) No Other Rights of Termination. Customer acknowledges that it has no rights of termination other than those specifically set out in these General Terms.

8.3 Changes to Services. 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 including a description of the degradation. If the identified material degradation is not corrected by Mimecast within thirty days of Mimecast's receipt of such notice from Customer, then Customer may terminate these General Terms and all applicable Services Orders and receive a refund of any fees paid for the remainder of the then-effective Subscription Term.

8.4 Suspension of Services. Mimecast may suspend the Services in the event Customer fails to pay any undisputed amount within fifteen days of Mimecast's (or Reseller's) notice to Customer of such failure to pay. Additionally, in the event 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 3.3, 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 these General Terms: Section 2.4 (*Confidentiality Obligations*), Section 3.3 (*Restrictions*), 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; for clarity, this Section 9 will have no effect unless 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 days from the invoice date. Mimecast will provide instructions for payment in the applicable invoice or through some other reasonable means. No less than thirty 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 8% 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 5% 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 months of the parties' signatures on the applicable Services Order. 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 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 in the event payment has not been received in accordance with the terms of Section 9.1. If any undisputed amount due is not paid within fourteen days of such notice, then 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. 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.

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 these General Terms. 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.

## **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 these General Terms 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). In the event 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 the 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 these General Terms due to any cause or event outside its reasonable control including, acts of God, civil or military authority, acts of war, cyber warfare, 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 these General Terms 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 these General Terms or any Services Orders in whole or in part without Mimecast's prior written consent, which consent will not be unreasonably withheld. These General Terms will be binding upon the parties hereto and any authorized assigns.

10.4 **Notices.** Any communications in connection with these General Terms may be provided by email. Legal notices relating to these General Terms 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 these General Terms; and (ii) agreement to these General Terms is not conditioned on any promise made by Mimecast to deliver any future deliverable such as a feature or functionality. The parties agree that these General Terms 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 these General Terms 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 these General Terms must be made in writing and signed 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 these General Terms. The parties further acknowledge that no Reseller is entitled to modify these General Terms, including the Service Levels or Support or to otherwise make promises, representations, or warranties on behalf of Mimecast. If any provision of these General Terms is held to be unenforceable, such provision will be reformed to the extent necessary



to make it enforceable, 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 these General Terms will not waive such party's right to exercise that or any other right in the future.

10.8 **No Third-Party Beneficiaries.** These General Terms are entered into solely between, and may be enforced only by, Mimecast and Customer. These General Terms will not be deemed to create any third-party rights or obligations.

10.9 **Independent Contractors.** Each party to these General Terms 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.

10.10 **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 of the United States Department of Commerce and the United States Export Administration Act. Customer hereby warrants that Customer will not procure or facilitate the use of the Services in any region that is the subject or target of any U.S. or other national government financial and economic sanctions or trade embargoes or otherwise identified on a list of prohibited, sanctioned, debarred, or denied parties, including those imposed, administered or enforced from time to time by the U.S. government through the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury, the Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce, or the U.S. Department of State, the United Nations Security Council, the European Union, or Her Majesty's Treasury of the United Kingdom (collectively, "Sanctions"), without having first obtained any required license or other government authorization or in any manner which would result in a violation of Sanctions by Customer or Mimecast.

## 11. Regional Terms.

11.1 **United States.** The following terms apply if the Mimecast entity on the applicable Services Order is Mimecast North America, Inc:

(a) **Governing Law (USA).** These General Terms and any disputes hereunder will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles, and any litigation concerning these General Terms shall be submitted to and resolved by a court of competent jurisdiction in Boston, Massachusetts.

(b) **Waiver of Jury Trial.** 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 these General Terms. 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 these General Terms, 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 the waiver under this Section 11.1 (b) knowingly and voluntarily.

11.2 **United Kingdom.** The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Services Ltd:

(a) **Governing Law (UK).** These General Terms and any court proceedings shall be governed by the laws of England and Wales and held in England.

(b) **Middle East Business.** If Customer is located in any Middle East territory, in the event that 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, Dubai, UAE. Where such a dispute relates to a claim for a sum within the limits specified by the Dubai International Financial Centre Small Claims Tribunal, then the dispute may be referred to said tribunal. Customer understands and acknowledges that Mimecast provides Services in accordance with the laws of the Hosting Jurisdiction and does not warrant or represent compliance with any specific laws, regulations, statutes or guidelines, in any other jurisdiction regardless of where Customer is located, including without limitation, the CITC's Cloud Computing Regulatory Framework applicable in the Kingdom of Saudi Arabia

11.3 **South Africa.** The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast South Africa (Pty) Ltd:

(a) **Governing Law (RSA).** These General Terms 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 South Gauteng High Court, Johannesburg for the purpose of all or any legal proceedings arising from or concerning these General Terms.

11.4 **Australia.** The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Australia (Pty) Ltd:



(a) **Governing Law (AU).** These General Terms 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. 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.

(b) **Disclaimer.** Section 5 (Disclaimer) and any restrictions herein on liability will apply only to the extent that they are consistent with non-excludable Australian laws and nothing in those Sections or these General Terms limit any consumer guarantees or other rights Customer may have under non-excludable Australian laws. THE DISCLAIMER SET FORTH IN SECTION 5 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.

11.5 **Canada.** The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Canada Ltd:

(a) **Governing Law (CA).** These General Terms 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 waive any objection to the laying of venue of any action or any proceeding in such courts and irrevocably waive and 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.

11.6 **Singapore.** The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Singapore Pte Ltd:

(a) **Governing Law (Singapore).** 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.