mimecast

Simply Migrate Software End User License Agreement

This Simply Migrate Software End User License Agreement (the "**Agreement**"), is a binding agreement between the Mimecast entity ("**Licensor**") and the customer entity ("**Licensee**") each as identified on the applicable Services Order and governs the Licensee's use of the Simply Migrate Software (the **"Software"**). Licensee will submit a Service Order for the purchase of the Simply Migrate Software either directly with Mimeast or via a Mimecast Reseller. A "**Service Order**" is a transactional document (such as a customer quote, a customer confirmation, a purchase order or a statement of work) that references this Agreement and is agreed to by the parties or between Licesnsor and Reseller for the provision of the Simply Migrate Software to Licensee.

LICENSOR PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. LICENSEE ACCEPTS THIS AGREEMENT AND AGREES THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS. LICENSEE'S SIGNATORY TO THIS AGREEMENT REPRESENTS AND WARRANTS THAT S/HE HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND LICENSEE MUST NOT DOWNLOAD OR INSTALL THE SOFTWARE OR THE DOCUMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT IN RESPECT OF ANY SOFTWARE THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR'S SOFTWARE AND THIS AGREEMENT EXPRESSLY EXCLUDES ALL RIGHTS CONCERNING SUCH SOFTWARE.

1. License. Subject to and conditioned upon Licensee's payment of the License Fees and Licensee's strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited and revocable license during the Term to use the Software and the Documentation only as set forth in this Section 1. Customer may opt to contract separately with a reseller ("Reseller") as to the pricing and invoicing for the Software, in which case Section 10 ("Payment") of this Agreement will have no effect and any refunds payable in accordance with this Agreement, shall be paid to Reseller.

1.1. Upon processing of the applicable Services Order, Licensee will be notified via the administrative console that the Software is available for download. The Software will only support migrations of data in .PST and .EML format.

1.2. Licensee may only use the Software in accordance with the Documentation (as available at https://community.mimecast.com/community/knowledge-base, the "**Documentation**") solely for the purpose of migrating the volume of email data noted on the applicable Services Order from an email archive or email server belonging to Licensee to an account designated for Licensee within Licensor's cloud archive for email (the "**Account**"). Without limiting the generality of the foregoing, Licensee shall use the license key provided by Licensor to download and install the Software in accordance with the Documentation and may only download one copy of the Software on one computer or server controlled by Licensee.

1.3. In addition to the foregoing, Licensee has the right to make one copy of the Software solely for backup purposes, provided that Licensee shall not, and shall not allow any individual, company, governmental entity or other organization ("**Person**") to, install or use such copy other than if and for so long as the initial copy is inoperable and, further provided that Licensee uninstalls and otherwise deletes such inoperable copy. Each copy of the Software and the license key: (i) is and will remain Licensor's exclusive property; (ii) will be subject to the terms and conditions of this Agreement; and (iii) must include all trademark, copyright, patent, and any licensing notices contained in the original.

1.4. The Software may include software that is owned by Persons other than Licensor and that is provided to Licensee on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). A list of Third-Party Licenses can be found in the "read me" file provided with the Software. Licensee is bound by and shall comply with all Third-Party Licenses. Any breach by Licensee of any Third-Party License is also a breach of this Agreement.

2. **Use Restrictions.** Licensee shall not, directly or indirectly: (i) use or copy the Software or Documentation beyond the

scope of the license granted under Section 1, including use of the Software for a volume of data greater than that specified on the Services Order; (ii) modify, translate, adapt, or otherwise create derivative works or improvements of, the Software or Documentation or any part thereof; (iii) share or modify the license key; (iv) combine or incorporate the Software or any part thereof , in or with any other programs; (v) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof; (vi) modify, disable, circumvent or in any way interfere with technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against use of the Software other than as allowed under this Agreement; (vii) remove, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof; (viii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software to any third party for any reason; (ix) use the Software in, or in association with, the design, maintenance, or operation of any system used for the management of or response to emergency situations; (x) use the Software or Documentation in violation of Applicable Data Protection Law (as defined later herein) or any applicable law, regulation, or rule; or (xi) use the Software or Documentation for purposes of (A) building a competitive service/product or comparative features; or (B) comparative analysis (including but not limited to benchmarking) intended for use outside Licensee's organization. Licensee will defend, indemnify and hold harmless Licensor, its officers, directors, employees and consultants, in the event of any third-party claim or regulatory action arising out of Licensee's breach (or alleged breach) of the terms of this Section 2.

3. License Compliance Measures.

3.1. The volume of data to be migrated utilizing the Software is limited to twenty gigabytes per permitted user for which the Licensee has subscribed to Licensor's hosted services. For example, if the Licensee has subscribed to hosted services for one hundred permitted users, then Licensee shall be allowed to migrate two thousand gigabytes (or two terabytes) of data. In the event the Licensee needs to migrate data in excess of this limit, then Licensee may purchase additional capacity equal to the amount purchased under the initial Services Order. For example, if the initial purchase provided two terabytes of data and the Customer determines that three terabytes are needed, then Customer must purchase an additional two terabytes as the additional purchase must equal the initial purchase.

3.2. On Licensor's written request, Licensee shall conduct a review of its use of the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance, then Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof.

4. Licensee Responsibilities.

4.1. Licensee will implement and maintain appropriate administrative, technical, organizational and physical security measures to protect the Software and the license key from any use or access which is not authorized hereunder. Licensee is responsible and liable for all uses of the Software and Documentation through access provided by Licensee, directly or indirectly, including all use by any of Licensee's employees, contractors or agents or any Person. Without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and omissions regarding the use of the Software and Documentation by its authorized users or by any other Person to whom Licensee or an authorized user may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

4.2. Licensee will use commercially reasonable standards to maintain and store all databases resulting from use of the Software until seven years have expired from the termination or expiration of this Agreement. Licensor will provide Licensee with a reasonable degree of assistance to verify that all data targeted by the Software was properly processed for migration to the Account.

4.3. Licensor will make technical documentation available to Licensee to enable Licensee to utilize the Software including, without limitation, any essential technical information which may be required to achieve interoperability with any necessary software.

5. Data Processing, Collection and Use.

5.1. Licensee acknowledges that Licensor may collect and store information regarding use of the Software, equipment on which the Software is installed, or equipment through which the Software is accessed via the provision of Software; however said information shall not include Personal Data. Licensee agrees that Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:

- improving the performance of the Software; and

- verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

5.2. Regardless of Licensor's obligations that may exist under a services agreement and/or separate contract arrangements which are in place between Licensor and Licensee, as regards to the Software, Licensor shall have no obligations under the any Data Protection Law. Further, to the extent that Personal Data is Processed using the Software, Licensee acknowledeges that Licensor shall have no access to the Personal Data and therefore Licensor is not a Data Processor or a Data Controller in respect of any Personal Data other than such Pesonal Data as Licensor collects for legitimate business purposes, to facilitate this Agreement. Licensee will Process Personal Data only in accordance with Applicable Data Protection Law. The terms "**Personal Data**", "**Processed**", "**Data Processor**", "**Data Controller**", and "**Instructions**" have the same meanings herein as in the General Data Protection Regulation. "**Applicable Data Protection Law**" means all applicable data privacy and data protection regulations, including to the extent applicable, the requirements of the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**GDPR**") and/or, the California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 et seq (the "**CCPA**").

5.3. Licensor owns an unlimited right to any Feedback in any present or future form or format for use in any manner that Licensor deems appropriate, without monetary or other compensation to Licensee. "**Feedback**" means any communications or materials provided to Licensor by Licensee suggesting or recommending changes to the Software.

6. Confidentiality.

6.1. "**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. Licensor's Confidential Information includes any information related to the performance, functionality, and reliability of the Software, as well as the Software, the Software's source code, and the Documentation. 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 from the Disclosing Party ("**Receiving 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. Obligations of confidentiality shall survive for so long as any information shall be treated as a Confidential Information within the meaning of the present Agreement.

6.2. Confidential Information is and will remain the exclusive property of the Disclosing Party. In addition to any other obligations required of it herein, the Receiving Party will: (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 6; (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; and (iv) upon written request, return or destroy all copies of the Disclosing Party's Confidential Information that are in its possession or control. Notwithstanding the foregoing, Confidential Information may be retained and disclosed by Licensor as required to comply with applicable laws, regulations, subpoenas, or court orders or to otherwise enforce its rights under this Agreement. Where allowed by law, Licensor will provide reasonable prior written notice to Licensee to permit Customer to seek a protective order and will cooperate in Licensee's activities under this Section 6.2, at Licensee'ss expense. Licensor will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

6.3. 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.

7. Intellectual Property.

7.1. Licensee acknowledges and agrees that the Software and Documentation are provided only as a subscription under license (and not sold) to Licensee. Licensee does not acquire any ownership in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor and its licensors reserve and shall retain its/their entire right, title, and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, except as expressly granted to Licensee in this Agreement.

7.2. Licensor will defend, indemnify and hold harmless Licensee, its officers, directors, employees and

consultants against any third-party claim, suit, or proceeding alleging that the Software or the Documentation infringe any copyright, moral right, trade secret, trade or service mark, or patent issued in the United States, Canada, Australia, the United Kingdom, or the European Union. Licensee will provide prompt written notice of the applicable claim to Licensor and cooperate in Licensor's defense, as reasonably requested by Licensor and at Licensor's expense. Licensor will have sole control of the defense and settlement of the applicable matter.

7.3. Licensor may, at its expense and discretion, attempt to resolve any indemnified claim by: (a) modifying the Software or Documentation to avoid the alleged infringement; (b) obtaining a license to permit Licensor's use of the Software or Documentation as contemplated by this Agreement; or (c) terminating the rights set forth in this Agreement and refunding to Licensee fees paid by Licensee for the Software based on a five year straight line depreciation. Licensee will cooperate fully with Licensor in the implementation of any above-described resolution. Licensor will have no liability under this Section 7 to the extent any claim results from the combination of the Software with third-party products, services, data or business processes used by Licensee or from content or information processed by Licensee through the Software.

7.4. This Section 7 sets forth Licensor's entire liability and Licensee's sole remedy in connection with any matters concerning any intellectual property rights relating to the Software or the Documentation. Licensee agrees that any and all implied indemnification obligations that may apply to this Agreement are hereby excluded.

8. Limited Warranties, Exclusive Remedy, and Disclaimer. The remedies set forth in this Section 8 are Licensee's sole remedies and Licensor's sole liability under the limited warranty set forth in this Section 8.

8.1. Solely with respect to Software for which Licensor receives a License Fee and excepting data processed through the Software which was degraded or corrupted prior to such processing, Licensor warrants that the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith for a period of one year following the date of Licensee's signature on the applicable Services Order.

8.2. The warranties set forth in Section 8.1 will not apply and will become null and void if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User: (i) breaches any material provision of this Agreement; (ii) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Licensor in writing; or (iii) uses or modifies the Software other than as specified in the Documentation or expressly authorized by Licensor in writing.

8.3. If any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation during the period specified in Section 8.1, and such failure is not excluded from warranty pursuant to Section 8.2, Licensor will, subject to Licensee's prompt notification to Licensor in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor reasonably requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or (ii) terminating the rights set forth in this Agreement and refunding to Licensee fees paid by Licensee for the Software based on a five year straight line depreciation.

8.4. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND WITHOUT LIMITING LICENSOR'S EXPRESS OBLIGATION SET FORTH IN SECTION 8.1, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES NOT SPECIFIED IN THE DOCUMENTATION, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

9. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW:

9.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, LICENSOR'S AFFILIATES, OR LICENSOR'S LICENSORS BE LIABLE WHETHER IN CONTRACT, 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, (B) LOSS OF PROFITS, (C) LOSS OF ANTICIPATED SAVINGS, (D) DAMAGE TO REPUTATION; (E) LOST MANAGEMENT TIME; OR (F) LOSS OR CORRUPTION OF DATA; OR (G) INCIDENTAL EXPENSES; OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, THE DOCUMENTATION, OR ANY RELATED SERVICE PROVIDED OR AGREED TO BE PROVIDED BY LICENSOR, EVEN IF LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THIS SECTION 9.1 DOES NOT APPLY TO ANY AMOUNTS PAYABLE IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS STATED HEREIN.

9.2. IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENTOR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR (OR RESELLER) PURSUANT TO THIS AGREEMENT FOR THE SOFTWARE.

9.3. THE LIMITATIONS SET FORTH IN SECTIONS 9.1 AND 9.2 SHALL APPLY EVEN IF LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

10. Payment. This Section 10 does not apply if Licensee has contracted separately with a Reseller as to the pricing and invoicing for the Software; for clarity, this Section 10 will have no effect unless Llicensee will be invoiced for the Software directly by Licensor.

10.1. All fees are payable in advance in the manner set forth on the Services Order and are non-refundable, except as may be expressly set forth herein. Fees are due net thirty days from the invoice date. If Licensee disputes any portion of the amount due, then Licensee will notify Licensor in writing within ten days of receipt of the invoice. Such notice will include a description of the basis for Licensee's dispute. If only part of an invoice is disputed, then Licensee will pay the undisputed amount as provided herein. The parties will work together in good faith to resolve any such dispute promptly.

10.2. 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 Software during the Term. Licensee is responsible for paying any such taxes, excluding taxes based on Licensor's net income.

11. Term and Termination.

11.1. This Agreement and the license granted hereunder shall remain in effect until the earlier of: (i) the Licensee reaching the data limit as set forth in Section 3.1; or (ii) the date of termination in accordance with these terms (the "**Term**"). Upon expiration or termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all fees that may have become due before such expiration or termination, or entitle Licensee to any refund. For the avoidance of doubt, in the event this Agreement expires due to the data limit set forth in Section 3.1 being reached and Licensee elects to make an additional purchase, then this Agreement shall continue to govern such additional purchase.

11.2. Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.

11.3. Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured five days after Licensor provides written notice thereof. Further, Unless prohibited by law, Licensor may terminate this Agreement effective immediately if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

11.4. This Agreement will be co-terminous with the services agreement entered into by and between the parties.

12. General

12.1. If Licensee transitions from its then-current Reseller to a new authorized Licensor Reseller, Licensee will notify Licensor in writing. In that event, Licensee agrees that the terms and conditions of this Agreement will continue to apply to Licensee's use of the Software (in addition to the pricing and other terms provided by Licensee's new Reseller). In the event Licensor terminates its relationship with Licensee's then-current Reseller, Licensor will notify Licensee in writing and will provide a description of the plan to maintain the Software through the end of the applicable Term. At the end of such

term, Licensee may continue to receive the Sofware through the authorized Reseller of its choice.

12.2. Neither party will be liable for any delay in performance or failure to perform its obligations hereunder due to any cause or event outside its reasonable control including, acts of God, civil or military authority, acts of war, 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.

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

12.4. Any business communications in connection with this Agreement may be provided by email. Any legal notices relating to this Agreement must be provided in writing and sent to the receiving party at the address set out on the Services Order or any address later provided by such party. All notices will be sent by major commercial delivery courier service or mailed in a manner that requires signature by the recipient.

12.5. 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 Licensor to deliver any future deliverable such as a feature or functionality. No purchase order or other communication will add to or vary this Agreement. Any purchase order or other terms provided by Licensee will be accepted by Licensor for invoicing purposes only. This Agreement does not modify or void any other contractual arrangements regarding the subject matter other than that described herein which may in effect between the parties.

12.6. Except as expressly provided herein, any modification to this Agreement must be made in writing and signed by an authorized representative of each party. If any provision of this Agreement 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.

12.7. 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.

12.8. This Agreement is entered into solely between, and may be enforced only by, Licensor and Licensee. This Agreement will not be deemed to create any third-party rights or obligations. 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 Licensor and Licensee.

12.9. Each party agrees to comply with all applicable laws and regulations with respect to the export and import of the Software, 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 Evaluation 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 Nationals 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.

12.10. This Section and the provisions of the following Sections will survive termination or expiration of this Agreement: Section 2 (Use Restrictions), Section 4.2 (Licensee Responsibilities), Section 6 (Confidentiality), Section 7 (Intellectual Property), Section 8.4 (Disclaimer), Section 9 (Limitation of Liability), Section 10 (Payment) and Section 13 (Regional Terms).

13. Governing Law.

Country (Licensee registered	**Mimecast Entity**	**Governing Law**

address)		
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, 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.