



## **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.**

Depending on which Services Customer orders, “**Mimecast**” refers to:

- for **Email Security, Cloud Integrated** (and associated Services) → **Mimecast Services Limited**
- for **Email Security, Cloud Gateway** and all other Services → **Mimecast Germany GmbH**.

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 Mimecast 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 Reseller or Customer. Standard terms included in a Service Order that conflict with, or deviate from, these General Terms shall not apply. Mimecast’s silence regarding such deviating or conflicting terms shall not be deemed tacit approval or acceptance thereof.

Some Services are subject to additional terms and conditions (“**Supplemental Terms**”) which are posted to [www.mimecast.com/contracts](http://www.mimecast.com/contracts) and will be provided to Customer during order process, if applicable. Any applicable Supplemental Terms, each Services Order, and the Data Processing Addendum 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: mutually signed Services Order, (where applicable), any applicable Supplemental Terms, and these General Terms.

Customer and Mimecast acknowledge that this Agreement sets out the rights and obligations of the parties in relation to the provision of the Services by Mimecast. Mimecast’s chosen business model however is for its customers to contract with 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 this Agreement shall be paid to Reseller.

These General Terms and the Agreement shall exclusively apply to entrepreneurs within the meaning of §310 Para. 1 German Civil Code.

### **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**”). Description of Support Services (“**Support**”) and Service Levels 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. 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.

1.3 Hosting Jurisdiction. The “**Hosting Jurisdiction**” means the country where the Customer Data is stored and will be noted on the relevant Services Order. Please note, notwithstanding the foregoing, the Hosting Jurisdiction for our DMARC Analyzer Service is Ireland and for our Brand Exploit Protect Service is Belgium and the Netherlands.

1.4 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 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 this Agreement. For the avoidance of doubt, Mimecast applications fall under the definition of Services hereunder.

1.5 Professional and Managed 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. If Mimecast’s performance does not conform as described in the applicable Services Order, Customer will notify Mimecast of such failure, providing reasonable detail, within fifteen (15) days after delivery of the Professional Services (“**Acceptance Period**”). Warranty regulations in accordance with German Civil Code apply, subject to amendments as follows: Mimecast shall be granted a minimum of two (2) attempts to re-perform the non-conforming Professional Services at no additional cost to Customer. If Mimecast fails to achieve conformance, it shall refund to Customer the fees for the non-conforming Professional Services as applicable, unless they are still of use to Customer. In the event Professional Services are provided on a Time and Material basis, Customer may cancel the affected portion of such services, subject to payment of Time and Material Services already performed. 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 1.5 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, such access shall not be covered by this Agreement. The Simply Migrate EULA available at [www.mimecast.com/contracts](http://www.mimecast.com/contracts) will apply to the installation and use of such software.

Customer acknowledges that by subscribing to the Awareness Training managed service offering it is enabling Mimecast to maintain an assigned role in the Customer’s Mimecast account with limited access to Customer’s Awareness Training dashboard. Mimecast may provide the managed service in any jurisdiction where Mimecast maintains support personnel.

1.6 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 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) Mimecast shall have no indemnification obligations nor any liability of any type with respect to Trial Services. Exclusion in 1.6 (v) shall not apply in cases of liability for damages from injury to life, body or health, in the case of malice, intent or gross negligence on the part of Mimecast of its legal representatives or vicarious agents or to the extent as the Product Liability Act applies.

## 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. Notwithstanding the foregoing, Customer Data does not include any data processed via the Services that is reasonably identified to be malicious, including, without limitation, data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity (collectively, “**Threat Data**”). Threat Data is discussed further in Section 4.2.

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 may be outlined in a separate data processing agreement between the parties (referred to herein as “**Data Processing Terms**”). The Data Processing Terms shall be incorporated into and form an addendum to 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. 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. 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 UK General Data Protection Regulation (“**UK GDPR**”); and (iii) any relevant law, statute, regulation, legislative enactment, order or other binding instrument, that implements 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 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.

## 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 also includes Customer Data. Mimecast’s Confidential Information include, amongst other, 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.

## 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 Terms. 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. 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 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 not (i) license, sell rent, lease, transfer, grant rights in, or access to the Services for commercial gain; (ii) copy disseminate, allow unauthorized access to, disassemble, reverse engineer, or decompile the Services, or any components thereof. Customer will defend, indemnify, 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 to enable the Services to work in conjunction with certain third-party services, systems, and/or applications. The process to gain access to the APIs will be made available to Customer upon request. Customer is responsible for ensuring that the information provided to Mimecast to enable any API, is and remains accurate and up to date. Mimecast may revoke access to any API at any time without notice to Customer if Mimecast, in its reasonable discretion believes necessary or appropriate to protect Mimecast Services or 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. If 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.

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 necessary to enable the Services), or enable in conjunction with the Services or Mimecast API connectors. Mimecast is not responsible for, and no representations or warranties are made regarding, Third Party Services.

#### **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. 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.

#### **4.2 Threat Data, Machine-Learning Data and Aggregated Usage 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 process Customer Data, including certain Customer Data within Machine-Learning Data (as defined below), as well as Personal Data within Threat Data for the purposes of: (i) provision of Services; (ii) improving threat detection, analysis, awareness, and prevention; and/or (iii) improving and developing the Services.

(a) Threat Data. As part of the Services, Mimecast processes "Threat Data" (as defined in Section 2.1) 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, awareness and prevention. In certain instances, Threat Data may include Personal Data (e.g. weaponized email address, etc.).

(b) Machine-Learning Data. Through automated pattern recognition designed to develop and improve the efficacy and accuracy of our machine learning algorithms within the 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**”). Mimecast does not share Machine-Learning Data with third parties. Machine-Learning Data does not include full message content of Customer Data.

(c) 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 permission 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**

Based on the information provided to him, Customer should consider whether the Services are appropriate for Customer’s needs and if provision of Services in accordance with this Agreement will achieve results intended by Customer. Due to the nature of the Services provided, Mimecast does not represent that the Services meet individual Customer requirements or will always be uninterrupted and/or error free.

Customer acknowledges and agrees that reports, graphs, analyses or similar information which may be provided as part of the Services, are based on information known to Mimecast at the time and are provided for Customer’s internal business purpose only. Mimecast will use reasonable efforts to provide accurate and up-to-date information, but does not accept any warranty as to the accuracy or completeness of the information provided.

## 6. **Intellectual Property Indemnification.**

6.1 Indemnification. Mimecast will defend and indemnify Customer, its officers, directors, employees and consultants from the damages, liabilities, and costs awarded by a court to a third party claiming 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.

## 7. **Liabilities.**

### 7.1 General.

(a) Mimecast’s liability is unlimited to the extent such liability arises from Mimecast’s: (i) wilful misconduct; (ii) gross negligence; (iii) personal injury liability; or (iv) liability under the German Product Liability Act (Produkthaftungsgesetz), or a written assumption of a guarantee.

(b) Except for aforementioned Mimecast shall only be liable for damages caused by a breach of a “material contractual obligation”. Which shall be defined, as an obligation, that is essential for the agreed performance of the contract in the first place, the fulfilment of which the Customer can regularly rely on and which if breached may jeopardize the purpose of the contract being achieved.

(c) In the event of Liability subject to section 7.1 (b) such liability shall be limited damages as one may typically expect to occur within the scope of the individual contract, but shall in no event exceed an amount equal to the greater of: (i) €85,000 or (ii) two times the fees paid by Customer to Mimecast (or Reseller) for the applicable Services during the twelve months immediately preceding the event giving rise to the claim.

## 7.2 Statute of Limitations.

Employee Liability. With respect to Section 7.1 (a) the statutory provisions of limitation in accordance with German Law shall apply. In all other cases, claims for damages shall be subject to a limitation period twelve (12) months, commencing with the date, that the damage occurred, and the Customer becomes aware or should have become aware of its occurrence, but in no event later than three (3) years after the occurrence of the damage.

To the extent that Mimecast's liability is excluded or limited under the foregoing provisions, this shall also apply for the benefit of Mimecast's employees in the event of direct claims by the customer against them.

## 8. **Term and Termination.**

8.1 Term. 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 1.6 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 ninety (90) days prior to the end of the then-current Subscription Term.

### 8.2 Termination.

(a) For Breach. 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 days of its receipt thereof. Additionally, if Customer has purchased the Services through a Reseller, Mimecast may terminate these 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.

(b) For Restricted Party Screening. The parties acknowledge that Mimecast on a regular basis conducts a review of its customers to determine whether restrictions or sanctions apply with regards to transacting with them, including but not limited to, those referred to in Section 10.10, ("**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 of pursuant to this Section 8.2(b), Mimecast shall have no further obligations to Customer hereunder.

8.3 Changes to Services. Customer acknowledges that the Services are offered as software-as-a-service and the details of the offerings themselves, including the terms of the Service Levels and Support will change over time and the Support and Service Levels may be adapted by Mimecast to reflect technical advances (or as required for the efficiency, security and integrity) or to allow for continuing compliance with applicable law ("**Continuous Modification**") Mimecast will provide information about Continuous Modifications within a reasonable notice period either by email or by updating the Trust Center. In the unlikely event that a change results in a material degradation of the Services and to the extent that Customer can no longer reasonably be expected to fulfil its obligations under the Service Order, Customer may provide written notice to Mimecast. Such notice shall be provided within two (2) weeks from when Customer first becomes aware such degradation and shall include a detailed description. 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 any applicable Services Order and receive a refund of any fees paid for the remainder of the then-effective Subscription Term. In case Customer does not so terminate, then the Subscription Term described in the Services Order will continue unaffected.

8.4 Suspension of Services. Mimecast may suspend the Services if the Customer fails to pay any undisputed amount within fifteen (15) days 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 3.3, 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 this Agreement: Section 2.4 (*Confidentiality Obligations*), Section 3.3 (*Restrictions*), Section 4 (*Ownership*); Section 5 (*Disclaimer*); Section 6 (*Intellectual Property Indemnification*), Section 7 (*Limitation of Liability*), Section 10 (*General*), and Section 11 (*Governing Law*).

## 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 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. Recurring fees may increase up to 8% at the start of each Renewal Subscription 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 commencement of 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 in the event payment has not been received in accordance with the terms of Section 9.1. If any amount due is not paid within fourteen days of such notice, then Mimecast may charge late interest based on the applicable German statutory late interest rate, 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, 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. 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 and any Service Order in whole or in part to the acquirer of the business in the event of a sale or merger of Customer. Otherwise, Customer shall only be entitled to assign, pledge or otherwise dispose of claims to which it is entitled against Mimecast with Mimecast's express written consent. The provision of § 354a Para. 1 HGB remains unaffected. 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 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 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. 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 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.

10.9 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.

10.10 Export 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 or allow the export or re-export of anything related to 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 or regulations with respect to the export and import of the Services, by Customer or Mimecast.

10.11 Headings; Construction. The headings to the sections and parts of 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. As used in this Agreement "discretion" means sole discretion.

**11. Governing Law**. This Agreement and any disputes hereunder will be governed by the laws of the Federal Republic of Germany, without regard to its conflict of law principles, and any litigation concerning this Agreement shall be submitted to and resolved by a court of competent jurisdiction in Munich, Germany. Notwithstanding the foregoing, either party may seek equitable, injunctive, declaratory or other relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction.

**12. Language**. This Agreement may be available in several languages. In the event of inconsistencies or lack of clarity between the German language and other language versions, the English language version of this Agreement shall exclusively apply as the binding text for its legal effectiveness and interpretation.