



## **Brand Exploit Protect Terms and Conditions**

These Brand Exploit Protect Terms and Conditions (the “**BEP Terms**”) govern Customer’s (defined below) use of Mimecast’s Brand Exploit Protect services (the “**BEP Services**”) and are an addendum to and form part of the services agreement which is in place between the parties or which will be executed concurrently with these BEP Terms (the “**Agreement**”).

If there is any conflict between these BEP Terms and the Agreement, then these BEP Terms shall take precedence. However, any capitalized terms not otherwise defined herein have the same meanings as those noted in the Agreement and the BEP Services are “**Services**” as that term is used in the Agreement.

**BY CLICKING ‘I ACCEPT’ YOU (i) AGREE TO THE TERMS AND CONDITIONS OF THESE BEP TERMS WHICH WILL FORM A BINDING CONTRACT BETWEEN MIMICAST AND THE CORPORATION, BUSINESS OR ENTITY YOU REPRESENT (THE “CUSTOMER”); (ii) AGREE THAT THE BEP SERVICES ARE SUBJECT TO BOTH THESE BEP TERMS AND THE AGREEMENT; AND (iii) YOU REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE CUSTOMER TO THESE BEP TERMS.**

**IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THESE BEP 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 BEP TERMS OR CONTINUE WITH USE OF THE BEP SERVICES.**

**1. BEP Services.** The BEP Services are designed to protect Customer’s domains (each, a “**Domain**”) from illegitimate use by a third-party to create and/or register an imposter website. Customer must identify each Domain to be protected in writing to Mimecast, up to the maximum number of Domains listed on the applicable Services Order. It is Customer’s responsibility to inform Mimecast of any additional Domains to be protected. Additional Domains may be subject to additional fees. The Mimecast Brand Exploit Protect Service is hosted in Google GCP Belgium.

**1.1 Takedowns.** Customer acknowledges and agrees that Mimecast will monitor for replications of Customer’s Domains, and in the event of a discovered Domain replication Mimecast will seek confirmation from Customer that a discovered Domain is illegitimate and unauthorized by Customer. Subject to its receipt of such confirmation from Customer, Mimecast will report the imposter Domain to third party blocking sites and approach third-party registrars to request that the imposter Domain be disabled or blocked (each, a “**Takedown**”). Customer shall be responsible for all confirmations provided to Mimecast with regards to Takedowns whether in writing or via confirmation within the customer’s account or Mimecast administrative console. Takedowns are treated as the Professional Services referenced in the Agreement and are limited to the number listed on the Services Order. Due to the nature of the Services provided, personnel will be available 24/7 to provide Support for the BEP Services. Takedowns will be charged per request received and not upon completion of a successful Takedown.

**1.2 Web Scraping Tracker.** The subscription fee for the BEP Services includes a limited, non-exclusive, non-transferable usage license to a script that Customer may add to each Domain for Customer’s internal business purposes only during a Subscription Term (each, a “**Web Scraping Tracker**”). Customer is solely responsible for deploying the Web Scraping Tracker to Customer’s website code. Customer’s rights are limited to those specifically granted to Customer herein. Mimecast reserves all right, title, interest and ownership of the Web Scraping Tracker, and Customer shall gain no right, title, interest or ownership in the Web Scraping Tracker as a result of these BEP Terms, the Agreement or the provision of the Services.

**1.3 Restrictions.** Specifically as regards the BEP Services described herein, Customer will not: (a) use the BEP Services in any manner 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); (b) register any Domain with Mimecast for the BEP Services, unless said Domain is owned or legally controlled by Customer; or (c) engage in any activity that could reasonably be expected to interfere with or disrupt the BEP Services. In addition to any indemnification obligations contained in the Agreement, Customer will hold harmless, defend and indemnify Mimecast in the event of any third-party claim or regulatory action arising out of Customer’s breach (or alleged breach) of this Section 1.3.

## **2. Security and Confidentiality for BEP.**

**2.1 Security.** Mimecast will implement and maintain appropriate administrative, technical, organizational and physical security measures for the BEP Services. Customer acknowledges and agrees that, in the course of providing the BEP Services to Customer, it may be necessary for Mimecast to access Customer’s account (including any data stored therein) to respond to technical problems or Customer queries and to ensure the proper working of the BEP Services; such access may originate from any jurisdiction where Mimecast maintains support personnel. A list of the locations from

which Support is provided and Mimecast's certifications, attestations and assessments are posted to <https://www.mimecast.com/company/mimecast-trust-center/> (the "Trust Center").

2.2 **Data Protection Laws.** Mimecast acknowledges that, as between the parties, Customer owns and controls the right, title and interest in and to any information or data provided by Customer for processing for the BEP Services. With respect to any information that relates to an identified or identifiable natural person that is processed through the BEP Services ("**Personal Data**"), Customer acts as data controller and Mimecast acts as data processor. Mimecast will use and process the Personal Data solely in accordance with Customer's Instructions. The "**Instructions**" are embodied in the Agreement, these BEP Terms, the applicable Service Order(s), and any applicable Data Processing Agreement, and as may be additionally communicated by Customer to Mimecast in writing from time-to-time. Where permitted by applicable law, Mimecast may process, transfer or copy Personal Data in the United States or other countries or jurisdictions outside of the country where it was collected. Customer is responsible for providing any requisite notice and obtaining any consents (if required) for such processing and transfer of Personal Data, including international transfers.

2.3 **Data Processing Agreement.** As required by law or as otherwise agreed by the parties, data protection measures may be described in more detail in a data processing agreement separately entered into by the parties, which will be made supplementary to these BEP Terms ("**Data Processing Agreement**"). In the event of any conflict between these BEP Terms and the Data Processing Agreement, the Data Processing Agreement shall prevail, except as expressly provided in this Section 2.3. As regards any Data Processing Agreement made effective prior to 17 February 2020, Sections 5.2 and 5.3 of the Data Processing Agreement are hereby deleted in their entirety and replaced with the following:

*"5.2 If Data Processor receives a Data Subject Request, and it is clear from the nature of the request without the need for any independent investigation that the Data Controller is the applicable controller of Data Subject's Personal Data, Data Processor will refer the Data Subject to Data Controller, unless otherwise required by Applicable Law. In the event Data Processor is legally required to respond to the Data Subject, Data Controller will fully co-operate with Data Processor as appropriate. To the extent they are available through the BEP Services, Data Controller agrees that provision of technical tools to enable Data Controller to take the necessary action to comply with such request/s shall be sufficient to discharge Data Processor's obligations of assistance hereunder.*

*5.3 To the extent the BEP Services provide technical tools for a Data Controller to comply with any Data Subject Requests, Data Controller will reimburse all reasonable costs incurred by Data Processor as a result of reasonable assistance provided by Data Processor under this Clause 5."*

### 3. **Intentionally Omitted.**

### 4. **Intellectual Property Claims.**

4.1 **By Mimecast.** 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 BEP Services infringe any copyright, moral right, trade secret, trade or service mark, or patent issued in country that is a signatory to the Berne Convention (each, an "**Intellectual Property Claim**").

4.2 **Resolution of Intellectual Property Claim.** Mimecast may, at its expense and discretion, attempt to resolve any Intellectual Property Claim by: (a) modifying the BEP Services to avoid the alleged infringement; (b) obtaining a license to permit Customer's use of the BEP Services as contemplated by these BEP Terms; or (c) terminating the rights set forth in these BEP 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 above-described resolution. Mimecast will have no liability under this Section 4 to the extent any claim results from the combination of the BEP Services with third-party products, services, data or business processes by Customer or from instructions, content or information supplied by Customer.

4.3 **By Customer.** Customer will defend, indemnify and hold harmless Mimecast, its officers, directors, employees and consultants against any third-party claim, suit, proceeding or regulatory action arising from any action undertaken by Mimecast against any third-party at Customer's direction in pursuit of the activities relating to the BEP Services, including but not limited to any Takedowns.

4.4 **Conditions.** The indemnified party shall give the indemnifying party prompt written notice of any claim on which indemnified party intends to base a request for indemnification ("**Claim Notice**"). Failure by the indemnified party to provide a Claim Notice to the indemnifying party does not relieve the indemnifying party of its obligations under this Section 3; however, in such case the indemnifying Party will not be liable for any losses resulting from such delay. In the case of an Intellectual Property Claim, Mimecast will have sole control of the defense and/or settlement of the applicable matter. In all other cases, neither party will settle a matter under this Section 4 if such settlement requires the other party to admit fault or wrongdoing, or to pay any financial award without the other party's pre-approval; such

approval will not be unreasonably withheld. The parties agree to each cooperate with each other, to a reasonable degree, but always at the indemnifying party's expense. Section 4.2 sets forth Mimecast's entire means to resolve an Intellectual Property Claim. Any further damage claims in this respect will be subject to the following section.

## 5. Liabilities

### 5.1 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 5.1 (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.

### 5.2 Statute of Limitations.

Employee Liability. With respect to Section 5.1 (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.

**6. Payment. This Section 5 does not apply if Customer has contracted separately with a Reseller as to the pricing and invoicing for the BEP Services; for clarity, this Section 5 of these BEP Terms will have no effect unless fees are listed in the Services Order and Customer will be invoiced for the BEP Services directly by Mimecast.**

6.1 Fees and Payment Terms. This Section 6 is supplemental to the payment terms included in the Agreement. The BEP Services include a fixed number of Domains and Takedowns, as noted on the Services Order. Customer may not reduce the number of Takedowns or Domains associated with a Services Order during a Subscription Term. BEP Services that are unused during a Subscription Term are not refundable or eligible for use during a future Subscription Term. Customer may increase the number of Domains or Takedowns during a Subscription Term for an additional fee.

## 7. Proof of Concept.

If Customer has subscribed to the trial version of the BEP Services, such trial shall include one Takedown for evaluation purposes only. Access to the Proof of Concept will be terminated upon expiration of the Proof of Concept Period and shall not be eligible for renewal following such expiration (notwithstanding any provision to the contrary in the General Terms and Conditions). Should Customer wish to continue use of the BEP Services following expiration of the Proof of Concept Period, a full subscription to the BEP Services will be required. No additional Takedowns may be purchased during the Proof of Concept Period and the single included Takedown shall expire at the end of the Proof of Concept. Notwithstanding any provision to the contrary herein, in respect of the Proof of Concept, Customer acknowledges and agrees that: (i) Mimecast has no obligation to retain any Personal Data related to the Trial Services after termination or expiration of the Proof of Concept Period; (ii) either party may terminate the Proof of Concept immediately and without liability upon written notice to the other party; (iii) Mimecast's Support levels do not apply to the Proof of Concept; and (iv) the Proof of Concept is provided "as is" and (v) notwithstanding anything included in this Agreement to the contrary, Mimecast shall have no indemnification obligations nor any liability of any type with respect to the Proof of Concept. Exclusion in 7 (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.

**"Proof of Concept Period"** means a one-Takedown/ one-month Subscription Term or any other Subscription Term which is less than 12 months and described in the Services Order as a trial.