



## **CCPA Service Provider Addendum**

This CCPA Service Provider Addendum (the “**Addendum**”) is entered into by the customer (“**Customer**”) and the applicable Mimecast entity providing the Services (“**Mimecast**” or the “**Service Provider**”) with each of the Customer or Mimecast referred to as a party and collectively as the parties. This Addendum shall form a part of and is incorporated into the services agreement currently in place between the parties or which will be executed concurrently with this Addendum (collectively, the “**Agreement**”). This Addendum reflects the parties’ agreement on the Processing of Personal Information in connection with the California Consumer Privacy Act of 2018, as amended by the California Privacy Rights Act (collectively, the “**CCPA**”) and shall be effective as of the date of the last signature appearing below (the “**Effective Date**”).

### **HOW THESE TERMS APPLY:**

The provisions of this Addendum are effective solely to the extent the CCPA applies. Customer is solely liable for its compliance with the CCPA in its use of Services (defined below). If there is any conflict or inconsistency between this Addendum and the Agreement, including a Data Processing Agreement that may be executed between the parties (the “**DPA**”), then this Addendum shall control. In the event of changes to the CCPA or issuance of any applicable regulation or court order or governmental guidance relating to the CCPA, the parties may amend this Addendum upon mutual agreement.

1. **Definitions.** All capitalized terms used in this Addendum and not otherwise defined shall have the same meaning attributed to them in the Agreement and/or the DPA. The following definitions have the meanings set out below.

“**Affiliate**” means an entity that controls, is directly or indirectly controlled by, or is under common control of the relevant party;

“**Authorized Affiliate**” means any of Customer’s Affiliate(s) which (a) is subject to the CCPA, and (b) is permitted to use the Services pursuant to the Agreement between Customer and Mimecast, but has not signed its own Agreement with Mimecast and is not a “Customer” as defined under the Agreement;

“**Applicable Law**” means the CCPA;

“**Business Purpose**” means those limited and specific purposes of providing any and all services by Mimecast as identified in the Agreement and this Addendum and further described in the Trust Center and an ordering document referencing the Agreement (the “**Services**”);

“**Consumer Request**” means a request from a Consumer in accordance with Applicable Law;

“**Customer Data**” means data provided by Customer for processing via the Services including, without limitation, the contents of the files, emails or messages sent by or to a Permitted User;

“**Customer Personal Information**” means Personal Information under the control of the Customer and Processed by Mimecast in connection with the performance of the Services;

“**Third Party**” means any person (including companies, entities, organizations, etc.) that is not the Customer or Mimecast;

“**Third-Party Subcontractor**” means the third-party subcontractors listed in Schedule 1, as such list may be updated from time to time pursuant to Clause 6; and

“**Trust Center**” means the website created by Mimecast which includes relevant content referenced in this Addendum and otherwise related to Applicable Law as well as Mimecast’s operations and is found here: <https://www.mimecast.com/company/mimecast-trust-center/>.

The terms “**Consumer**” “**Personal Information**”, “**Process**” and “**Sale**” (as well as any derivative thereof) as used in this Addendum have the meanings given in the CCPA.

## 2. Processing.

### 2.1 Mimecast represents:

**2.1.1** it shall Process Customer Personal Information on behalf of Customer in accordance with and for the Business Purpose. Further details about Mimecast's Processing of Customer Personal Information are found on the Trust Center. Notwithstanding the foregoing, Mimecast may Process Customer Personal Information as may otherwise be permitted for service providers or under a comparable exemption from "Sale" under Applicable Law, as reasonably determined by Mimecast.

**2.1.2** except as set forth herein, it shall not Sell (as such term may be defined under Applicable Law) Customer Personal Information or release, disclose, disseminate, make available, transfer or otherwise communicate Customer Personal Information to any third party;

**2.1.3** it shall promptly inform Customer if, in Mimecast's opinion, it cannot comply with Applicable Law; and

**2.1.4** It understands the restrictions placed on it under this Clause 2.1.

### 2.2. Customer represents:

**2.2.1.** its use of the Services and the instructions provided do not contravene Applicable Law; and

**2.2.2.** it has complied and continues to comply with Applicable Law, in particular that it has obtained any necessary consents and/or given any necessary notices, and/or otherwise has the right to disclose Customer Personal Information to Mimecast and enable the Processing set out in this Addendum and as contemplated by the Agreement.

2.3. Customer understands that Customer Personal Information transferred to Mimecast is determined and controlled by Customer in its sole discretion. As such, Mimecast has no control over the volume and sensitivity of Customer Personal Information Processed through its Services by Customer or its users. Mimecast shall implement and maintain the technical and organisational security measures specified in Schedule 3 hereto before Processing Customer Personal Information and shall continue to comply with such technical and organizational security measures as a minimum standard of security during the term of the Agreement.

3. **Notification of Security Breach.** Mimecast shall notify Customer without undue delay (and in no event more than 48 hours, with periodic updates to follow as may be necessary) of a declared breach of security which has led to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Information which affects the integrity, availability or confidentiality of Customer Personal Information ("**Security Breach**"). For the avoidance of doubt, Security Breaches will not include unsuccessful attempts to, or activities that do not, compromise the security of Customer Personal Information including, without limitation, unsuccessful log in attempts, denial of service attacks and other attacks on firewalls or networked systems and no notice of the foregoing shall be required. In the event a Security Breach requires notification by Customer to Consumers or relevant authorities, the parties agree to coordinate in good faith on developing the content of any public statements or required notices.

## 4. Audit and Inspection.

4.1 Taking into account the nature of the Processing and the information available to Mimecast, Mimecast shall provide reasonable assistance in response to inquiries from Customer relating to Mimecast's Processing of Customer's Personal Information.

4.2 Mimecast shall, upon written request from Customer, provide Customer with information reasonably necessary to demonstrate compliance with its obligations set forth in this Addendum. This information shall consist of permitting examination of the most recent reports, certificates and/or extracts prepared by an independent auditor pursuant to Mimecast's ISO27001 or similarly held industry certification.

4.3 In the event the information provided in accordance with Clause 4.2 above is insufficient to reasonably demonstrate compliance, Mimecast shall permit Customer to inspect or audit the technical and organisational measures of Mimecast for the purposes of monitoring compliance with Mimecast's obligations under this Addendum. Any such audit or inspection shall be:



- (i) at Customer's expense;
- (ii) limited in scope to matters specific to Customer;
- (iii) agreed in advance between the parties in writing, including scope, duration, start date and Mimecast's then-current rates for professional services;
- (iv) conducted in a way that does not interfere with Mimecast's day-to-day business;
- (v) during local business hours of Mimecast and, upon not less than twenty (20) business days advance written notice unless, in Customer's reasonable belief an identifiable, material non-conformance has arisen;
- (vi) limited to no more than once per any twelve (12) calendar month period, except if (i) required by instruction of a competent Regulator; or (ii) in case of a Security Breach; and
- (vii) subject to the confidentiality obligations in the Agreement or, where a third-party auditor conducts the audit, such third-party auditor must be a professional bound by a duty of confidentiality or subject to a suitable non-disclosure agreement.

4.4 Any audit conducted under this Section shall not be conducted by a party who is a competitor of Mimecast or provides services to a competitor of Mimecast.

4.5 Customer will provide Mimecast with copies of any audit reports generated in connection with any audit under this Section, unless prohibited by Applicable Law. Customer may use the audit reports only for the purposes of meeting its regulatory audit requirements and/or confirming compliance with the requirements of this Addendum.

5. **Compliance, Co-operation, and Response.** Taking into account the nature of the Processing and the information available to Mimecast, Mimecast will provide reasonable assistance to Customer in complying with any Consumer Requests or requests received by Customer from applicable authorities that occur in accordance with Applicable Law.

5.2. If Mimecast receives a Consumer Request, and it is clear from the nature of the request without the need for any independent investigation that Customer is the applicable controller of Customer Personal Information, Mimecast will refer the Consumer to Customer, unless otherwise required by Applicable Law. In the event Mimecast is legally required to respond to the Consumer, Customer will fully co-operate with Mimecast as appropriate. Customer agrees that provision of technical tools to enable Customer to take the necessary action to comply with such request(s) shall be sufficient to discharge Mimecast's obligations of assistance hereunder.

5.3. Customer will reimburse all reasonable costs incurred by Mimecast as a result of reasonable assistance provided by Mimecast under this Clause 5.

6. **Sub-Contracting.**

6.1. Customer hereby consents to the use of the Third-Party Subcontractors to perform Services. Subcontracting for the purpose of this Addendum is to be understood as meaning services which relate directly to the provision of the principal obligation related to the processing of Customer Personal Information pursuant to the Agreement. This does not include ancillary services, such as telecommunication services, postal/transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment. Mimecast agrees that it has a written agreement in place with all Third-Party Subcontractors that contains obligations on the Third-Party Subcontractor that are no less onerous on the relevant Third-Party Subcontractor than the obligations on Mimecast under this Addendum in respect of the specific Services provided by the Third-Party Subcontractor.



- 6.2. **Change to Third Party Subcontractors.** If Mimecast appoints a new Third-Party Subcontractor or intends to make any changes concerning the addition or replacement of the Third-Party Subcontractors, it shall provide Customer with reasonable advance written notice. For the purposes of this Clause 6.2, notice may be provided electronically, including but not limited to posting on the Mimecast administrative console of the Services, a notice on the Trust Center and/or in a e-newsletter sent to Customer (if Customer has subscribed to such e-newsletter via Mimecast's online preference center).
7. **Confidentiality.** The Confidentiality provisions in the Agreement shall apply equally to this Addendum.
8. **Liability.**
- 8.1. **Limitations.** The parties agree that Affiliates of Mimecast and/or Third-Party Subcontractors Processing Customer Personal Information hereunder shall be bound by data protection obligations no less protective than the data protection obligations as specified in this Addendum. It is further agreed that the aggregate liability of the Affiliates, Third-Party Subcontractors and Mimecast under this Addendum shall be no greater than the aggregate liability of Mimecast under the Agreement, to the extent permissible by Applicable Law. If Customer has contracted the Services through a managed services provider ("MSP"), Customer shall have no direct right of action against Mimecast with regards to the general provision of the Services and/or any instruction received from or access granted by the MSP, and all such claims should be brought against Customer's MSP. For the avoidance of doubt, the limitations of liability in the Agreement shall apply to this Addendum. Neither Customer nor any of its Authorized Affiliates shall be entitled to recover more than once in respect of the same claim under this Addendum.
9. **Termination.** Termination of this Addendum shall be governed by the Agreement.
10. **Consequences of Termination.** Upon termination of this Addendum in accordance with Clause 9, Mimecast shall, at Customer's request:
- 10.1. delete all Customer Personal Information Processed on behalf of Customer, unless applicable laws, regulations, subpoenas or court orders require it to be retained; or
- 10.2. assist Customer with the return to Customer of Customer Personal Information and any copies thereof which it is Processing or has Processed upon behalf of Customer. Customer acknowledges and agrees that the nature of the Services mean that Customer may extract a copy of Customer Personal Information at any time during the term of the Agreement, and providing the tools to allow Customer to do so shall be sufficient to show Mimecast has complied with this Clause 10.2. If Customer requires Mimecast to extract Customer Personal Information on its behalf, Customer must engage Mimecast in a professional services project, which shall be subject to additional fees; and
- 10.3. in either case, cease Processing Customer Personal Information on behalf of Customer, except as may otherwise be required in accordance with subparagraph (i) above.
11. **Law and Jurisdiction.** This Addendum shall be governed by and construed in all respects in accordance with the governing law and jurisdiction provisions in the Agreement, provided that, in the event of a conflict between the Agreement and this Addendum with regards to the Processing of Customer Personal Information, this Addendum shall control.

This Addendum may be executed in any number of counterparts, each of which is an original and all of which evidence the same agreement between the parties.

**Customer**

By: \_\_\_\_\_

Name: \_\_\_\_\_

**Mimecast**

By: \_\_\_\_\_

Name: Michael Paisley



Title: \_\_\_\_\_

Title: Data Protection Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_



**Schedule 1 to the Addendum**

**Third-party subcontractors**

Mimecast shall maintain a list of Third-Party Subcontractors at:

<https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/sub-processors/>



## Schedule 2 to the Addendum

### Technical and Organisation Security Measures

Mimecast shall implement the technical and organisational security measures specified on the Trust Center <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/technical-organizational-measures/> as a minimum security standard. Customer acknowledges and agrees that the nature of the Services mean that the technical and organisational measures may be updated by Mimecast from time-to-time but such updates shall not result in a lesser standard of security to that in place upon signature of this Addendum.