These Terms and Conditions ("Terms") govern the use of the services provided by Mimecast as described further in a Services Order referencing these Terms (collectively, the "Services"), and are entered into by the customer as identified in the Services Order ("Customer") and Mimecast Germany GmbH ("Mimecast"). In the event of any conflict between these Terms and the Services Order, the Services Order will control.

Customer terms that are contrary to or deviate from these Terms shall not apply. Mimecast’s silence regarding such deviating or conflicting terms shall not be considered as approval or acceptance. These Terms shall apply even if Mimecast delivers the Services to Customer, even where Mimecast was aware of conditions that are contrary to or deviate from these Terms. Customer may subscribe to the Services directly from Mimecast or through a reseller ("Reseller"). In either event, Customer and Mimecast each agree to these Terms as a condition of the provision of the Services by Mimecast. These Terms 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 and Material described in each Services Order in accordance with the applicable Services Order, these Terms and the applicable Services documentation available at [https://community.mimecast.com/community/knowledge-base](https://community.mimecast.com/community/knowledge-base) ("Documentation"). A “Services Order” is any transactional document (such as a customer quote, a customer confirmation or a statement of work) that references these Terms and is agreed to by the parties. Each Services Order will include:

- A description of the Services, Support, and Professional Services (if any) to be provided to Customer (each, a “Services Description”)
- The number of users of the Services (individuals employed by or otherwise under Customer’s control) (each, a “Permitted User”)
- The term of the Services subscription (“Subscription Term”)
- Identification of the country where Mimecast has located the data centers where the Services will be based (the “Hosting Jurisdiction”)
- Any additional terms agreed to by the parties.

1.2 Support and SLA. Mimecast will provide certain on-going support services in connection with Customer’s use of the Services (“Support”), as described in the “Support Description”. In addition, Mimecast will maintain certain service levels as described in the “Service Levels”. The Support Description and Service Levels are available at [www.mimecast.com/contracts](http://www.mimecast.com/contracts).

1.3 Professional Services. At Customer’s request, Mimecast will provide professional services to Customer ("Professional Services"). Professional Services may be described in a Services Order or mutually agreeable statement of work. Mimecast will perform such Professional Services in a professional and workmanlike manner, consistent with industry standards. In the event Mimecast’s performance does not conform to the terms of the applicable statement of work or Services Order, Customer will notify Mimecast of such failure within fifteen days after delivery of the Professional Services (“Acceptance Period”). Promptly after receipt of Customer’s notice Mimecast will re-perform the non-conforming Professional Services at no additional cost to Customer, as Customer’s exclusive remedy. After the Acceptance Period, any additional Professional Services will be subject to a new Services Order. Mimecast shall not be deemed in breach of its obligations under this Section 1.3 to the extent that Mimecast is delayed or prevented from performing due to an act or omission of Customer.

2. Data Protection and Confidentiality.

2.1 Customer Data. "Customer Data" means the data processed through Customer’s use of the Services, including where relevant to the Services the contents of the files and emails sent by or to Permitted Users. "Personal Data" is Customer Data that relates to an identified or identifiable natural person.

2.2 Security. Mimecast will implement and maintain appropriate administrative, technical, organizational and physical security measures to protect Customer Data against unauthorized access, disclosure or loss. Customer acknowledges and agrees that, in the course of providing the Services, Professional Services, and Support 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 a list of Mimecast’s certifications, attestations and assessments, is available at [https://www.mimecast.com/company/mimecast-trust-center/](https://www.mimecast.com/company/mimecast-trust-center/) (the “Trust Center”). Mimecast may update the Trust...
Center from time to time. Where required hereunder (or in accordance with any Data Processing Agreement), Mimecast shall notify Customer of such changes in advance, provided that Customer has registered to receive such notifications via the Trust Center. Customer is responsible for maintaining up-to-date contact information for said notifications.

2.3 Data Protection Laws. As required by law or as otherwise agreed by the parties, data protection measures may be described in more detail in a data processing agreement, which will be made supplementary to these Terms ("Data Processing Agreement"). In the event of any conflict between these Terms and a Data Processing Agreement, the Data Processing Agreement shall prevail. Mimecast acknowledges that, as between the parties, Customer owns and controls the right, title and interest in and to the Customer Data. Mimecast will collect and protect the Customer Data in compliance with the applicable laws and regulations of the Hosting Jurisdiction, including without limitation, as applicable, the requirements of European Economic Area data protection law, the Federal Data Protection Act (Bundesdatenschutzgesetz) and, the General Data Protection Regulation (Regulation (EU) 2016/679). With respect to any 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 these Terms, the applicable Service Order(s), any applicable Data Processing Agreement and as may be additionally communicated by Customer to Mimecast from time-to-time. Where permitted in accordance with applicable law, Mimecast may process Customer Data which may include 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 consent (if required) from Permitted Users for such processing and transfer of Personal Data, including international transfers.

2.4 Confidentiality Obligations.

(a) Definitions. "Confidential Information" means all financial, commercial, technical, operational, organizational, staff, legal, management and other information, data and know-how regarding our respective Groups, and the Purpose, including either party’s respective products and services, assets, networks, turnover, profits, customers, suppliers and employees which may be supplied orally or in writing or in any other form by either party. For clarity, Customer’s Confidential Information also includes Customer Data, and Mimecast’s Confidential Information also includes any 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 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.

(b) Obligations. Confidential Information is and will remain the exclusive property of the Disclosing Party. In addition to any other obligations required of it under Section 2 herein, the Receiving Party will: (i) use Disclosing Party’s Confidential Information solely for the performance of the activities contemplated by these Terms or the Services Order; (ii) disclose such information only to its employees, agents, and contractors who are bound by obligations of confidentiality at least as strict as those contained in this Section 2.4(b); (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.

3. Customer Activities.

3.1 Customer Use. Customer will use the Services for its own internal business purposes and will not transfer, resell, license or otherwise make the Services or the Material (as defined below) available to third parties. Customer will use the Services as reasonably directed by Mimecast, subject to Section 2.3 and the provisions of any Data Processing Agreement.

3.2 Access Control. Customer will allow only the number of Permitted Users shown in the applicable Services Order to access and use the Services. 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: (a) use the 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) use the Services in a manner that violates any industry standards concerning unsolicited email; (c) use the Services in a manner that introduces any viruses, malicious code, or any other items of a harmful nature; or (d) engage in any activity that could reasonably be expected to interfere with or disrupt the Services (for example, an activity that causes Mimecast to be blacklisted by an internet service provider). Customer will
defend and 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.

4. Payment.

This Section 4 will apply only if Customer subscribes to the Services directly from Mimecast. If Customer subscribes the Services through a Reseller, the pricing and invoicing terms will be agreed between Customer and Reseller directly and the following terms will not apply.

4.1 Fees and Payment Terms. Customer will pay any fees set forth in any agreed Services Order. Fees are due net thirty days from the invoice date. Mimecast will provide instructions for payment in the applicable Services Order or through some other reasonable means. Recurring fees may increase up to 5% at the start of each renewal Subscription Term.

4.2 Professional Services Fees. Fees for any Professional Services to be performed by Mimecast shall be invoiced in full promptly after the Effective Date (unless otherwise indicated on a Services Order). If such professional services include import of historical Customer Data into the Services, then Customer must provide the volume of Customer Data shown on the Services Order to Mimecast within twelve months of the Effective Date. Customer Data received for import by Mimecast after the expiration of the twelve-month period will be subject to a separate charge. If the amount of Customer Data actually provided to Mimecast for import within twelve months of the Effective Date of the Services Order exceeds the amount shown therein, Mimecast will invoice Customer a pro-rated amount based on the per gigabyte charge listed in the Services Order.

4.3 Disputed Invoices. Customer may dispute an invoice (or a portion thereof) by providing Mimecast with written notice; such notice must be received by Mimecast within fifteen days of Customer’s receipt, or the invoice shall be deemed accepted. Such notice will include a description of the basis for Customer’s dispute. The parties will work together in good faith to resolve any such dispute promptly.

4.4 Late Payment. Customer will be notified in the event payment has not been received in accordance with the terms of Section 4.1. 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.

4.5 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 these Terms. Customer is responsible for paying any such taxes, excluding taxes based on Mimecast’s net income.

5. Ownership

5.1 Ownership of the Services. The parties acknowledge and agree that Mimecast has no ownership rights and intellectual property rights to Customer Data. Mimecast and its third-party licensors will retain all ownership and intellectual property rights in and to the Services and its underlying systems, as well as to the Material. “Material” includes collateral such as training materials, video training modules, user surveys, and user assessments made available to Customer by Mimecast. Customer’s rights are limited to those expressly stated in these Terms. Notwithstanding any provision herein to the contrary, nothing in these Terms is intended to limit Customer’s liability in the event of Customer’s violation of Mimecast’s ownership and intellectual property rights, and any claim with respect to such violation will not be deemed governed by these Terms. 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.

5.2 Aggregated Data and Threat Data. Notwithstanding any provision herein to the contrary, Mimecast owns: (i) the aggregated data derived from the Service as aggregated with usage data from Mimecast’s other customers, including, without limitation, utilization statistics, reports, logs and information regarding spam, viruses or other malware processed by the Services ("Aggregated Data"); and (ii) all data identified through the Services as malicious, such as that which may perpetuate data breaches, malware infections, cyberattacks or other threat activity ("Threat Data"). Neither Aggregated Data nor Threat Data will include any Personal Data. Customer agrees that Mimecast may process Aggregated Data or Threat Data for its business purposes and/or may share Aggregated Data or Threat Data with third-parties.

5.3 Feedback. Mimecast owns an unlimited right 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.

6. Intellectual Property Claims
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 in the applicable Hosting Jurisdiction and in the country where Customer is domiciled provided the Customer provides prompt written notice of the applicable claim to Mimecast and cooperates in Mimecast’s defense, as reasonably requested by Mimecast and at Mimecast’s expense. Furthermore, the Customer will have to give Mimecast the sole control of the defense and settlement negotiations and the information and authority Mimecast needs to defend against or settle the claim. If Customer ceases to use the Services to mitigate loss or for other just reason, Customer must notify said third party that such cessation does not imply any recognition of the claimed infringement.

6.2 Additional Terms. Mimecast may, at its expense and discretion, attempt to resolve any indemnified claim by: (a) modifying the Services or Material to avoid the alleged infringement (while substantially preserving its utility or functionality); or (b) obtaining a license to permit Customer’s use of the Services or Material as contemplated by these Terms or (c) terminating the rights set forth in these 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 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 or information supplied by Customer.

6.3 Entire Liability. This Section 6 sets forth Mimecast’s entire liability and Customer’s sole remedies in connection with any matters concerning any intellectual property rights relating to the Services or the Material. Customer agrees that any and all implied indemnification obligations that may apply to these Terms are hereby excluded.

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).

(b) In cases of gross negligence, Mimecast’s liability is limited to the amount of foreseeable loss that would have been prevented through the exercise of due care, or, as appropriate, to the amount of foreseeable loss that would have been prevented by the presence of the guaranteed quality.

(c) Subject to Section 7.1(a) and (b), Mimecast is not liable under these Terms except for a breach of a Major Obligation (Kardinalpflicht) up to 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 preceding the event giving rise to the claim. The parties acknowledge and agree that a “Major Obligation” is a duty which is a necessary prerequisite for Mimecast’s contractual performance hereunder, or where the breach of the relevant duty jeopardizes the purpose of the contract and where Customer could legitimately rely upon its fulfilment.

7.2 Contributory Negligence. Notwithstanding Section 7.1, Customer acknowledges that Mimecast may claim contributory negligence (for example, where Customer has breached its obligations under Section 3 herein).

7.3 Expiration. All claims against Mimecast in contract, tort, or otherwise for loss or wasted anticipatory expenditure are barred after a period of one year. That period begins at the point in time specified in the German Civil Code, Section 199(1). Except for cases of willful misconduct and damage to life, bodily injury or damage to health, any liability claims against Mimecast may only be raised by Customer via written notice to Mimecast within four weeks of the damaging event or the proven date when the Customer became aware of the damage, whichever occurs later. Failing this, Customer’s liability claims shall expire.

8. Term and Termination

8.1 Term.

These Terms will remain in effect until the conclusion of all agreed-to Services Orders between Customer and Mimecast. The Subscription Term in the initial Services Order (the “Initial Subscription Term”) will renew automatically for periods of twelve months (each period a “Renewal Term”), unless one party gives the other party written notice of its intent not to renew at least thirty days prior to the end of the Initial Subscription Term or the Renewal Term.

8.2 Termination.

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

(b) For Breach. Either party may terminate these Terms immediately on giving notice in writing to the other party if the other party commits any material breach of any term of these Terms or related Services Orders and has not cured such breach within thirty days of its receipt of written notice of the breach. 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.

8.3 Changes to Services.

The Services are offered as software-as-a-service. The features of the Services will therefore change over time and the Support Description and Service Levels may be 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 impairment of the provision and quality of the Services, to the extent that Customer can no longer reasonably be expected to fulfill its obligations under the Service Order, Customer may provide written notice to Mimecast including a description of the change within two weeks from when Customer first becomes aware. If the identified impairment is not corrected by Mimecast within thirty 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 in the event Customer fails to pay any amount due within fifteen days of Mimecast’s (or Reseller’s) notice to Customer of such failure to pay. Additionally, in the event Customer’s account is the subject of denial of service attacks, hacking attempts or other malicious activities, or Customer’s activities reasonably appear to be in breach of Section 3.3, Mimecast will work with Customer to resolve such matters as soon as possible. In such circumstances, to protect Mimecast’s own systems, Customer acknowledges that Mimecast may be required to suspend the Services until the issues are resolved. Mimecast will provide advance notice to Customer of such suspension where reasonably practicable.

8.5 Survival. Customer’s payment obligations, the provisions of this Section and the provisions of the following Sections will survive any termination of these Terms: Section 2 (Data Protection), Section 3.3 (Restrictions), Section 6 (Intellectual Property Claims), Section 7 (Liabilities) and Section 9 (General).

9. General

9.1 Transition from Reseller. If Customer transitions from its then-current Reseller to a new authorized Mimecast reseller, Customer will notify Mimecast in writing. In that event, Customer agrees that the terms and conditions of these Terms will continue to apply to Customer’s use of the Services (in addition to the pricing and other terms provided by Customer’s new reseller). In the event Mimecast terminates its relationship with Customer’s then-current Reseller, Mimecast will notify Customer in writing and will provide a description of the plan to maintain the Services through the end of the applicable Subscription Term. At the end of such term, Customer may continue to receive the Services through the authorized reseller of its choice.

9.2 Legal Demands. Notwithstanding any provision herein to the contrary, Customer Data may be retained and disclosed by Mimecast as required to comply with applicable laws, regulations, subpoenas or court orders or to otherwise enforce its rights under these Terms. Where allowed by law, Mimecast will provide reasonable prior written notice to Customer to permit Customer to seek a protective order and will cooperate in Customer’s activities under this Section 9.2, at Customer’s expense. Mimecast will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

9.3 Force Majeure. Neither party will be liable for any delay in performance or failure to perform its obligations under these Terms 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.

9.4 Assignment. Customer may assign these Terms 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. These Terms will be binding upon the parties hereto and any authorized assigns.
9.5 **Notices.** Any notices relating to these Terms must be provided in writing and sent to the receiving party at the address set out in the applicable 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.

9.6 **Entire Agreement.** The parties acknowledge that no Reseller is entitled to modify the terms of these Terms, including the Support Description or Services Levels or to otherwise make promises, representations or warranties on behalf of Mimecast. No purchase order or other communication will add to or vary these Terms. Any purchase order or other terms provided by Customer will be accepted by Mimecast for invoicing purposes only.

9.7 **Modifications and Severability.** Except as expressly provided herein, any modification to these Terms must be made in writing and signed by an authorized representative of each party. If any provision of these Terms is held to be unenforceable, such provision will be reformed to the extent necessary to make it enforceable, and such holding will not impair the enforceability of the remaining provisions.

9.8 **Waiver.** The failure by a party to exercise any right hereunder or to insist upon or enforce strict performance of any provision of these Terms will not waive such party's right to exercise that or any other right in the future.

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

9.10 **Independent Contractors.** Each party to these Terms will be acting as an independent contractor, and nothing herein will be construed to create a partnership, joint venture or any type of agency relationship between Mimecast and Customer or any Permitted User.

9.11 **Export Restrictions.** Each party agrees to comply with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the export and import of the Services.

9.12 **Governing Law.** These Terms 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 these Terms 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.

9.13 **Language.** These Terms shall be used in a variety of languages. In the event of inconsistencies or lack of clarity between the German language and other language versions the German language version of the Terms shall exclusively apply as the binding text for its legal effectiveness and interpretation.