Web Security Terms and Conditions

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

Customer may subscribe to the Services directly from Mimecast or through a reseller ("Reseller"). In either event, Customer and Mimecast each agree to these Web Security Terms as a condition of the provision of the Services by Mimecast. Customer terms that are contrary to or deviate from these Web Security Terms shall not apply. Mimecast’s silence regarding such deviating or conflicting Web Security Terms shall not be considered as approval or acceptance. These Web Security 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 Web Security Terms.

1. Services.

1.1 Provision of Services. Mimecast will provide the Services described in each Services Order in accordance with the applicable Services Order, these Web Security Terms and the applicable Services documentation available at https://community.mimecast.com/community/knowledge-base ("Documentation") for so long as these Web Security Terms are in effect. A "Services Order" is any transactional document (such as a customer quote, a customer confirmation or a statement of work) that references these Web Security 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’s data centers will be located (the "Hosting Jurisdiction")

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 http://www.mimecast.com/contracts. Support does not include adjustments to the default configurations for the Services or configuration of Customer systems such as MX records, DNS, or FTP traffic, all of which are Customer’s responsibility.

1.3 Changes to Services. Customer acknowledges that the Services are offered as software-as-a-service and that the details of the offerings themselves, including the terms of the Service Levels and Support Description, will change over time.

1.4 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. 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. If the cure should fail to produce a work Customer may at its option reduce the purchase price or revoke the contract. 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 1.4 to the extent that Mimecast is delayed or prevented from performing due to an act or omission of Customer.

2. Customer Activities.

2.1 Customer Use. Customer will use the Services for its own internal business purposes and will not rebrand, transfer, reseal, license or otherwise make the Services available to third-parties. Customer will use the Services as reasonably directed by Mimecast and as described herein. 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.

2.2 Access Control. Customer will implement and maintain reasonable and appropriate controls to ensure that user accounts are used only by Permitted Users and to manage and monitor Permitted Users, including designating one or more administrators responsible for access control. Customer will not share any user authentication information and/or any user password with any third party. 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.

2.3 Restrictions. Customer will not: (a) use the Services in any manner that violates any applicable law or regulation (including but not limited to any infringing, defamatory or fraudulent purpose or 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 introduces any viruses, malicious code, or any other items of a harmful nature; (c) disable or circumvent any access control, authentication process or security procedure established with respect to the Services; or (d) engage in any activity that could reasonably be expected to interfere with or disrupt the Services. 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 2.3.

3. Ownership.

3.1 Ownership of the Services. Mimecast and its third-party licensors will retain all ownership and intellectual property rights in and to the Services and its underlying systems. Customer’s rights are limited to those expressly stated herein. Notwithstanding any provision herein to the contrary, nothing in these Web Security Terms 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 deemed governed by these Web Security Terms.

3.2 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 and as applicable, utilization statistics, traffic patterns, user behavior, reports, logs and other information processed by the Services (“Aggregated Data”); and (ii) anything 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 personally identifiable information. Mimecast is entitled to use Aggregated Data or Threat Data for its business purposes and/or may share Aggregated Data or Threat Data with third-parties.

3.3 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 compensation of any kind to Customer. “Feedback” means any communications or materials provided to Mimecast by Customer suggesting or recommending changes to the Services.

4. Confidentiality Obligations.

4.1 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 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. 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.

4.2 Obligations. Confidential Information is and will remain the exclusive property of the Disclosing Party. The Receiving Party will: (i) use Disclosing Party’s Confidential Information solely for the performance of the activities contemplated by these Web Security Terms; (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 4.2; (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. Any personally identifiable data (“Personal Data”) will be processed as described in Mimecast’s Trust Center available at
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Fees and Payment Terms. Customer will pay any fees set forth in any agreed Services Order. Fees are due

ent thirty days from the invoice date. Mimecast will provide instructions for payment in the applicable Services Order or through some other reasonable means. 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). Recurring fees will increase up to 5% at the start of each renewal Subscription Term.

Disputed Invoices. If Customer disputes an invoice (or a portion thereof), then Customer shall notify

https://www.mimecast.com/company/mimecast-trust-center/ (the “Trust Center”). Mimecast may update the Trust Center from time to time. Where required by law (or in accordance with a data processing agreement enacted between the parties), Mimecast shall notify Customer of such changes. Such 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 Data Processor’s online preference center. In this case, Customer is responsible for maintaining up-to-date contact information for said notifications).

5. Intellectual Property Claims

5.1 Indemnification. 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 Services or Documentation infringe any copyright, moral right, trade secret, trade or service mark, or patent issued 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. Customer grants Mimecast 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.

5.2 Additional Terms. Mimecast may, at its expense and discretion, attempt to resolve any indemnified claim by: (a) modifying the Services or Documentation to avoid the alleged infringement; (while substantially preserving its utility or functionality); (b) obtaining a license to permit Customer’s use of the Services or Documentation as contemplated herein; or (c) terminating the usage rights set forth in these Web Security 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 5 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.

5.3 Entire Liability. This Section 5 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. Customer agrees that any and all implied indemnification obligations that may apply to these Web Security Terms are hereby excluded.


6.1 For damages with respect to injury to health, body or life caused by Mimecast, Mimecast’s representatives or Mimecast’s agents in the performance of the contractual obligations, Mimecast is fully liable.

6.2 Mimecast is fully liable for damages caused willfully or by gross negligence by Mimecast, Mimecast’s representatives or Mimecast’s agents in the performance of the contractual obligations. The same applies to damages which result from the absence of a quality which was guaranteed by Mimecast or to damages which result from malicious action.

6.3 If damages, except for such cases covered by sections 6.1, 6.2 or 6.4, with respect to a breach of a contractual core duty are caused by slight negligence, Mimecast is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose fulfillment enables proper performance of an agreement in the first place and whose performance a contractual party regularly may rely on.

6.4 Mimecast’s liability based on the German Product Liability Act remains unaffected.

6.5 Any further liability of Mimecast is excluded.

6.6 The limitation period for claims for damages against Mimecast expires after one year, except for such cases covered by sections 6.1, 6.2 or 6.4.

7. Payment. This Section 7 will apply only if Customer subscribes to the Services directly through Mimecast. If Customer subscribes to the Services through a Reseller, the pricing and invoicing terms will be agreed to between Customer and Reseller directly and the following terms will not apply.

7.1 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. 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). Recurring fees will increase up to 5% at the start of each renewal Subscription Term.

7.2 Disputed Invoices. If Customer disputes an invoice (or a portion thereof), then Customer shall notify
Mimecast in writing within fifteen days of receipt of the applicable invoice or the invoice shall be deemed accepted. Such notice shall 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.

7.3 **Late Payment.** Customer will be notified in the event payment has not been received in accordance with the terms of this Section 7.1. If any amount due is not paid within fourteen days of such notice, then Mimecast may charge a late payment interest of nine (9) percentage points above the base interest rate on any unpaid amount 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.

7.4 **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 Web Security Terms. Customer is responsible for paying any such taxes, excluding taxes based on Mimecast’s net income.

8. **Term and Termination; Suspension**

8.1 **Term.** These Web Security 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 additional period 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. Except as noted on a Services Order or in Section 8.2(a) below, subscriptions are non-cancelable before the end of the Initial Subscription Term or within a Renewal Term and fees are non-refundable.

8.2 **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.

8.3 **Termination for Breach.** Either party may terminate these Web Security Terms immediately on giving written notice to the other party if the other party commits any material breach of any term of these Web Security 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 Web Security 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.

8.4 **Termination for Bankruptcy.** Either party may terminate these Web Security Terms immediately on giving written notice to the other party if the other party: (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy pursuant to any insolvency law, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

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: (i) the subject of denial of service attacks, hacking attempts or other malicious activities; or (ii) Customer’s activities reasonably appear to be in breach of Section 2.3; or (iii) in violation of acceptable use policies set forth in the Support Description or Service Levels. 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 Web Security Terms: Section 2.3 (Restrictions), Section 4 (Confidentiality), Section 5 (Intellectual Property Claims), Section 6 (Limitation of Liability), 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 Web Security 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, Confidential Information 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 Web Security 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 Web Security 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 Web Security Terms and any Services Order in whole or in part to the acquirer of the business in the event of a sale or merger of Customer. Otherwise, Customer may not assign these Web Security Terms or any Services Orders in whole or in part without Mimecast’s prior written consent, which consent will not be unreasonably withheld. The provision of § 354a Para. 1 HGB remains unaffected. These Web Security Terms will be binding upon the parties hereto and any authorized assigns.

9.5 **Notices.** Any business communications in connection with these Web Security Terms may be provided by email. Any legal notices relating to these Web Security 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 these Web Security 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 Web Security 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 Web Security Terms must be made in writing and signed by an authorized representative of each party. If any provision of these Web Security 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 Web Security 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 Web Security Terms are entered into solely between, and may be enforced only by, Mimecast and Customer. These Web Security Terms will not be deemed to create any third-party rights or obligations.

9.10 **Independent Contractors.** Each party to these Web Security 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 Web Security 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 excluding the regulations of the United Nations Convention on Contracts for the International Sale of Goods (“CISG”). Any litigation concerning these Web Security 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 or declaratory relief to enforce any of its intellectual property rights or rights in the Confidential Information in any court of appropriate jurisdiction.