

# mimecast™

## Terms and Conditions

These Terms and Conditions (“**Terms**”) govern the use of Mimecast’s products and services (collectively, the “**Services**”) and are entered into by the customer (“**Customer**”) and Mimecast Germany GmbH (“**Mimecast**”). A “**Services Order**” is a transactional document (such as a customer quote, a customer confirmation, a partner quote, or a statement of work) 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. No Services Order shall add to or amend these Terms unless signed by both parties.

In addition to the Services Order, some Services are subject to additional terms and conditions (“**Supplemental Terms**”) which are posted to [www.mimecast.com/contracts](http://www.mimecast.com/contracts). The Supplemental Terms and each Services Order are each incorporated into these Terms. In the event that there are conflicting terms, the order of precedence shall be as follows: signed Services Order, applicable Supplemental Terms, and these Terms.

Customer terms that conflict with, or deviate from, these Terms shall not apply. Mimecast’s silence regarding such deviating or conflicting terms shall not be deemed tacit approval or acceptance thereof. These Terms shall govern Mimecast’s delivery of the Services to Customer, notwithstanding Mimecast being aware of the existence of any Customer conditions that conflict with, or deviate, from these Terms.

Customer and Mimecast each agree to these Terms as a condition of the provision of the Services by Mimecast. However, Customer may opt to contract separately with a reseller (“**Reseller**”) as to the pricing and invoicing for the Services, in which case Section 8 (“**Payment**”) of these Terms will have no effect and any refunds or service credits payable in accordance with these Terms, shall be paid to Reseller.

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 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**”). Support Services (“**Support**”) and Service Levels descriptions 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. Such changes may be made effective at the start of a Renewal Term, but only if Mimecast receives notice of such change not less than thirty days prior to the renewal date.

1.3 Hosting Jurisdiction. The “**Hosting Jurisdiction**” means the country where the datacentre hosting the Customer Data is located and will be noted on the relevant Services Order or Supplemental Terms. Please note, the Hosting Jurisdiction may differ dependant on the Service provided. Further details with regards to data hosting can be found at <https://www.mimecast.com/company/mimecast-trust-center/gdpr-center/technical-organizational-measures/>.

1.4 Professional 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. In the event Mimecast’s performance does not conform as described in the applicable 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 1.4 to the extent that Mimecast is delayed or prevented from performing due to an act or omission of Customer. In the event that 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 these Terms, instead the Simply Migrate EULA at [www.mimecast.com/contracts](http://www.mimecast.com/contracts) will apply to the installation and use of such software.

1.5 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 notice to the other party; (iii) Mimecast’s Service Levels and Support does not apply to the Trial Services; and (iv) Mimecast’s maximum liability for any and all causes of action arising out of or relating to the Trial Services, whether in contract, tort, statute or otherwise, will be limited to \$100 (or the equivalent in the currency of the applicable Hosting Jurisdiction at the time the claim arose).

1.6 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 these Terms and any associated end user license agreement made available via the application/marketplace. The term of Customer’s license to use the application is co-terminous with these Terms. For the avoidance of doubt, Mimecast applications fall under the definition of Services hereunder.

## 2. Data Protection and Confidentiality.

2.1 **“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.

2.2 Security. Mimecast will implement and maintain appropriate administrative, technical, organizational and physical security measures for each of the Services 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 Laws. As required by law or as otherwise agreed by the parties, data protection measures may be described in more detail in an executed data processing agreement between the parties, which will be made supplementary to these Terms (“**Data Processing Agreement**”). In the event of any conflict between these Terms and the Data Processing Agreement, the Data Processing Agreement shall prevail. With respect to any Customer Data that relates to an identified or identifiable natural person (“**Personal Data**”), Customer acts as the accountable organization or the data controller and Mimecast acts as a service provider or the data processor. Except as may be required by applicable law, Mimecast will process the Personal Data solely in accordance with Customer’s Instructions. The “**Instructions**” are embodied in these Terms and any applicable Data Processing Agreement, and as may be additionally communicated by Customer to Mimecast in writing from time-to-time. Mimecast will collect and protect Personal Data in compliance with Applicable Law. “**Applicable 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 GDPR as incorporated into United Kingdom (“**UK**”) law by the Data Protection Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments, etc.) (EU Exit) Regulations 2019 (“**UK GDPR**”); and (iii) any law, regulation or order that implements 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 is responsible for providing any requisite notices and obtaining any consents (if required) for such processing and transfer of Personal Data, including international transfers.

### 2.4 Confidentiality Obligations.

(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. Customer’s Confidential Information includes Customer Data. Mimecast’s Confidential Information includes 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 required of it under Section 2 herein: (i) use Disclosing Party's Confidential Information solely for the performance of the activities contemplated by these Terms or any applicable 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; 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 be 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 Agreement. 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.

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 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 by requesting a Customer specific application key ("**Application Key**"). In order to gain access to an Application key, Customer must register with Mimecast and provide the information requested. Customer is responsible for ensuring that the information provided to Mimecast is and remains accurate and up-to-date. Mimecast can revoke the Application Key at any time without notice to Customer, to protect Mimecast services and 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. In the event 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. Mimecast is not responsible for, and no representations or warranties are made regarding, Third Party Services (as defined in Section 3.5 below).

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 or enable in conjunction with Mimecast Services or Mimecast API connectors.

### **4. Ownership.**

4.1 **Ownership of the Services.** Customer's rights are limited to those expressly stated in these Terms. 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 these 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 governed by these Terms.

#### 4.2 Threat Data, Machine-Learning Data and Aggregated Usage Data.

4.2.1 Customer 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 collect and process Customer Data, including certain Customer Data within Machine-Learning Data (as defined below), as well as Threat Data (as defined below) for the purposes of: (i) providing the Services; (ii) improving threat detection, analysis, awareness, and prevention; and/or (iii) improving and developing the Services.

4.2.2 Threat Data. As part of the Services, Mimecast processes certain data reasonably identified to be malicious, including, without limitation, data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity (collectively, “Threat Data”). Mimecast processes Threat Data 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 and awareness. Threat Data is not Customer Data but may include Personal Data.

4.2.3 Machine-Learning Data. Through automated processes designed to develop and improve our machine learning algorithms within 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”). We do not share Machine-Learning Data with Third Parties. Machine-Learning Data does not include full message content of Customer Data.

4.2.4 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.

4.4 References. Customer grants Mimecast a revocable, non-transferable, worldwide, royalty-free, fully paid up, non-exclusive license 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. **Intellectual Property Claims**

5.1 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.

5.2 Resolution of Claim. 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; (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 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.

5.3 Entire Liability. Section 5 sets forth Mimecast’s entire liability and Customer’s sole remedy for an infringement claim as described in Section 5.1. Mimecast specifically disclaims any and all implied indemnification obligations that may apply to these Terms.

### 6. **Liabilities.**

## 6.1 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 6.1(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.

6.2 Contributory Negligence. Notwithstanding Section 6.1, Customer acknowledges that Mimecast may claim contributory negligence (for example, where Customer has breached its obligations under Section 3 herein).

6.3 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 wilful 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.

## 7. **Term and Termination**

7.1 Term. These Terms are 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 1.5 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 thirty days prior to the end of the then-current Subscription Term.

### 7.2 Termination.

(a) Opt-out. Customer may terminate its initial Services Order during the first thirty days of the initial Subscription Term. 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 initial Subscription Term described in the initial Services Order will continue unaffected.

(b) For Breach. Either party may terminate these Terms immediately on giving written notice 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 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.

7.3 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 impairment of the provision and quality of the Services (including, without limitation, the Service Levels and Support), 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 weeks from when Customer first becomes aware such material impairment and include a description of the change. If the identified material 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.

7.4 Suspension of Services. Mimecast may suspend the Services in the event Customer fails to pay any

undisputed amount 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.

7.5 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 2.4 (*Confidentiality Obligations*), Section 3.3 (*Restrictions*), Section 5 (*Intellectual Property Indemnification*), Section 6 (*Limitation of Liability*), Section 9 (*General*), and Section 10 (*Governing Law*).

**8. Payment. This Section 8 does not apply if Customer has contracted separately with a Reseller as to the pricing and invoicing for the Services; for clarity, this Section 8 will have no effect unless Customer will be invoiced for the Services directly by Mimecast.**

8.1 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 invoice or through some other reasonable means. No less than thirty 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 5% at the start of each Renewal Subscription Term.

8.2 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 months of the parties' signatures on the applicable Services Order. Customer Data received for import after that twelve-month period will be subject to additional fees.

8.3 Disputed Invoices. If Customer disputes any portion of an invoice, then Customer will notify Mimecast in writing within fifteen 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.

8.4 Late Payment. Customer will be notified in the event payment has not been received in accordance with the terms of Section 8. 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.

8.5 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.

## 9. General

9.1 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 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 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 these Terms due to any cause or event outside its reasonable control including, acts of God, civil or military authority, acts of war, cyber warfare, 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.

9.3 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.

9.4 Notices. Any communications in connection with these Terms may be provided by email. Legal notices relating to these Terms 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 and, sent by major commercial delivery courier service or mailed in a manner that requires signature by the recipient.

9.5 Entire Agreement. Each party hereby acknowledges that: (i) no reliance is placed on any representation not provided in these Terms; and (ii) agreement to these Terms is not conditioned on any promise made by Mimecast to deliver any future deliverable such as a feature or functionality. The parties agree that these Terms 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 these Terms 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.

9.6 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. 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 these Terms. The parties further acknowledge that no Reseller is entitled to modify these Terms, including the Service Levels or Support, or to otherwise make promises, representations, or warranties on behalf of Mimecast. 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.

9.7 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.

9.8 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.

9.9 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.

9.10 Export Restrictions. Each party agrees to comply with all applicable regulations with respect to the export and import of the Services, including where applicable the regulations of the United States Department of Commerce and the United States Export Administration Act.

10 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.

11 Language. These Terms may be available in several 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.

Signed \_\_\_\_\_

For and on behalf of Mimecast

Name \_\_\_\_\_

Position \_\_\_\_\_

Signed \_\_\_\_\_

For and on behalf of Customer

Name \_\_\_\_\_

Position \_\_\_\_\_