



## **General Terms and Conditions**

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

### **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 General Terms and the applicable Services documentation available at <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 General Terms and Conditions and is agreed to by the parties. Each Services Order will include:

- A description of the Services and 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 Customer Data will be stored (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), the current version of which is attached as Addendum A.

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**" means 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 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, 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/> (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.

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 General Terms ("**Data Processing Agreement**"). In the event of any conflict between these General Terms and Conditions and the 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. With respect

to any Personal Data contained in Customer 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, but solely during an effective Subscription Term. The "Instructions" are embodied in these General Terms, the applicable Service Order(s), and any applicable Data Processing Agreement, and as may be additionally communicated by Customer to Mimecast from time-to-time. 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 UK Data Protection Act 1998, US Health Insurance Portability and Accountability Act, and the General Data Protection Regulation (Regulation (EU) 2016/679). Where permitted by applicable law, Mimecast may process, transfer or copy Customer Data and 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 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 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 General 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 2.4; (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. Customer will allow only the number of Permitted Users shown in the applicable Services Order to access and use the Services.

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: (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 any internet service provider).

4. Payment. This Section 4 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.

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. If Customer is contracting with Mimecast North America, Inc., then recurring fees will increase by 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.** If Customer disputes any portion of the amount due, 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.

4.4 **Late Payment.** Customer will be notified in the event payment has not been received in accordance with the terms of this Section 4.4. If any undisputed amount due is not paid within fourteen days of such notice, then Mimecast may charge a late payment fee on any unpaid amount due at the rate of one percent (1%) per month or at the maximum rate permitted by law, whichever is lower, 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 General Terms. Customer is responsible for paying any such taxes, excluding taxes based on Mimecast's net income.

5. **Disclaimer.** WITHOUT LIMITING MIMECAST'S EXPRESS OBLIGATIONS UNDER THESE GENERAL TERMS, MIMECAST HEREBY DISCLAIMS ALL GUARANTEES, CONDITIONS, WARRANTIES AND REPRESENTATIONS, IMPLIED, STATUTORY OR OTHERWISE CONCERNING ANY SERVICES, SOFTWARE, DOCUMENTATION OR MATERIALS PROVIDED BY MIMECAST, INCLUDING BUT NOT LIMITED TO, THOSE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. PROFESSIONAL SERVICES DO NOT QUALIFY AS LEGAL OR EXPERT ADVICE. CUSTOMER SHOULD CONSIDER WHETHER THE SERVICES AND/OR PROFESSIONAL SERVICES ARE APPROPRIATE FOR CUSTOMER'S NEEDS, AND WHERE APPROPRIATE, SEEK LEGAL OR EXPERT ADVICE. MIMECAST DOES NOT REPRESENT THAT THE SERVICES OR THE PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS..

## 6. Ownership.

6.1 **Ownership of the Services.** The parties acknowledge and agree that Mimecast has no ownership rights to Customer Data. Mimecast and its third-party licensors will retain all ownership interest 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 General Terms. Notwithstanding any provision herein to the contrary, nothing in these General Terms is intended to limit Customer's liability in the event of Customer's violation of Mimecast's intellectual property rights, and any claim with respect to such violation will not be deemed governed by these General 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.

6.2 **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.

6.3 **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.

## 7. Intellectual Property Indemnification

7.1 **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 the Material 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. Mimecast will have sole control of the defense and settlement of the applicable matter; however, Mimecast shall not accept any settlement that admits wrongdoing or liability on behalf of Customer, or which subjects Customer to any ongoing affirmative obligations.

7.2 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; (b) obtaining a license to permit Customer's use of the Services or Material as contemplated by these General Terms; or (c) terminating the rights set forth in these General 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 7 to the extent any 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.

7.3 Entire Liability. This Section 7 sets forth Mimecast's entire liability and Customer's sole remedy 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 General Terms are hereby excluded.

## 8. Limitation of Liability

8.1 Exclusion of Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY (A) INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, (B) LOSS OF PROFITS, (C) LOSS OF ANTICIPATED SAVINGS, OR (D) LOST MANAGEMENT TIME OF ANY KIND WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THESE GENERAL TERMS OR ANY OF THE SERVICES PROVIDED OR AGREED TO BE PROVIDED BY MIMECAST, EVEN IF THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF. THIS SECTION 8.1 DOES NOT APPLY TO ANY AMOUNTS PAYABLE IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS STATED HEREIN

8.2 Liability Cap. The parties acknowledge that any limitation of liability set forth herein is intended to apply only to the extent permitted by applicable law (a) General. Each party's maximum liability for any and all causes of action arising out of or relating to these General Terms, the Services, or the Material (collectively, "General Claims"), whether in contract, tort, statute or otherwise, will be limited to an amount equal to the fees paid or payable by Customer to Mimecast (or Reseller) for the applicable Services during the twelve months preceding the incident giving rise to the General Claim; provided that the foregoing cap will not apply to: (i) the indemnification obligations set forth in these General Terms, (ii) Customer's obligations under Section 3.3, (iii) Customer's payment obligations, or (iv) Data Claims (as defined in subsection 8.2(b)).

(b) Data-Related Claims. Mimecast's maximum liability for any and all Data Claims will be limited to an amount equal to the greater of: (i) USD \$300,000 (or the equivalent in the currency of the applicable Hosting Jurisdiction at the time the claim arose) or (ii) FIVE times the fees paid or payable by Customer to Mimecast (or Reseller) for the applicable Services during the twelve months preceding the event giving rise to the Data Claim. The liability cap described in this subsection 8.2(b) is intended to cover Data Claims only and may not be combined with the cap described in subsection (a) in connection with the same set of underlying facts. Customer agrees that the limitations of liability set forth in these General Terms are intended to apply to any Data Agreement entered into by the parties and that such limitations will control in the event of any conflict between such agreements. "Data Claims" means, collectively, any and all causes of action arising out of or relating to Mimecast's breach of the obligations set forth in Section 2 or in any Data Processing Agreement, whether in contract, tort, statute or otherwise.

8.3 Exclusions. Notwithstanding any other provision of these General Terms, neither party's liability is excluded or limited by these General Terms in the event of: (a) death or personal injury caused by its negligence; (b) fraudulent misrepresentation; or (c) any other liability which may not lawfully be excluded or limited.

## 9. Term and Termination

9.1 Term. These General Terms will remain in effect until the conclusion of all agreed-to Services Orders between Customer and Mimecast. The party may agree to new Services Orders for renewal Subscription Terms by written agreement prior to the end of the then-current Subscription Term.

### 9.2 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 General Terms immediately on giving written notice to the other party if the other party commits any material breach of any term of these General 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 General 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.

(c) For Bankruptcy. Either party may terminate these General 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.

9.3 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. If such changes result in a material degradation of the Services, then Customer may provide written notice to Mimecast including a description of the degradation. If the identified material degradation is not corrected by Mimecast within thirty days of Mimecast's receipt of such notice from Customer, then Customer may terminate these General Terms and all applicable Services Orders and receive a refund of any fees paid for the remainder of the then-effective Subscription Term.

9.4 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.

9.5 Survival. Customer's payment obligations, the provisions of this Section and the provisions of the following Sections will survive any termination of these General Terms: Section 2 (*Data Protection and confidentiality*), Section 3.3 (*Restrictions*), Section 6 (*Disclaimer*), Section 7 (*Intellectual Property Indemnification*), Section 8 (*Limitation of Liability*) and Section 10 (*General*).

## 10. General

10.1 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 General 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.

10.2 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 General 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 10.2, at Customer's expense. Mimecast will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

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

10.4 Assignment. Customer may assign these General Terms in whole or in part to a successor in interest in the event of a sale or merger of Customer. Otherwise, Customer may not assign these General Terms or any Services Orders in whole or in part without Mimecast's prior written consent, which consent will not be unreasonably withheld. These General Terms will be binding upon the parties hereto and any authorized assigns.

10.5 Notices. Any business communications in connection with these General Terms may be provided by



email. Any legal notices relating to these General 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.

10.6 Entire Agreement. Each party hereby acknowledges that (i) no reliance is placed on any representation not provided in these General Terms; and (ii) agreement to these General Terms is not conditioned on any promise made by Mimecast to deliver any future deliverable such as a feature or functionality. The parties further acknowledge that no Reseller is entitled to modify these General 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 General Terms. Any purchase order or other terms provided by Customer will be accepted by Mimecast for invoicing purposes only.

10.7 Modifications and Severability. Except as expressly provided herein, any modification to these General Terms must be made in writing and signed by an authorized representative of each party. If any provision of these General 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.

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

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

10.10 Independent Contractors. Each party to these General 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.

10.11 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.

10.12 Insurance.

(a) While this Agreement is in effect and for a period of one year thereafter, Mimecast shall obtain and maintain, at its own cost and expense, insurance as set forth below. Such insurance shall be written by an insurance company or companies having an A.M. Best rating no lower than A-.

- (i) General liability insurance in an amount of \$1 million per occurrence and \$2 million in the aggregate, which includes personal injury.
- (ii) Worker's compensation insurance at the statutory limit.
- (iii) Employer's liability insurance in an amount of \$500 thousand for bodily injury by accident per accident, \$500 thousand for bodily injury by disease per each disease and \$500 thousand in the aggregate.
- (iv) Errors and omissions insurance (also known as professional liability insurance) in an amount of \$5 million per occurrence and in the aggregate.
- (v) Automobile insurance in an amount of \$1 million per accident.
- (vi) Technology/ Cyber liability insurance in an amount of \$10 million in aggregate.
- (vii) Umbrella liability insurance in an amount of \$10 million per occurrence and in the aggregate.

(b) Upon request but not more than once annually, Mimecast shall provide Customer with satisfactory proof of such insurance in the form of certificates of insurance issued by the insuring company or companies.

**11. Regional Terms.**

The following terms apply if the party contracting for Mimecast (as set forth in the applicable Services Order) is located in the United States of America:

11.1 Governing Law (US). These General Terms and any disputes hereunder will be governed by the laws of the State of California, without regard to its conflict of law principles, and any litigation concerning these General Terms shall be submitted to and resolved by a court of competent jurisdiction in State or Federal Courts located within the County of Alameda, California.

DocuSigned by:  
  
 Signed \_\_\_\_\_  
 1090E80A3D18423  
 For and on behalf of Mimecast  
 Name Rory Douglas  
 Position Commercial Counsel

Signed \_\_\_\_\_  
For and on behalf of Customer  
Name \_\_\_\_\_  
Position \_\_\_\_\_

Wm. H. Ch...

Carolyn J. Hoff

## Addendum A – Service Levels and Support Description

All credits shown will apply to the relevant Service only.

### A. SERVICE LEVELS

#### 1. Email Delivery:

This Service Level measures the ability to deliver email messages to or from Mimecast's servers for the Messaging Security and Archiving Services *only*.

| Service Availability Per Calendar Month | Credit of Fee for the Affected Month                                                                    |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------|
| <100% but >=99%                         | 10%                                                                                                     |
| <99% but >=98%                          | 20%                                                                                                     |
| <98% but >=97%                          | 30%                                                                                                     |
| <97% but >=96%                          | 40%                                                                                                     |
| <96%                                    | 50% and Customer may terminate the Agreement and receive a pro-rata refund of any unused pre-paid fees. |

#### 2. DNS Resolution:

This Service Level measures the ability to resolve customer DNS requests against Mimecast's servers for the Web Security Services *only*.

| Service Availability Per Calendar Month | Credit of Fee for the Affected Month                                                                    |
|-----------------------------------------|---------------------------------------------------------------------------------------------------------|
| <100% but >=99%                         | 10%                                                                                                     |
| <99% but >=98%                          | 20%                                                                                                     |
| <98% but >=97%                          | 30%                                                                                                     |
| <97% but >=96%                          | 40%                                                                                                     |
| <96%                                    | 50% and Customer may terminate the Agreement and receive a pro-rata refund of any unused pre-paid fees. |

#### 3. Spam Protection:

This Service Level measures the effectiveness of the protection against receipt of spam for those Messaging Security and Archiving Services that include such functionality. This Service Level is measured in terms of "False Positives" and "False Negatives" (defined below). This Service Level applies across all of Customer's email traffic and SMTP connection attempts (any attempt to connect to a Mimecast SMTP mail gateway to send email).

- (a) **Definitions:** A "**False Positive**" is an e-mail incorrectly classified as spam by the Service. False Positives do not include emails which: (i) do not constitute legitimate business email; (ii) are sent from a compromised machine; (iii) are sent from a machine which is on a third party block list; or (iv) are sent from a mail server that does not fully comply with the SMTP delivery standards as defined in RFC 2821 & 2822. A "**False Negative**" is a spam email that the Service does not identify as spam.



(b) Service Levels:

## False Positive Service Levels:

| False Positive Capture Rate per Calendar Month | Credit of Fee for the Affected Month |
|------------------------------------------------|--------------------------------------|
| >.0001% but <= .001%                           | 10%                                  |
| > .001% but <= .01%                            | 20%                                  |
| > .01% but <= .1%                              | 30%                                  |
| > .1%                                          | 40%                                  |

## False Negative Service Levels:

| Consecutive days with False Negative Rate Exceeding<br>2% | Credit of Fee for the Affected Month |
|-----------------------------------------------------------|--------------------------------------|
| 2 – 3                                                     | 10%                                  |
| 4 – 5                                                     | 20%                                  |
| 6 – 9                                                     | 30%                                  |
| 10+                                                       | 40%                                  |

**4. Anti-Virus Service:**

This Service Level measures protection against infection of Customer's servers by a virus through the Services, for those Messaging Security and Archiving Services that include anti-virus functionality. Upon confirmation by Mimecast that Customer's systems have been infected by one or more harmful viruses in any calendar month through the Services, Customer will be entitled to a service credit from Mimecast equal to 50% of the fees for the affected calendar month.

**5. Search Performance:**

This Service Level relates to the search time experienced by Permitted Users accessing Mimecast's email archiving service. This Service Level measures the time elapsed only when using the administrative console, Mimecast Personal Portal, Mimecast for Outlook or any Mimecast Mobile application between the receipt of the Permitted User's search request by Mimecast's systems and when the return of the search results is initiated by Mimecast (the "**Query Time**"). This Service Level does not apply to searches conducted using the Case Review or Supervision components of the administration console. This Service Level applies only where Customer has performed at least 250 searches in the given month.

| Query Time *            | Credit of Fee for the Affected Month |
|-------------------------|--------------------------------------|
| > 7 seconds but <=20    | 10%                                  |
| > 20 seconds but <= 25  | 15%                                  |
| Greater than 25 seconds | 25%                                  |

\*Query Time calculated via the median search times for all searches conducted by Permitted Users in the given month across all of the applicable applications.

**6. Credit Request Process and Service Credits**

To receive a credit under this Section A, Customer must submit a credit request by opening a support case within 14 days of the end of the calendar month in which Mimecast fails to meet the standards provided in this Section A. A credit request will include details and dates of the relevant anomalies. Subject to verification by Mimecast, Mimecast will apply the appropriate credit and notify Customer accordingly. In any event, Mimecast's maximum accumulative liability to Customer under this Agreement in any calendar month shall be no more than 100% of the fees paid by Customer for the applicable month.

## 7. Service Level Conditions

Service Levels will not apply to the following circumstances:

- During any trial periods, periods of planned maintenance, periods of non-availability due to a force majeure event, or periods of suspension of Service by Mimecast in accordance with this Agreement.
- Customer is not using the Services in accordance with the Documentation (including the best practice implementation policies therein) as well as reasonable usage allowances. The reasonable usage limit for Services which include archiving, journaling or SMS messaging is three times the typical average user (as per internal benchmarks). The reasonable usage limit for Web Security Services including DNS resolution is three times the typical average user (as per Internal benchmarks).
- To emails containing attachments that cannot be scanned (i.e., encrypted or password protected attachments).
- The implementation by Customer of excessively complex full text content policies.
- To emails sent by Customer to large external distribution lists, which may be subject to serialized delivery.
- A denial of service attack from a third party or Customer causes a denial of service attack to occur (or any similar event).
- Customer or third party inability to access the primary or backup MX hosts servers due to a failing in the Internet.
- Viruses introduced to Customer's systems by Customer.
- Problems caused by mail servers that are not RFC-822 compliant.
- Where Customer's email system appears to be operating as an "open relay." "Open relay" means an email server configured to receive mail from an unknown or unauthorized third party and forward mail to recipients who are not users of that system.

Please note that Mimecast reserves the right to contact any Customer which is using the Services in excess of the reasonable usage allowance to renegotiate contract terms.

## B. TECHNICAL SUPPORT

Mimecast will provide the following technical support ("**Technical Support**") in connection with the Services. Mimecast will respond to each Technical Support request within the time frames set forth below and will work diligently to resolve such request as soon as reasonably possible. Mimecast will log all support requests, provide the Customer with an incident number and use all reasonable endeavours to provide a resolution. Mimecast may elect to provide a temporary solution until a resolution to the initial problem can be found.

### 1. CONTACTS

Customer will nominate specific people as support contacts ("**Designated Contacts**"), whose details will be registered with Mimecast. The Designated Contacts may be amended by Customer upon written notice to Mimecast. Customer is required to ensure that the Designated Contacts are and continue to be fully trained on all the licensed Services using web-based training provided by Mimecast. Designated Contacts will perform the following:

- Carry out initial analysis and attempt to replicate the problem in an effort to resolve simple end user-type errors. They will co-ordinate the gathering of relevant information from the end-users, computer room operators, system managers in order to diagnose reported problems.
- Distinguish between normal and abnormal operation of the Services; accurately describe symptoms of repeatable problems.
- Notify Mimecast of problem situations using agreed procedures if the problem cannot be resolved after the initial analysis.

Mimecast will provide and maintain applicable contact information to enable Customer to contact the technical support team for the Applicable Region.

### 2. HOURS OF SUPPORT

Mimecast will respond to Priority 1 support requests made by Designated Contacts on a 24x7x365 days a year basis. All other support requests will be dealt with in accordance with the level of support purchased.

**Please note that the Standard Support, Business Support, and Priority/Platinum Support plans are entering an end-of-life period on April 1, 2018. Existing Customers may continue to use these plans as per their**



**Mimecast Agreements, but their availability to new Customers will be limited after that date. Your Services Order will indicate the plan which applies to your Agreement.**

| Type                      | Description                                                                                                                                                                                                   |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Standard Support          | Email support available during local working hours (8am to 6pm).                                                                                                                                              |
| Business Support          | Telephone and email support available during local working hours (8am to 6pm).                                                                                                                                |
| Priority/Platinum Support | 24x7 telephone support. Technicians are available either directly or through a call answer service. Email support is available during local working hours.                                                    |
| Bronze Success            | Email and online support available during local working hours (8am to 6pm).                                                                                                                                   |
| Silver Success            | Telephone support available during local working hours (8am to 6pm). Email and online support available during local working hours.                                                                           |
| Gold/Platinum Success     | 24x7 telephone support. Technicians are available 24x7 either directly or through a call answer service. Email and online support is available during local working hours. Prioritized Support for P1 issues. |

### 3. SUPPORT REQUEST PRIORITY

Mimecast will investigate and assess the support request and assign a priority number as detailed below:

| Priority | Description                                                                                                  |
|----------|--------------------------------------------------------------------------------------------------------------|
| 1        | Total loss or significant impairment of the Services. Must be logged by telephone.                           |
| 2        | Impairment of a specified function (e.g. search functionality, access to the administrative interface, etc.) |

### 4. RESPONSE TIMES

| Support Option                                     | Priority | Response Time    |
|----------------------------------------------------|----------|------------------|
| Priority/Platinum Support<br>Gold/Platinum Success | 1        | 1 hour           |
|                                                    | 2        | 6 working hours  |
| Business Support<br>Silver Success                 | 1        | 2 hours          |
|                                                    | 2        | 12 working hours |
| Standard Support<br>Bronze Success                 | 1        | 2 hours          |
|                                                    | 2        | 12 working hours |

### 5. EXCLUSIONS

Mimecast shall be under no obligation to provide technical support due to improper installation or operation of the Services or use of the Services not in accordance with the Documentation or the instructions of Mimecast's support team. In addition, Mimecast shall not be responsible for any performance delays or failure of the Services if the failures or delays are caused by (a) equipment, software, systems, services or data not provided by Mimecast, or (b) acts or omissions of Customer (including Permitted Users) that violate the terms of this Agreement.

### 6. SERVICE UPGRADES

Mimecast may from time to time upgrade and/or enhance the Services, which may require the cessation or interruption of the Services. Mimecast shall use reasonable endeavours to avoid doing so during the hours of 8:00am to 8:00pm on business days in the Applicable Region. Where Mimecast is required to undertake emergency maintenance which is necessary to safeguard the Services and/or any systems on which it operates then it may do so at any time but nonetheless shall endeavour to provide as much advance warning as it reasonably can to Customer.





## Customer Confirmation

**Mimecast North America, Inc.**  
191 Spring Street  
Lexington, MA 02421

**Reference:** Q-142116  
**Prepared By:** Phil O'Connor  
**Confirmation Date:** March 11, 2020  
**Subscription Term (Months):** 12.00  
**Hosting Jurisdictions:**  
Email Services - United States

**CUSTOMER:**  
City of Alameda  
2263 Santa Clara Avenue  
Alameda, California 94501

**RESELLER:**  
SHI International Corp.  
290 Davidson Ave  
Somerset, New Jersey 08873-4145

| Service                      | Qty |
|------------------------------|-----|
| Mimecast M3RA                | 500 |
| Add On- Secure Messaging     | 500 |
| LCS - Silver                 | 1   |
| IMP - Managed Implementation | 1   |

Please note:

- Customer may increase the number of Permitted Users shown above or add Services at any time during the Subscription Term. However, Customer must provide Reseller or Mimecast with advance notice prior to adding additional 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 Permitted Users shown above; (ii) downgrade any of the Services shown above; or (iii) remove any of the Services shown above. Such changes may be made effective at the start of a new Subscription Term, but only if Mimecast receives notice of such change not less than thirty days prior to the renewal date.

The provision of Services described herein is subject to the Mimecast Terms and Conditions, an executed copy of which is attached hereto.



## Customer Confirmation

To accept the Services under the terms set forth herein, please sign here:

### For and on behalf of Customer:

Individual  
Signing: \_\_\_\_\_

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

Authorized  
Signature: \_\_\_\_\_

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

### For and on behalf of Mimecast:

Individual  
Signing: \_\_\_\_\_

Rory Douglas

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

Commercial Counsel

Authorized  
Signature: \_\_\_\_\_

DocuSigned by:  
Rory Douglas  
1090E80A3D18423...

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

April 29, 2020 | 11:46 EDT

## Service Descriptions

| Service Name                 | Description                                                                                                                                                                                                                                                                 |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mimecast M3RA                | Email Security with Targeted Threat Protection and Remediation, Continuity, DLP, Sync & Recover and 99 year Archive.                                                                                                                                                        |
| Add On- Secure Messaging     | Share sensitive and confidential information with external contacts with confidence, via a secure email channel.                                                                                                                                                            |
| LCS - Silver                 | Local Business Hours Online Support, local Business Hours Telephone Support, 24x7x365 Telephone Support for P1 critical issues, unlimited access to Mimecast online Community & knowledge base, service monitoring, alerting and reporting, access to Customer Success Desk |
| IMP - Managed Implementation | Mimecast Professional Services Consultant Managed engagement, Transition planning and Milestone Check-in as well as legacy policy review.                                                                                                                                   |

Approved as To Form

Alan M. Cohen  
Assistant City Attorney  
City of Alameda