



Gordon County
Government

Annette Berry <aberry@gordoncounty.org>

Mimecast Email Security

1 message

Tim Cochran <tcochran@gordoncounty.org>
To: James Ledbetter <jledbetter@gordoncounty.org>
Cc: Annette Berry <aberry@gordoncounty.org>

Tue, Sep 14, 2021 at 3:23 PM

Hey Jim,

Please see the contract for Mimecast Security Solutions. This is for our enhanced email security and user training in this fiscal budget. The total annual cost will be \$16,122.55 and I have three written quotes per the purchasing policy. The quote is attached as well. If you do not see any legal problems with the contract I would like to add it to the next commissioner agenda.

Thanks!!



Tim Cochran
IT Director
T: 706-879-2300 | M: 706-676-0965
www.gordoncounty.org
200 South Wall St, 2nd FL | Calhoun, GA 30701

2 attachments

- Gordon County Government_General Terms_Final_16Jul2021 (1).pdf**
276K
- MFMN096.pdf**
63K

QUOTE CONFIRMATION



DEAR TIM COCHRAN,

Thank you for considering CDW•G LLC for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MFMN096	6/23/2021	MIMECAST	6880486	\$16,122.55

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<u>Mimecast Email Security Comprehensive Defense - subscription license (1 yea</u> Mfg. Part#: M_COMP-DEF_250_A Electronic distribution - NO MEDIA Contract: MARKET	345	6153172	\$41.08	\$14,172.60
<u>MIMECAST ADVANCED SUP</u> Mfg. Part#: M_ADV-SP_A Electronic distribution - NO MEDIA Contract: MARKET	1	6531299	\$1,949.95	\$1,949.95
<u>Professional Services Guided Implementation - implementation</u> Mfg. Part#: M_IMP_GDD_OO \$1,500 Price will be waived by Mimecast should you decide to purchase/sign agreement prior to July 1. Electronic distribution - NO MEDIA Contract: MARKET	1	5065156	\$0.00	\$0.00
<u>MIMECAST AT IMPLEMENTATION</u> Mfg. Part#: M_ATIOS_OO Electronic distribution - NO MEDIA Contract: MARKET	1	5913208	\$0.00	\$0.00

PURCHASER BILLING INFO		SUBTOTAL	\$16,122.55
Billing Address: GORDON COUNTY BOARD OF COMMISSIONERS ACCTS PAYABLE PO BOX 580 CALHOUN, GA 30703-0580 Phone: (706) 629-3795 Payment Terms: Net 30 Days-Govt State/Local		SHIPPING	\$0.00
		SALES TAX	\$0.00
		GRAND TOTAL	\$16,122.55
		Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515	
DELIVER TO			
Shipping Address: GORDON COUNTY BOARD OF COMMISSIONERS 200 S WALL ST FL 2 CALHOUN, GA 30701-2246 Shipping Method: ELECTRONIC DISTRIBUTION			



Adam Bruno

(877) 325-6613

adabrun@cdwg.com

This quote is subject to CDW's Terms and Conditions of Sales and Service Projects at <http://www.cdwg.com/content/terms-conditions/product-sales.aspx>
For more information, contact a CDW account manager

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mimecast™

General Terms and Conditions

These General Terms and Conditions (“**General Terms**”) govern the use of Mimecast’s products and services (collectively, the “**Services**”) and are entered into by the parties set out below.

Some Services (including where provided as Trial Services) are subject to additional terms and conditions (“**Supplemental Terms**”). Applicable Supplemental Terms are posted to www.mimecast.com/contracts. The Supplemental Terms are each incorporated into these General Terms and in the event that there are conflicting terms, the Supplemental Terms shall take precedence.

Customer and Mimecast each agree to these General 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 9 (“**Payment**”) of these General Terms will have no effect and any refunds or service credits payable in accordance with these General Terms, shall be paid to Reseller.

Mimecast North America, Inc. (“ Mimecast ”)	Gordon County Government (“ Customer ”)
Registration Number (if applicable): _____	Registration Number (if applicable): _____
Address: 191 Spring Street, Lexington, MA 02421	Address: 201 North Wall St Calhoun, GA 30701

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 as noted in the applicable Services Order (including any Renewal Term as noted in Section 8 herein) (“**Subscription Term**”). A “**Services Order**” is a transactional document such as a signed customer quote, a customer order, a partner quote, a partner purchase order, or a statement of work, which sets out the services to be provided to the Customer by Mimecast and may be submitted to Mimecast by Customer or Reseller. The Services will perform materially in accordance with the 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.

1.2 **Usage Metrics.** Services may be based on different usage metrics, including Domains, Takedowns, 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 new Subscription Term, but only if Mimecast receives notice of such change not less than thirty days prior to the renewal date.

1.3 **Hosting Jurisdiction.** Means the country where the data centre hosting the Customer Data is located which will be the location of the Mimecast contracting entity set out above, unless noted otherwise in the Supplemental Terms or agreed otherwise in writing between the Parties. 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 a 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.

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 Description does not apply to the Trial Services; 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).

2. Data Protection and Confidentiality.

2.1 **Customer Data.** "**Customer Data**" means the data processed through Customer's use of the applicable Services including, but not limited to, the contents of the files and emails sent by or to, a Permitted User. The parties acknowledge and agree that Mimecast has no ownership rights to Customer Data.

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, which will be made supplementary to these General Terms ("**Data Processing Agreement**"). In the event of any conflict between these General 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 General 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 the applicable laws and regulations of the Hosting Jurisdiction, including without limitation, where applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) (the "**GDPR**") and/or the California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 et seq (the "**CCPA**"). 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 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; 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;

2.5 **Injunction.** Notwithstanding anything to the contrary, 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.

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); (b) violates any industry standards concerning unsolicited email; (c) introduces any viruses, malicious code, or any other items of a harmful nature; or (d) 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, and hold harmless Mimecast in the event of any third-party claim or regulatory action arising out of Customer's breach (or alleged breach) of the terms of this Section 3.3.

4. Ownership.

4.1 **Ownership of the Services.** Customer's rights are limited to those expressly stated in these General Terms. Mimecast and its third-party licensors will retain all ownership interest in and to the Services and its underlying systems, as well as 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 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 governed by these General Terms.

4.2 **Threat Data and Aggregated Data.** Customer hereby grants Mimecast a worldwide, royalty-free, fully paid up, irrevocable, non-exclusive license to use, process and store Threat Data for the purpose of providing the Services in accordance with these General Terms. "**Threat Data**" means all data identified through the Services as malicious, such as data which may perpetuate data breaches, malware infections, cyberattacks or other threat activity, as well as data that describes and gives information about Customer Data, including but not limited to files, URLs, and other graph identifier derived features and other data used by machine learning processes that are designed to improve the Services. Threat Data does not include raw content of Customer Data. For clarity, notwithstanding any provision herein to the contrary, Mimecast owns all aggregated data derived from the Services 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**"). Aggregated Data does not contain Personal Data. Customer acknowledges and agrees that Mimecast may (i) Process Aggregated Data and/or Threat Data for its business purposes; (ii) improve and develop the Services, including but not limited to the use of Threat Data to train the Service's machine-learning algorithms, the output of which are anonymized and irreversible; and (iii) share Aggregated Data and/or Threat Data with Third Parties. A "**Third Party**" is any person (including companies, entities, organizations, etc.) that is not Customer or Mimecast.

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.

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

6. Intellectual Property Indemnification

6.1 **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 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.

6.2 **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 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 6 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, instructions, or information supplied by Customer.

6.3 **Entire Liability.** This Section 6 sets forth Mimecast’s entire liability and Customer’s sole remedy for an infringement claim as described in Section 6.1. Mimecast specifically disclaims any and all implied indemnification obligations that may apply to these General Terms.

7. Limitation of Liability

7.1 **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, EXTRA-CONTRACTUAL LIABILITY, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY (A) INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, (B) LOSS OF REVENUE OR PROFITS, (C) LOSS OF ANTICIPATED SAVINGS, (D) DAMAGE TO REPUTATION; OR (E) 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 MIMICAST, IN EACH CASE 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 7.1 DOES NOT APPLY TO ANY AMOUNTS PAYABLE IN CONNECTION WITH THE INDEMNIFICATION OBLIGATIONS STATED HEREIN.

7.2 **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, extra-contractual liability, 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 7.2(b)).

(b) **Data Claims.** Mimecast’s maximum liability for any and all Data Claims will be limited to the greater of: (i) USD \$100,000 (one hundred thousand US Dollars) or the equivalent in the currency of the applicable Hosting Jurisdiction at the time the claim arose) or (ii) two 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 7.2(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 Processing 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, extra-contractual liability, tort, statute or otherwise.

7.3 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.

8. Term and Termination

8.1 Term. These General Terms are valid as of the Customer signature date herein and will remain in force until the conclusion of all Services Orders for the provision of Services to the Customer (whether directly or via a Reseller). Other than as set out in Section 1.5 herein, each Subscription Term will renew automatically for terms of the same length as the Subscription Term noted in the Services Order, 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.

8.2 Termination.

(a) Opt-out. Customer may terminate this Agreement during the first thirty days of the Subscription Term noted in the initial 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 thereof. 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.

(d) No Other Rights of Termination. Customer acknowledges that it has no rights of termination other than those specifically set out in these General Terms.

8.3 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.

8.4 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.

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 General Terms: Section 2.4 (*Confidentiality Obligations*), Section 3.3 (*Restrictions*), Section 5 (*Disclaimer*), Section 6 (*Intellectual Property Indemnification*), Section 7 (*Limitation of Liability*), Section 10 (*General*), and Section 11 (*Regional Terms*).

9. Payment. This Section 9 does not apply if Customer has contracted separately with a Reseller as to the pricing and invoicing for the Services; for clarity, this Section 9 of these General Terms will have no effect unless Customer will be invoiced for the Services directly by Mimecast.

9.1 **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.

9.2 **Professional Services Fees.** Fees for any Professional Services to be performed by Mimecast shall be invoiced in full promptly once the applicable Services Order is in effect. 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' on the applicable Services Order. Customer Data received for import after that twelve-month period will be subject to additional fees.

9.3 **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.

9.4 **Late Payment.** Customer will be notified in the event payment has not been received in accordance with the terms of this Section 9.4. 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.

9.5 **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, provincial, 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.

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 above or 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 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.

11. Regional Terms.

11.1 Governing Law (US).

The following terms apply if the Mimecast entity on the applicable Services Order is Mimecast North America, Inc:

11.1.1 These General Terms and any disputes hereunder will be governed by the laws of the State of Georgia, 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 the State of Georgia.

11.2 Governing Law (UK).

The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Services Ltd:

11.2.1 These General Terms and any court proceedings shall be governed by the laws of England and Wales and held in England.

11.2.2 If Customer is located in any Middle East territory, in the event that the United Kingdom courts refuse jurisdiction, the parties agree that such dispute shall be subject to the exclusive jurisdiction of the court of the Dubai International Financial Centre, Dubai, UAE. Where such a dispute relates to a claim for a sum within the limits specified by the Dubai International Financial Centre Small Claims Tribunal, then the dispute may be referred to said tribunal. Customer understands and acknowledges that Mimecast provides Services in accordance with the laws of the Hosting Jurisdiction and does not warrant or represent compliance with any specific laws, regulations, statutes or guidelines, in any other jurisdiction regardless of where Customer is located, including without limitation, the CITC's Cloud Computing Regulatory Framework applicable in the Kingdom of Saudi Arabia

11.3 Governing Law (RSA).

The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast South Africa (Pty) Ltd:

11.3.1 These General Terms and any disputes hereunder will be governed by the laws of the Republic of South Africa, without regard to its conflict of law principles. The parties hereby consent and submit to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg for the purpose of all or any legal proceedings arising from or concerning these General Terms.

11.4 Governing Law (AU).

The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Australia (Pty) Ltd:

11.4.1 These General Terms and any arbitration and court proceedings shall be governed by the federal laws of Australia and the State of Victoria and held in Melbourne, Australia. Section 5 (Disclaimer) and any restrictions herein on liability will apply only to the extent that they are consistent with non-excludable Australian laws and nothing in those Sections or these General Terms limit any consumer guarantees or other rights Customer may have under non-excludable Australian laws. Customer hereby consents to the jurisdiction of such courts over Customer and

stipulates to the convenience, efficiency and fairness of proceeding in such courts, and covenant not to assert any objection to proceeding in such courts based on the alleged inconvenience, inefficiency or unfairness of such courts.

11.4.2 THE DISCLAIMER SET FORTH IN SECTION 5 DOES NOT EXCLUDE OR LIMIT ANY STATUTORY OR IMPLIED GUARANTEE, CONDITION OR WARRANTY THAT MAY NOT BY OPERATION OF LAW BE EXCLUDED OR LIMITED. TO THE EXTENT PERMITTED BY LAW, MIMICAST LIMITS ITS LIABILITY UNDER ANY STATUTORY OR IMPLIED CONDITION, WARRANTY OR GUARANTEE THAT CANNOT BE EXCLUDED TO, AT THE OPTION OF MIMICAST, THE RESUPPLY OF THE SERVICES OR THE PAYMENT OF THE COST OF DOING THE SAME.

11.5 Governing Law (Canada).

The following terms apply if the Mimecast entity listed on the applicable Services Order is Mimecast Canada Ltd:

11.5.1 These General Terms shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada. Any legal action or proceeding arising out of or based upon these General Terms will be instituted in the courts of the province of Ontario, and each party irrevocably submits to the jurisdiction of such courts in any such action or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Signed _____

For and on behalf of Mimecast

Name _____

Position _____

Signed _____

For and on behalf of Customer

Name _____

Position _____

