

ELEVITY SERVICES MIMECAST ADDENDUM

This Elevity Services Mimecast Addendum ("Mimecast Addendum") is made a part of the Elevity Master Services Agreement ("MSA") and the Order For Recurring/Support Services ("Order"), by and between Gordon Flesch Company, Inc. d/b/a Elevity ("Elevity") and You the Elevity customer ("Customer" or "You") acquiring Mimecast Services ("Mimecast Services") from Elevity, (collectively, the "Agreement"). All terms used herein and not otherwise defined are to have the same meaning as defined in the Agreement.

1. **Mimecast Services.** You will have five (5) days to check the initial configuration of Mimecast to ensure it meets Your requirements, and provide Elevity with written notice specifying any claimed defect or omission within five (5) days of installation and implementation of Mimecast. If You do not timely provide such notice, You acknowledge that You accept Mimecast as configured and are satisfied that the Solution is in the proper configuration. The Mimecast Services are subject to the Service Level Agreement which is set forth here: <https://www.mimecast.com/globalassets/documents/general-terms-docs/msp--service-levels--support-description.pdf>. Elevity will provide You with level 1 support in accordance with the Order.

2. **Proprietary Rights.** Mimecast and its third party licensors (as appropriate) shall retain all intellectual property rights in the Mimecast Services and the Partner Portal, including but not limited to patents, trademarks, trade name, service mark, copyright, trade secrets, know-how, process, technology, development tool, ideas, concepts, design right, domain names, moral right, database right, methodology, algorithm and invention, and any other proprietary information (whether registered, unregistered, pending or applied for). No Mimecast intellectual property rights are granted to You. You as owner of all data provided to Elevity and Mimecast retain all ownership and intellectual property rights thereto and grant to Elevity and Mimecast a license to use the data to the extent necessary for the performance of the Mimecast Services. You agree that You will not interfere with Mimecast's right in this respect. Mimecast is permitted to check Your use of the Mimecast Services to the extent necessary to ensure compliance with this Mimecast Addendum, and to access and ensure the quality of the Mimecast Services. You agree that You will not interfere with Mimecast's right in this respect. You acknowledge and agree that it may be necessary for Elevity or Mimecast to access the data to respond to Your technical problems and/or queries, and to ensure the proper working of its systems; all such access will be logged by the Elevity or Mimecast. If Elevity or Mimecast requests that Mimecast have access to individual emails, You agree to permit Mimecast such access upon request. Denying such access may hinder Mimecast's ability to provide You with services. You will hold Elevity and Mimecast harmless from any and all claims relating to such access. Mimecast shall have a perpetual, royalty-free, irrevocable, world-wide license to use and incorporate into the Mimecast Services any suggestions, ideas, modification requests, feedback or other recommendations related to the Services at no charge to Mimecast. Reselling or rebranding of the Mimecast Services is strictly prohibited.

3. **Confidentiality.** You agree to treat as confidential all information obtained from Elevity and Mimecast in connection with the Agreement which is designated as confidential or which is by its nature would reasonably be considered confidential. You will not disclose such confidential information or use or permit the use of the confidential information for purposes other than providing or using the Mimecast Services. You will promptly notify Elevity in writing of any loss or unauthorized use or disclosure of or access to such confidential information of which it becomes aware. This Section does not extend to information which: (a) is or becomes generally available to the public through no fault of Yours; (b) was previously rightfully known by You; (c) is independently developed by You without reference to or use of the confidential information; or (d) is required to be disclosed by You as a matter of law.

4. **Warranties.** Mimecast warrants that the Mimecast Services shall be performed with reasonable care and skill. Your exclusive remedy in the event of a breach of this warranty are limited, at Mimecast's sole discretion, to: (a) use reasonable efforts to rectify any non-conformance with this warranty with a reasonable period of time; (b) replace the Mimecast Service with an alternative application with similar functionality; or (c) make a pro rata refund of any outstanding upfront Mimecast Service fees paid for a specific Order. Mimecast shall have no liability or obligation for a breach of this warranty unless it has received written notice from You and Elevity of any Mimecast Service non-conformance within fifty (15) days from the date of such non-conformance.

EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS MIMECAST ADDENDUM, THE SERVICES AND THE PARTNER PORTAL ARE PROVIDED AND MADE AVAILABLE TO YOU "AS IS" AND THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THOSE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. MIMECAST DOES NOT REPRESENT THAT THE SERVICES OR THE PARTNER PORTAL WILL BE UNINTERRUPTED OR ERROR FREE OR MEET YOUR SPECIFIC REQUIREMENTS.

5. **Indemnification.** Mimecast will defend and indemnify Elevity against all damages and losses finally awarded against Elevity or agreed by Mimecast in final settlement (including reasonable legal fees) arising from a claim that the Mimecast Service used within the scope of this Agreement infringes any European Union or North American third party, intellectual property rights provided that: (a) You and Elevity notifies Mimecast in writing within thirty (30) days of the claim; (b) Mimecast has sole control of the defense and all related settlement negotiations; and (c) Elevity provides Mimecast with the assistance, information and authority necessary to perform the above. Reasonable, documented, out-of-pocket expenses incurred by You in providing such assistance will be reimbursed by Mimecast. If Your normal use or access to the Mimecast Service is held or believed by Mimecast to infringe as detailed above, then Mimecast may at its expense in its sole discretion: (a) procure the right to continue using the Mimecast Service; or (b) modify or replace the Mimecast Services so as to avoid the infringement; or (c) if such remedies are not reasonably available, refund any outstanding upfront Mimecast Service fees paid whereupon this Agreement shall terminate. This indemnity will not apply to infringement arising out of the use of the Mimecast Service or any part thereof in combination with any equipment and/or computer programs not supplied or approved by Mimecast for use with the Mimecast Service if such infringement would have been avoided by the use of the Mimecast Services without such equipment

and/or programs. The foregoing states Mimecast's entire liability with respect to infringement or alleged infringement of any third party rights of any kind whatsoever. You will hold harmless, defend and indemnify Elevity and Mimecast against all damages and losses (including reasonable legal fees) arising from a third party claim alleging that use of the Service (as opposed to the Service itself) by You is used to download or share electronic media in violation of such third party's intellectual property rights in such electronic media, or has otherwise harmed a third party. Elevity will provide You with prompt written notice of any such claim or action. Elevity shall have sole control of the defense on all related settlement negotiations and Mimecast shall provide the assistance, information and authority necessary to perform the above. Reasonable, documented, out-of-pocket expenses incurred by Elevity and Mimecast in providing such assistance will be reimbursed by You. Mimecast and Elevity shall be entitled to participate in the defense with its own counsel at its own expense. You shall retain liability and responsibility for use made of the Mimecast Services. You shall indemnify Elevity and Mimecast in full for any loss or damages to Elevity or Mimecast for such use. You shall indemnify Elevity and Mimecast in full for any loss, claims or damages suffered or brought against Elevity or Mimecast as a result of Your failure: (a) to adhere to the terms of this Agreement and any instructions given by Elevity and Mimecast; and (b) to obtain any necessary consents and/or permissions from permitted users or third parties; and (c) to adhere to any applicable laws or regulations.

6. LIMITATION OF LIABILITY. SUBJECT TO THE EXCLUSION BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OR PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The limitations set forth above shall not apply to matters subject to indemnification under this Agreement or relating to Your infringement or misappropriation of Elevity's or Mimecast's intellectual property rights.

7. Termination, and Suspension. Mimecast shall not be required to keep Your data for more than thirty (30) days following termination of the Mimecast Services. However, upon payment of reasonable costs, You can request the return of the data in an agreed format. If at any time continued provision of the Mimecast Services would compromise the security of the Mimecast Services due, without limitation, to backing attempts, denial of service attacks, mail bombs or other malicious activities either directed at or originating from Your domains or systems, Elevity or Mimecast may temporarily suspend the Mimecast Services. In such an event, Elevity will promptly inform You and will work with You to resolve such issues and re-instate the Mimecast Services. Mimecast reserves the right at any time during the supply of the Mimecast Services to test whether Your email system functions as an Open Relay ("Open Relay" means an email server configured to receive email from an unknown or unauthorized third party and forward the email to one or more recipients who are not users of that email system). If at any time Your email system is found to function as an Open Relay, then Mimecast reserves the right to suspend all or part of the Mimecast Services immediately until the problem has been resolved. Upon termination of the Mimecast Services for any reason whatsoever, Mimecast may reverse any configurations made to its systems and/or any DNS/name servers under its control that were implemented in order to provide the Mimecast Services. It shall be Your responsibility to ensure that the requisite changes are made to any DNS/name servers not under Mimecast's control and to inform Your ISP of the need to reroute inbound email.

8. Addendum. Any conflict between the provisions of this Mimecast Addendum and any other document or agreement regarding Mimecast Services, and the rights, benefits, and obligations regarding Mimecast Services will be resolved in favor of this Mimecast Addendum.