

MailStore Cloud – General Terms and Conditions

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INTRODUCTION

THESE CLOUD TERMS AND CONDITIONS (THE “**TERMS**”), TOGETHER WITH ANY EXHIBITS, ADDENDA, OR ORDER DOCUMENTATION (EACH, WHERE APPLICABLE, AND COLLECTIVELY, THE “**AGREEMENT**”), GOVERN YOUR ACCESS AND USE OF THE APPLICABLE SERVICES (AS DEFINED BELOW).

WHERE YOU HAVE PLACED AN ORDER DIRECTLY WITH AN OPENTEXT ENTITY THE FOLLOWING APPLIES: BY PLACING AN ORDER REFERENCING THESE TERMS, CLICKING “AGREE” OR A SIMILAR ACCEPTANCE BUTTON, OR BY ACCESSING OR USING THE SERVICES (THE FIRST DATE ON WHICH ANY SUCH ACTION OCCURS, THE “**EFFECTIVE DATE**”), YOU AND THE OPENTEXT ENTITY SET FORTH ON THE APPLICABLE ORDER DOCUMENTATION (“**MAILSTORE**”, “**OT**”, “**OPENTEXT**”, “**WE**”, OR “**US**”) ARE ENTERING INTO A LEGALLY BINDING CONTRACT AS OF THE EFFECTIVE DATE AND YOU AGREE TO BE BOUND BY AND ABIDE BY THIS AGREEMENT. THE TERMS OF THIS AGREEMENT GOVERN YOUR USE OF THE SERVICES, REGARDLESS OF ANY TERMS THAT MAY BE PRESENTED DURING YOUR USE OR INSTALLATION OF THE SERVICES, INCLUDING ANY SOFTWARE.

WHERE YOU HAVE PLACED AN ORDER FOR THE USE OF MAILSTORE CLOUD SERVICES VIA A RESELLER OR SERVICE PROVIDER, THE RESELLER/SERVICE PROVIDER IS YOUR CONTRACTING PARTY AND THE TERMS OF THIS AGREEMENT APPLY RESPECTIVELY TO THE USE OF THE MAILSTORE CLOUD SERVICES PURCHASED FROM RESELLER/SERVICE PROVIDER.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY OR ON BEHALF OF A BENEFICIARY (AS DEFINED BELOW), YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND/OR ANY BENEFICIARY (AS APPLICABLE) TO THIS AGREEMENT, IN WHICH CASE THE TERMS “**YOU**” AND “**YOUR**” AS USED HEREIN WILL REFER TO SUCH ENTITY AND BENEFICIARY (AS APPLICABLE). IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, YOU MUST NOT USE OR AUTHORIZE ANY USE OF THE SERVICES.

MAILSTORE MAY MODIFY THIS AGREEMENT FROM TIME TO TIME. IF MAILSTORE MAKES ANY MATERIAL CHANGES TO THIS AGREEMENT, AS DETERMINED BY MAILSTORE AT ITS SOLE DISCRETION, MAILSTORE WILL PROVIDE YOU WITH PRIOR WRITTEN NOTICE (INCLUDING, WITHOUT LIMITATION, BY POSTING THE REVISED AGREEMENT WITH A BANNER NOTIFICATION ON ITS WEBSITE OR IN THE SERVICES AND/OR BY SENDING AN EMAIL TO THE LAST EMAIL ADDRESS PROVIDED BY YOU). BY AGREEING TO THE MODIFIED AGREEMENT OR CONTINUING USE OF THE SERVICES AFTER THE EFFECTIVE DATE OF THE MODIFIED AGREEMENT, YOU AGREE TO THE TERMS OF THE MODIFIED AGREEMENT.

1. DEFINITIONS

“**App Store**” means a third-party digital distribution platform where an individual can find and order the Service or install Software on their device.

“**Applicable Taxes**” means the sales, use, consumption, goods and services, value-added and similar taxes applicable to the Services or Software, except taxes imposed on MAILSTORE’s income.

“**Beneficiary**” means a third-party organization for which an MSP provides managed services in accordance with Exhibit 1 for such organization’s own internal business use.

“**Covered Country**” means each contracting state to The Patent Cooperation Treaty (currently published at https://www.wipo.int/pct/en/pct_contracting_states.html).

“**End User**” means one of Your authorized employees or independent contractors. In the case of an MSP, End User shall also include Your Beneficiaries’ authorized employees or independent contractors.

“**Evaluation Services**” means Services, or a feature or functionality thereof, that are offered by MAILSTORE under this Agreement on a limited-use basis, including without limitation, for trial, testing, evaluation or similar purposes. For the avoidance of doubt, Evaluation Services do not include not-for-resale licenses that may be provided to MAILSTORE partners.

“**Fees**” means the fees and charges specified in the Order Documentation and any applicable overage or excess use charges not included in the Order Documentation.

“**High Risk System**” means any system, device, or network that the failure of which could lead directly to death, personal injury, or catastrophic personal damage. High Risk Systems include, but are not limited to, critical infrastructure, industrial plants, aircraft, train, boat, or vehicle navigation or communications systems, weapons systems, air traffic control systems, nuclear facilities, hazardous environments, hazardous systems, hazardous applications or life support or emergency operations.

“**Infringement Claim**” means claims, suits, actions, or proceedings brought against End User in a court of competent jurisdiction in a Covered Country by a third-party that allege an infringement by the Services of a third-party’s patent, copyright, or trade secret.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Marks” means all trademarks, service marks, trade dress, trade names, domain names, corporate names, brand names, product names, proprietary logos, proprietary symbols, and other indicia of origin provided by a party to the other from time to time in connection with this Agreement.

“Managed Services Provider” or **“MSP”** or **“Service Provider”** means a third-party that provides network, application, system, e-management services and/or other managed services through and/or in conjunction with the authorized use of the Services subject to the terms of this Agreement.

“No Fee Services” means Services and related Software (if any) offered by MAILSTORE under this Agreement and provided without a fee being charged to You, inclusive of any Services offered on a beta basis as a limited release.

“Order Documentation” means any written order, quotation or similar transactional document, in electronic or paper form, that is provided by MAILSTORE or a Reseller/Service Provider or an App Store regarding Your subscription to the Services. Order Documentation may include a MAILSTORE checkout payment page or the email confirmation that MAILSTORE sends for the purchase or other order document or communication made available to You regarding the Services.

“Reseller” means a third party authorized by MAILSTORE to resell or distribute the Services.

“Resultant Data” means information or data that is derived by or through the Services from processing Your data but is sufficiently distinct from Your data (including personal data) so that Your data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information or data alone. Resultant Data may include anonymized, aggregated, or de-identified data.

“Services” means the services MAILSTORE makes available to You under this Agreement, inclusive of updates to the Services provided at no cost to users.

“Service Documentation” means any manuals, instructions, or other documents or materials that MAILSTORE provides or makes available to You that describe the configuration, integration, operation or use of the applicable Service.

“Software” means the applicable object-code software that can be downloaded and installed for purposes of using the Services which may include client software for an individual personal computer, mobile device, server, or network.

“Subscription Term” means the period of time set forth on the applicable Order Documentation for the Services or, if not on the applicable Order Documentation, the period of time otherwise communicated to You in writing by or on behalf of MAILSTORE or

the period of time set forth in your order document with the Reseller/Service Provider, and any subsequent renewal terms.

2. THE SERVICES

2.1 Right to Access. Subject to Your compliance with the terms of this Agreement, MAILSTORE grants You, during the Subscription Term, a revocable, non-exclusive, non-sublicensable, non-transferable right to access and use the elements of the Services solely for Your internal business purposes, in accordance with this Agreement, and not for resale or, except to the extent specifically permitted under this Agreement, to provide services to or on behalf of a Beneficiary. You are responsible and liable for: (a) Your use of the Services, including any violation or breach of this Agreement; (b) any use of the Services or actions taken through use of Your Access Credentials; and (c) Your End User's compliance with the terms of this Agreement.

2.2 License to Software. If the Services include Software, the terms of this Section 2.2 will apply. Subject to Your compliance with the terms of this Agreement, MAILSTORE hereby grants You, during the Subscription Term, a revocable, non-exclusive, non-sublicensable, non-transferable license: (a) to download, reproduce and use the Software specified on the applicable Order Documentation, in such quantities as are set forth on such Order Documentation, as necessary for Your internal business purposes and solely as a component of the Services; and (b) to download and reproduce a reasonable number of copies of the Service Documentation (if any is provided) as necessary to use the Services. For the avoidance of doubt, MAILSTORE does not grant You a right to modify, publicly display, publish or distribute the Service Documentation. The license granted pursuant to this subsection does not include use by any third party, and You will not permit any such use, except to the extent specifically permitted under this Agreement. Copies of the Software created or transferred pursuant to this Agreement are licensed only for the duration of the Subscription Term, not sold, and You receive no title to or ownership of such copies. Furthermore, You receive no rights to the Software other than those specifically granted in this Section 2.2.

2.3 Service Specific Terms and Service Levels. The use of the Services is subject to additional service-specific terms which are incorporated herein and available at <https://www.mailstore.com/en/legal/> Furthermore, the Services shall be provided according to the service levels defined in the service-specific terms.

2.4 Support. Support for the Services will be provided in accordance with the MAILSTORE's support terms which are incorporated herein and available at <https://www.mailstore.com/en/legal/>.

2.5 Evaluation Services. If MAILSTORE grants to You an Evaluation Period to use any Evaluation Services, You may do so only: (a) subject to the limitations defined for such Services; and (b) in good faith for its intended purpose during the Evaluation Period. Unless otherwise agreed in writing, the “**Evaluation Period**” shall be for a period communicated to You by MAILSTORE (typically 30 days). Notwithstanding the foregoing, MAILSTORE reserves the right to terminate any Evaluation Services at any time in its sole discretion, including, without limitation, causing the Evaluation Period to co-term for all End Users at the same time. Unless You terminate the Evaluation Services before the end of the Evaluation Period, Your Evaluation Services will be automatically converted to a commercial subscription of the Services. If You terminate the Evaluation Services during the Evaluation Period then when the Evaluation Period expires, You will no longer have access to the Evaluation Services or to any data in the Evaluation Services. Any use of the Evaluation Services with production data is at Your own risk. In connection with use of any Evaluation Services, You specifically agree that: (i) Evaluation Services are provided “AS-IS” and without support, indemnification or warranty of any kind, express or implied; and (ii) any security, compliance, service level, and privacy commitments made by MAILSTORE in connection with the Agreement are not applicable to the Evaluation Services. MAILSTORE AND ITS AFFILIATES SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO ANY EVALUATION SERVICES AND RELATED SOFTWARE, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE MAILSTORE’S TOTAL AGGREGATE LIABILITY (EXCLUDING INDIRECT DAMAGES, FOR WHICH MAILSTORE EXPRESSLY DISCLAIMS ALL LIABILITY) ARISING OUT OF OR RELATING TO EVALUATION SERVICES IS €1,000 EURO (OR THE EQUIVALENT IN LOCAL CURRENCY).

3. YOUR RESPONSIBILITIES

3.1 Accounts and Access Credentials. Use of the Services may require You or Your End Users to create an account (“Account”) connected to access credentials (including, but not limited to, usernames and passwords) (“Access Credentials”). You and Your End Users are solely responsible for taking reasonable security measures to protect Your Access Credentials and agree not to share any End User’s Access Credentials. You must notify MAILSTORE immediately upon discovery of any unauthorized use of Your Access Credentials or unauthorized access to, or use of, any Account. You are responsible for compliance with this Agreement by Your End Users and for any and all (i) acts or omissions of Your End Users with respect to the Services; (ii) activities that occur under any of Your End User’s Accounts; (iii) any actions, or unauthorized use, by Your Access Credentials. The actions of Your End Users with respect to the Services shall be binding on You.

3.2 Restrictions on Use. As a condition to Your use of the Services, You must not, nor permit any End User or third party to: (a) copy, modify or create derivative works of the

Services or Service Documentation (except You may reproduce copies of the Service Documentation to the extent allowed under Section 2.2); (b) except for the limited rights granted to MSPs under Exhibit 1, rent, lease, lend, sell, resell, sublicense, assign, distribute, publish, transfer, or otherwise make available any portion of the Services to any third party, including on the internet or in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, or otherwise attempt to derive or gain access to any source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (d) access or use the Services or Service Documentation (if applicable): (i) to attempt to gain unauthorized access to, test the vulnerability of, or otherwise interfere with or disrupt the Services or any other account, website, computer system, network, device, data or server connected to the Services, (ii) in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, (iii) in a manner that violates, or causes the breach of, any applicable law, (iv) for purposes of competitive analysis of the Services, or for benchmarking or stress testing of the Services, or the development, provision, or use of a competing software service or product, (v) on or in a High Risk System, (vi) to upload, post, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes” or any other form of solicitation, (vii) in a manner intended to circumvent any technical restrictions or usage limits of the Services, or (viii) for a purpose or in a manner not permitted by this Agreement; (e) input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any malicious or harmful code; (f) damage, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services or MAILSTORE’s provision of services to any third party, in whole or in part; or (g) remove, delete, alter, or obscure any copyright, trademark, patent, or other intellectual property or proprietary rights notices in or relating to the Services or Service Documentation. If You are an MSP, the terms and conditions set forth in Exhibit 1 also apply to Your use of the Services.

4. CONTENT

4.1 Your Content. You grant MAILSTORE a non-exclusive, worldwide, royalty-free, fully-paid license to use Your data and other information uploaded, generated, stored or transmitted by You into the Services (“**Your Content**”): (a) to perform MAILSTORE’s obligations under this Agreement; (b) as authorized or instructed by You; (c) to provide, maintain and improve the Services; and/or (d) as required by applicable law. As between You and MAILSTORE, Your Content belongs to You, and MAILSTORE makes no claim to any right of ownership in Your Content. You represent and warrant to MAILSTORE that You are

the owner of all rights to Your Content, or that You have the right to reproduce, distribute, transfer and/or provide Your Content to MAILSTORE for the purposes of this Agreement. You remain solely responsible at all times for Your Content and for ensuring that Your Content complies with the Agreement and with all legal and regulatory obligations applicable to Your Content.

4.2 Your Obligations for Your Content. You represent and warrant that: (a) You own or have a valid license to all of Your Content; (b) You have all necessary consents, authorizations and/or legal permissions required to permit the processing of Your Content under this Agreement; and (c) none of Your Content: (i) is subject to the International Traffic in Arms Regulations maintained by the Department of State; (ii) infringes any intellectual property, proprietary, contractual or privacy rights of any party; (iii) contains software viruses or any other computer code, files or programs that interrupts, destroy or limits the functionality of any computer software or hardware or telecommunications equipment; (iv) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail”, “spam”, “chain letters”, “pyramid schemes”, “contests”, “sweepstakes”, or any other form of solicitation; (v) is unlawful, harmful, threatening, abusive, harassing, tortious, violent, defamatory, vulgar, obscene, pornographic, libelous or otherwise objectionable; or (vi) in the sole of judgment of MAILSTORE, is objectionable or which restricts or inhibits any other person from using or enjoying the Services, or which may expose MAILSTORE or its customers to any harm or liability of any kind. MAILSTORE has the right, but not the obligation, to monitor Your use of the Services to determine Your compliance with this Agreement.

4.3 Retention and Deletion of Your Content. MAILSTORE shall have no obligation to retain, delete or return Your Content to You except as provided in this Agreement. For Evaluation Services or No Fee Services, Your Content may be deleted by MAILSTORE without any retention period or notice. Provided You are not in material breach of this Agreement and are current with payment obligations, and subject to the functionality of the Services, You may access, export or delete Your Content at any time prior to the expiration or termination of the Subscription Term. MAILSTORE may delete all of Your Content at the time of the expiration or termination of the Subscription Term. Nonetheless, MAILSTORE may retain Your Content or Confidential Information in accordance with its standard backup or record retention policies or as required by Law, subject to Section 7 (Confidentiality) and any DPA.

5. INTELLECTUAL PROPERTY OWNERSHIP

5.1 Ownership of Software and Services. MAILSTORE and its licensors are and will remain the sole and exclusive owners of all right, title, and interest in and to the Services

(including the Software and all other software used to provide the Services and all graphics, user interfaces, logos, and trademarks reproduced through the Services), Service Documentation, and Resultant Data, including all derivative works of each of the foregoing, and all Intellectual Property Rights to each of the foregoing. This Agreement does not grant You any Intellectual Property Rights in or any license to the Service or any of its components, except to the limited extent that this Agreement specifically sets forth Your license rights to the Software or the Service Documentation. MAILSTORE and its licensors reserve all rights not expressly granted to You in this Agreement.

5.2 MAILSTORE Ownership of Feedback. In the course of using the Services, Evaluation Services and/or No Fee Services, You may provide MAILSTORE reports, comments, suggestions or ideas relating the Services, Evaluation Services and/or No Fee Services (“**Feedback**”). MAILSTORE shall have no obligation to incorporate Feedback into the Services, and You shall have no obligation to provide Feedback. MAILSTORE shall have no obligation to treat such Feedback as Your confidential or trade secret information. You, on behalf of Yourself and Your successors-in-interest, grant to MAILSTORE a world-wide, non-exclusive, irrevocable, perpetual, royalty-free and fully paid-up right and license to use, profit from, disclose, or publish, any Feedback. Without limiting the generality of the foregoing, You agree that Your provision of Feedback does not give You any intellectual property or any other right, title, or interest in or to any aspects of the Services, even if such Feedback leads MAILSTORE to create new Services. No representations, warranties, or indemnities as may be granted by either party to the other under this Agreement shall apply to Feedback.

5.3 Open Source Software. The Software may leverage and/or link with components subject to the terms and conditions of open source software (“**Open Source Software**”) licenses. You acknowledge that Your use of each Open Source Software component is subject to the open source license applicable to such component. MAILSTORE makes no representations or warranties with regard to such Open Source Software and assumes no liability that may arise from the use of Open Source Software.

6. PRIVACY

6.1 Privacy and Data Protection. MAILSTORE will provide the Services in accordance with privacy and data protections laws, to the extent applicable. To the extent that MAILSTORE processes personal data on Your behalf in performing the Services: (a) MAILSTORE shall implement reasonable and appropriate technical and organizational measures designed to protect personal data against unauthorized or unlawful processing; (b) MAILSTORE shall not collect, process or use such personal data except as necessary to perform the Services, or as otherwise permitted by the applicable laws; and (c) where an

individual submits a verifiable request to MAILSTORE to exercise their privacy rights relating to their personal data in respect of You as the named customer, MAILSTORE shall forward these requests to Your email address on file with MAILSTORE as soon as reasonably practicable. To the extent that MAILSTORE requires personal data to provide the Services, You will provide personal data only to the extent reasonably required. You are responsible for implementing and maintaining privacy protections and security measures for components that You provide or control, as well as complying with Your obligations under this Agreement or otherwise required by law including (without limitation) any requisite consents required to share or manage such personal data.

In the event that the provision of the Services involves the processing of personal data, such that applicable data protection legislation (including, without limitation, the EU General Data Protection Regulation 2016/679) require that the Parties enter into a data processing agreement, the terms of the Data Processing Addendum here at <https://www.opentext.com/assets/documents/en-US/pdf/opentext-data-processing-addendum-en.pdf> shall apply and be deemed incorporated herein automatically.

7. CONFIDENTIALITY

7.1 Confidentiality and Use; Exclusions. “**Confidential Information**” means any information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) which: (a) is marked as confidential or proprietary by the Disclosing Party; or (b) the Receiving Party should reasonably understand to be confidential. Each Disclosing Party may disclose to the Receiving Party Confidential Information pursuant to the Agreement. Each Receiving Party agrees, for the term of the Agreement and for three (3)

years after such term, to hold Disclosing Party’s Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to affiliates and to professional advisers who are bound by appropriate written obligations of confidentiality) unless authorized to do so by Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each Receiving Party agrees to take reasonable steps to protect Disclosing Party’s Confidential Information from being disclosed, distributed or used in violation of the provisions of this Section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (i) is or becomes a part of the public domain through no act or omission of Receiving Party; (ii) was in Receiving Party’s lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by Receiving Party either directly or indirectly from Disclosing Party; (iii) is lawfully disclosed to Receiving Party by a third party without restriction on disclosure; (iv) is independently

developed by Receiving Party or its employees or agents without use of Disclosing Party's Confidential Information; or (v) is required to be disclosed by Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that Receiving Party promptly notifies Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek a protective order or waive compliance with this Section. Each Receiving Party is responsible for any actions of its affiliates, employees and agents in breach of this Section.

8. FEES, PAYMENTS AND TAXES

8.1 Fees. You are responsible for paying MAILSTORE or a Reseller/Service Provider, as applicable, the Fees without setoff or deduction. Unless otherwise stated in this Agreement or any Order Documentation: (a) MAILSTORE or a Reseller/Service Provider, as applicable, will invoice You in advance for the Fees for the Subscription Term; (b) all Fees are guaranteed and non-refundable; and (c) quantities purchased cannot be decreased within a Subscription Term. Where you have contracted directly with MAILSTORE, MAILSTORE reserves the right to raise existing pricing at any time on an annual basis in MAILSTORE's sole and exclusive's discretion by (up to) five percent (5%). MAILSTORE also reserves the right to increase Fees (i) upon renewal (including automatic renewals) and (ii) at greater rate and frequency upon thirty (30) days' advance written notice. Your continued use of the Services after notice of a change to our Fees will constitute Your agreement to such changes.

8.2 Excess Usage. If You exceed the storage capacity, seats, licenses or other quantities as outlined in the applicable Order Documentation or otherwise exceed Your authorized usage of the Services ("Excess Usage"), You agree to pay the applicable Fees for such Excess Usage. In the event You fail to pay such fees, MAILSTORE reserves the right to suspend or throttle use of the Services so that Customer is using the Services in accordance with the quantities indicated in the applicable Order Documentation.

8.3 Payment; Taxes. Unless otherwise stated in the applicable Order Documentation, (a) payment is due thirty (30) days from receipt of applicable invoice and (b) all Fees exclude Applicable Taxes, import tariffs, and shipping and handling fees, which shall be Your responsibility. You shall indemnify, defend, and hold MAILSTORE harmless for any liability or expense MAILSTORE may incur in connection with the failure to pay, or collection of, any Fees, Applicable Taxes, import tariffs, or shipping and handling fees.

8.4 Credit History. Acceptance of any order and applicability of the payment terms above are subject to a review of Your credit history and rating. If Your credit history does not meet MAILSTORE's acceptance criteria, MAILSTORE may (i) reject the order or (ii)

require You to make deposits and up-front payments until an acceptable credit history is established.

8.5 Payment by Credit Card. MAILSTORE may accept credit card payment for certain services. Where MAILSTORE accepts payment by credit card for the Services, upon Your execution of the applicable Order Documentation and providing Your credit card information to MAILSTORE or to the payment processor MAILSTORE uses, You understand and agree that MAILSTORE or the payment processor that MAILSTORE uses may, and is authorized to, charge Your credit card account for payment in advance in the correct amount, which payment may vary from time to time as provided in this Agreement and/or the applicable Order Documentation, for each recurring billing period during the Subscription Term. Such credit card payment is not available for all Services.

8.6 Audit. You acknowledge and agree MAILSTORE shall have the right to audit You strictly with respect to Your usage of the Services in order to ensure compliance with the commercial terms of this Agreement or any applicable Order Documentation. Audits may be conducted by MAILSTORE personnel or by an independent third-party auditor appointed by MAILSTORE. In the event that the results of the audit indicate that (a) Your use of the Services violate the terms of this Agreement, or (b) You have underpaid any Fees or owe an amount with respect to excess usage of MAILSTORE's Services, You agree to reimburse MAILSTORE for the costs incurred by such audit, pay the applicable amounts owed to MAILSTORE and reduce, modify, and correct usage of the Services in accordance with this Agreement herein.

8.7 Late Payment. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. You shall bear all of MAILSTORE's costs of collection of overdue fees, including reasonable attorneys' fees.

9. TERM; TERMINATION

9.1 Term. The length of time that You are authorized to use the Services will be the applicable Subscription Term. Except as otherwise set forth in the applicable Order Documentation, all subscriptions to the Services will automatically renew unless You provide written notice of non-renewal at least one month prior to the renewal date. If no renewal term is identified in the Order Documentation, the renewal terms shall be the same length of time as the initial term of the subscription. If You terminate during the Subscription Term, (a) You will continue to have access to the applicable Service through the end of the then-current Subscription Term, (b) You shall be required to pay all Fees through the then-current Subscription Term, and (c) You will not be entitled to a refund or credit for any Fees already due or paid.

9.2 Termination. MAILSTORE may, at its option, terminate this Agreement and/or Your access to the Services immediately upon written notice to You, in the event: (a) You materially breach any provision of this Agreement and do not cure the breach within thirty (30) days after receiving written notice of such breach; (b) You become insolvent or unable to pay Your debts when due; (c) You file a petition in bankruptcy, reorganization or similar proceeding, or, if filed against You, such petition is not removed within ninety (90) days after such filing; (d) You discontinue Your business; or (e) a receiver is appointed or there is an assignment for the benefit of Your creditors.

9.3 Suspension. In addition to all other remedies and rights available to us at law, in equity, or otherwise, MAILSTORE may, at any time and in its sole discretion, suspend Your or any End User's access to all or any part of the Services for, including but not limited to, the following reasons: (a) a threat to the security or integrity of the Services; (b) You have materially breached this Agreement; or (c) any amount due hereunder remains unpaid after ten (10) days after the due date. MAILSTORE shall use commercially reasonable efforts to: (i) provide You with prior notice of any suspension; and (ii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the suspension is cured. MAILSTORE will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that You may incur as a result of a suspension.

9.4 Effect of Expiration or Termination. Upon expiration or earlier termination of a Subscription Term or this Agreement for any reason, all rights, licenses, and authorizations granted to You and Your End Users will immediately terminate and You and Your End Users must immediately: (a) stop using the Services; (b) delete the Software; and (c) if applicable, return any equipment provided to You by MAILSTORE in connection with the Services back to MAILSTORE, or, at MAILSTORE's option, provide access to Your equipment and premises for MAILSTORE to remove such equipment. In addition, all Fees that You owe MAILSTORE at termination or expiration, if any, will become due and payable to MAILSTORE on the effective date of termination. If this Agreement terminates or expires, MAILSTORE may delete Your Content at any time after date of termination or expiration.

9.5 Survival. The following provisions of this Agreement shall survive termination or expiration of the Agreement: Sections 2.5 (Evaluation and No Fee Services); 3.2 (Restrictions on Use); 4 (Content); 5 (Intellectual Property Ownership); 7 (Confidentiality) 8 (Fees, Payment and Taxes); 12 (Limitation of Liability); and any other provisions that by their nature should survive termination or expiration.

10. WARRANTIES

10.1 IF YOUR PRINCIPAL PLACE OF BUSINESS IS IN GERMANY, AUSTRIA OR SWITZERLAND, THE FOLLOWING WARRANTY TERMS APPLY:

- a) The parties agree that the Services owed under the Agreement are a new and varied type of service and that in the event of any defaults to the Services, the application of the special warranty provisions of the German Civil Code (BGB) to the interests of the parties would not be fair. It is therefore agreed that in connection with any default of the Services the following provisions shall apply exclusively.
- b) MAILSTORE warrants that the Services will be rendered in a professional and workmanlike manner and will function, in all material respects, in conformance with the Agreement.
- c) MAILSTORE does not warrant that the Services will be error-free or uninterrupted or that all failures of the Services will be remedied or that the Services meet Your requirements or expectations, or particular purpose. MAILSTORE is not responsible for any issues related to the performance, operation or security of the Services arising from: (a) Content or the content of third parties or from services provided by third parties on behalf of You; or (b) Your failure to provide appropriate operating environment necessary for the Services in accordance with the Service Documentation. If in case of a default of the Services for which MAILSTORE is responsible, You shall notify MAILSTORE immediately, but at the latest within two (2) weeks after becoming aware of the default by a written complaint describing the error in the Services. If no such complaint is lodged all Your warranty claims and rights arising from the respective default are excluded, insofar as they are recognizable for You.
- d) In response to a complaint pursuant to Section c), MAILSTORE shall have the opportunity to remedy the default free of charge within an appropriate period. If the default of Services cannot be rectified within an appropriate period or finally fails after MAILSTORE has been given at least two (2) opportunities to effect rectification, You may at its option: (a) demand a reduction of the Fees; or (b) terminate solely the affected parts of respective Agreement. In case of termination, You may assert a claim for compensation of damages or futile expenditures suffered within the limitations of Section 12 of the Agreement. Withdrawal shall be excluded in case of insignificant defaults in the Services. All warranty claims and rights of You arising from a default of the Services shall become statute-barred 12 months after the date on which the default was first notified or should have been notified pursuant to Section c) above.

e) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, USUALLY ASSUMED CHARACTERISTICS AND FITNESS FOR A PARTICULAR PURPOSE. MAILSTORE DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION. YOU ASSUME THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGES TO YOUR CONTENT OR OPERATIONS WHICH COULD BE CAUSED BY SERVICE DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS

10.2 If YOUR PRINCIPAL PLACE OF BUSINESS IS IN ANY OTHER COUNTRY OTHER THAN THE ONES SET FORTH ABOVE, THE FOLLOWING WARRANTY TERMS APPLY:

a) **Limited Warranty.** MAILSTORE warrants that the Services, when used as permitted in this Agreement, will operate substantially as described in the Service Specific Terms and Service Levels. The above warranty will not apply: (i) if the Services are not used in compliance with this Agreement; (ii) if any modifications are made to the Services by You or any third party; (iii) to defects due to accident, abuse or improper use by You; or (iv) to any Evaluation Services or No Fee Services.

b) **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED “AS IS” AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, MAILSTORE, ON BEHALF OF ITSELF, ITS AFFILIATES AND ITS SUPPLIERS, EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY. THERE IS NO WARRANTY THAT THE SERVICES WILL BE ERROR FREE; THAT ACCESS WILL BE CONTINUOUS OR UNINTERRUPTED; BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, NETWORKS OR DATABASES; OR THAT THE SERVICES WILL MEET YOUR BUSINESS REQUIREMENTS. ALL OPEN-SOURCE SOFTWARE AND OTHER THIRD-PARTY SOFTWARE ARE PROVIDED “AS IS”.

10.3 App Store Purchases. If You purchase the Services via an App Store, You agree that: (a) MAILSTORE makes no representations or warranties regarding such App Store; (b) MAILSTORE hereby disclaims all representations and warranties with regard to such App Store; and (c) as between MAILSTORE and You, You are solely responsible for its compliance with the App Store’s terms and conditions, and MAILSTORE takes no responsibility or liability for any breach by You of any of those terms and conditions.

11. INDEMNIFICATION

11.1 Infringement Indemnity

Provided You are not in material breach of the Agreement and are current with Your payment obligations, MAILSTORE will defend You from any Infringement Claim to the extent it arises solely from Your use of the Services in accordance with the provisions of the Agreement. This defense will not apply to an Infringement Claim to the extent caused by: (i) modification of the Services by any party other than MAILSTORE; or (ii) the combination or use of the Services with software, hardware, firmware, data, or technology not provided by MAILSTORE to You. As to any such Infringement Claim referenced under the preceding items (i) or (ii), MAILSTORE assumes no liability for infringement, and You will hold MAILSTORE harmless against any infringement claims arising therefrom.

11.2 MAILSTORE's obligations in this Section are conditioned upon: (i) You notifying MAILSTORE in writing within 10 days of You becoming aware of an Infringement Claim; (ii) You not making an admission against MAILSTORE's interests; (iii) You not agreeing to any settlement of the Infringement Claim without the prior written consent of MAILSTORE; (iv) You providing reasonable assistance to MAILSTORE in connection with the defence, litigation, and settlement by MAILSTORE of the Infringement Claim; and (v) MAILSTORE maintaining sole control over legal counsel, litigation, and settlement of the Infringement Claim. MAILSTORE will indemnify You from any judgment finally awarded, or payments made in settlement of, the Infringement Claim where all the conditions of this Section 11 are satisfied.

11.3 If the Services become, or in MAILSTORE's opinion may become, the subject of an Infringement Claim, MAILSTORE will, at no expense to You: (i) obtain an authorization for You to continue using the Services; (ii) modify the Services so they become non-infringing but still provide substantially the same functionality as the infringing Services; or (iii) terminate the Services and refund the unused portion of any prepaid fees received by MAILSTORE from You. MAILSTORE's entire liability and Your sole and exclusive remedy with respect to any Infringement Claim shall be limited to the remedies set forth in this Section 11.

11.4 Indemnification of MAILSTORE. You shall defend, indemnify and hold harmless MAILSTORE and its affiliates and their respective directors and employees from any damages, losses, claims and expenses arising from any claim or other legal action related to: (a) Your Content which MAILSTORE uses, processes and/or manages in connection with the Services; (b) Your or Your End User's use of the Services in breach of Section 3.2 (Restrictions on Use); (c) Your or Your End User's breach of this Agreement. Provided that, where any such indemnified claim relates to a claim against MAILSTORE from a third party, You may not settle any such third party claim against MAILSTORE unless MAILSTORE

consents to such settlement, and further provided that MAILSTORE will have the right, at its option, to defend itself against any such claim, or to participate in the defence thereof by counsel of its own choice.

12. LIMITATION OF LIABILITY

12.1 IF YOUR PRINCIPAL PLACE OF BUSINESS IS IN GERMANY, AUSTRIA OR SWITZERLAND, THE FOLLOWING LIMITATION OF LIABILITY TERMS APPLY:

- a) **Limitation of liability.** MAILSTORE's total liability for any and all claims arising out of or relating to the Agreement or the Services, regardless of the legal grounds (e.g., breach of contract or warranty, negligence, breach of duty, unlawful acts, tort or otherwise) shall be subject to the limitation set out herein:
- i. **Unlimited liability.** MAILSTORE shall be liable without limitation: (a) in the event of intentional acts; or (b) in the event of damage or loss arising from death or personal injury irrespective from the level of culpability; or (c) in case MAILSTORE has issued a guarantee or (d) in case of fraudulent misrepresentation, or (e) liability under the German Product Liability Act (ProdHaftG).
 - ii. **Cardinal obligations, gross negligence.**
 - aa) MAILSTORE shall be liable in case of a material breach of contractual obligations which jeopardize attainment of the contractual purpose (cardinal obligations) to the extent that MAILSTORE acted gross negligently.
 - bb) The parties agree that MAILSTORE's liability for cardinal obligations under Section ii) shall be limited in the aggregate to 200% of the fees paid by You during the 12 months immediately preceding the event causing the damage.
 - cc) For all claims in the aggregate arising from or relating to the Agreement or the Services during or in relation to the entire Agreement Term, the parties agree that MAILSTORE's liability for cardinal obligations shall be limited to 100% of the fees paid by You for the entire Agreement Term.
 - iii. **Cardinal obligations, simple negligence.**
 - aa) MAILSTORE shall be liable for a breach of cardinal obligations in case of only simple negligence up to the limited extent that is typically contractually foreseeable.

- bb) The parties agree that MAILSTORE's liability for typically contractually foreseeable damages shall not exceed in the aggregate 100% of the fees paid by You during the 12 months immediately preceding the event causing the damage.
- cc) For all claims in the aggregate arising from or relating to the Agreement or the Services during or in relation to the entire Agreement Term, the parties agree that MAILSTORE's liability for cardinal obligations shall be limited to 50% of the fees paid by You for the entire Agreement Term.
- iv. **Other cases.** Except for the liability specified in sections i), ii), iii), MAILSTORE's liability shall be excluded.
- v. **Indirect and consequential damages.** MAILSTORE shall not be liable for consequential and indirect damages, except where required under Sections i), ii) or iii) above.
- vi. **Contributory negligence and data backup.** If You have contributed to the occurrence of damage or loss by any own fault, the principles of contributory negligence shall determine the extent to which MAILSTORE and You shall have to bear the damage or loss. You are especially responsible for regular backup of Your data and to protect its operating environment against any sort of malware (virus, worms, trap door, back door, etc.) according to the current state of the art. In the event of a loss of data based on the fault of MAILSTORE, MAILSTORE shall be liable only for the costs of copying the data in the backup copies to be created by You and for reconstructing the data which would have been lost even if backup copies had been created at adequate regular intervals.
- vii. If and to the extent that the Services are considered to be leased and subject to the legal regulations of German rental law, any liability of MAILSTORE for damages or defaults in performance existing at the conclusion of the Agreement or the Order is excluded, to the extent that MAILSTORE acts or refrains from acting without fault (ohne Verschulden). Insofar § 536a Abs. 1 Alt. 1 BGB shall not apply.

12.2 If YOUR PRINCIPAL PLACE OF BUSINESS IS IN ANY OTHER COUNTRY OTHER THAN THE ONES SET FORTH ABOVE, THE FOLLOWING LIMITATION OF LIABILITY TERMS APPLY:

- a) **Disclaimer of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MAILSTORE OR ITS AFFILIATES

OR LICENSORS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (B) LOSS OF GOODWILL OR REPUTATION; (C) INTERRUPTION OR DELAY OF THE SERVICES; (D) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA OR BREACH OF DATA OR SYSTEM SECURITY; (E) COST OF REPLACEMENT GOODS OR SERVICES; OR (F) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER MAILSTORE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

b) **Liability Cap.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF MAILSTORE AND ITS AFFILIATES FOR ALL CLAIMS IN CONNECTION WITH ANY ORDER DOCUMENTATION EXCEED THE TOTAL AMOUNT OF FEES PAID TO MAILSTORE UNDER THE APPLICABLE ORDER DOCUMENTATION GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 12.2 APPLY WHETHER SUCH CLAIMS ARISE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

c) NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR: (I) DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE; (II) FRAUD OR DECEIT; OR (III) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW. THE REMEDIES SPECIFIED IN THE AGREEMENT ARE EXCLUSIVE.

13. GENERAL PROVISIONS

13.1 Entire Agreement. This Agreement represents the entire agreement of the parties, and supersedes any prior or current understandings, whether written or oral, with respect to the subject matter of this Agreement. Any purchase order terms which purport to amend or modify terms of this Agreement, or which conflict with this Agreement, are void.

13.2 Order of Precedence. In the event of a conflict between the components of this Agreement, the Order Documentation will prevail over these Terms.

13.3 Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by a written

waiver by a duly authorized representative. No waiver constitutes a waiver of any prior or subsequent breach.

13.4 Governing Law; Time Limit.

a) **IF your PRINCIPAL PLACE OF BUSINESS IS IN GERMANY, AUSTRIA OR SWITZERLAND, THE FOLLOWING APPLY:**

i. This Agreement is governed by the laws of Germany excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by MAILSTORE for injunctive or other equitable relief, any dispute arising out of this Agreement will be subject to the exclusive jurisdiction of the courts of Munich, Germany. The prevailing party in any litigation related to this Agreement will be entitled to its reasonable attorneys' fees and court costs.

ii. **Time Limit.** In the event of wilful act or gross negligence of MAILSTORE, in case of fraudulent misrepresentation, physical injury, guarantees (and claims in accordance with the Product Liability Act (Produkthaftungsgesetz), the statutory limitation periods apply. All claims for damages or reimbursement of expenses which are based on defects of the Services shall become time-barred within one (1) year. All other claims or actions, regardless of form, arising from the Agreement or any Services provided or to be provided hereunder become time-barred after two (2) years, except that an action for non-payment or infringement of MAILSTOREs intellectual property rights and trade secrets may be brought at any time in accordance with the statute of limitation. Statute of limitation shall commence at the time at which You have become aware of the circumstances giving rise to the claim or, ought to have been aware (without acting with gross negligence).

b) **If YOUR PRINCIPAL PLACE OF BUSINESS IS IN ANY OTHER COUNTRY OTHER THAN ONES SET FORTH ABOVE, THE FOLLOWING APPLY:**

This Agreement is governed by the laws of England and Wales excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by MAILSTORE for injunctive or other equitable relief, any dispute arising out of this Agreement will be subject to the exclusive jurisdiction of the courts of London, England. The prevailing party in any litigation related to this Agreement will be entitled to its reasonable attorneys' fees and court costs. No action, regardless of form, arising from this Agreement may be brought

by either party more than two (2) years after the cause of action has accrued, except that an action for non-payment may be brought at any time.

13.5 Relationship of the Parties. The relationship of the parties created by this Agreement is that of independent contractor. This Agreement will not be construed to create or imply any partnership, agency, joint venture or employment relationship between the parties. Neither party is authorized to make any representation, contract or commitment on behalf of the other party.

13.6 Assignment. There are no third-party beneficiaries to this Agreement. You may not assign or otherwise transfer any of Your rights or obligations under this Agreement, in whole or in part, without the prior written consent of MAILSTORE. Any assignment in breach of this Section is null and void. Except to the extent identified in this Section, the Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

13.7 Export Laws. The Services (which for the purposes of this Section include any Software, Service Documentation and technical data stored or transmitted via the Services) may be subject to export control laws of the United States or other countries. Customer agrees to comply strictly with all applicable export regulations, including, but not limited to: (a) the Export Administration Regulations maintained by the U.S. Department of Commerce and (b) the trade and economic sanctions maintained by the U.S. Department of Treasury Office of Foreign Assets Control, and will not allow use of the Services in a manner that breaches or facilitates the breach of such regulations. You have the responsibility to obtain any licenses required to export, re-export, or import the Services, including deemed exports. The Services shall not be used by anyone: (i) located in U.S. embargoed countries or by any Foreign National of a U.S. embargoed country; (ii) included on the U.S. Treasury Department's list of Specially Designated Nationals; or (iii) the U.S. Department of Commerce's Denied Persons or Entity List. By using the Services, You represent and warrant that neither You nor any person provided access to the Services by You is located in any such country or on any such list.

13.8 Force Majeure. MAILSTORE does not control the flow of data to or from the Services. Rather, such flow depends in large part on the performance of internet services and technology provided or controlled by third parties and the public internet infrastructure, as well as on other events beyond MAILSTORE's control. At times, the action or inaction of parties or systems not controlled by MAILSTORE or other events beyond MAILSTORE's control can impair, disrupt or delay MAILSTORE's ability to provide the Services or Your ability to access the Services. Notwithstanding anything to the contrary in this Agreement, MAILSTORE disclaims, and You shall not hold MAILSTORE responsible for, any and all liability resulting from or related to such actions or events, including, without limitation, acts of God, acts of governmental authority, unavailability of third party

communication facilities or energy sources, fires, transportation delays, or any cause beyond the reasonable control of MAILSTORE.

13.10 Notices. Except as otherwise specified in this Agreement, all notices sent to MAILSTORE are required to be in writing and are considered effective five (5) days after mailing, when sent via certified mail, return receipt requested and postage prepaid to MAILSTORE affiliate: Open Text Limited UK, 420 Thames Valley Park Drive, Reading RG6 1PT., Attention: Legal Department. Except as otherwise specified in this Agreement, all notices to You under this Agreement shall be sent and deemed effective: (a) upon being sent electronically to Your email address provided in connection with Your use of the Services, (b) upon publication to You via an in-product messaging, or (c) five (5) days after mailing, when sent via certified mail, return receipt requested and postage prepaid to Your address on any Order Documentation. It is Your responsibility to notify MAILSTORE or require the Reseller/Service Provider to notify MAILSTORE (as applicable) of any change to Your email address.

13.12 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, in whole or in part, the provision shall be modified/replaced by the court with such valid and enforceable provision which comes closest to what the parties would have agreed if they had known the invalidity or unenforceability and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. This shall apply accordingly in the event of any omission in the Agreement.

13.13 Legal Interpretation. This Agreement will not be construed in favour of or against either party by reason of authorship.

13.14 Governing Language. The parties confirm that this Agreement and all related documentation is and will be in the English language. Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue anglaise. Unless otherwise required by applicable law, all versions of this Agreement in any other language are for accommodation only and will not be binding upon the parties. Any inconsistency arising due to translation into another language or a difference of interpretation between two or more languages will be resolved in favour of the English language version. All communications and notices to be made or given pursuant to this Agreement must be in the English language.

END OF THE GENERAL TERMS AND CONDITIONS

Exhibit 1

Terms Applicable to MSP

- 1. Applicability.** If You are using the Services as an MSP, the provisions of this Exhibit 1 apply to You. To the extent of any conflict between the provisions of this Exhibit 1 and the Terms, the provisions in this Exhibit 1 shall prevail. You are referred to as “MSP” under this Exhibit 1.
- 2. Defined Terms.** All defined terms in this Exhibit 1 have the meanings given to them in the Terms, or in the section in which such terms are first defined.
- 3. Grant of Rights.** For so long as MSP complies with the terms of the Agreement, during the Subscription Term, MAILSTORE hereby grants to MSP a limited, revocable, non-exclusive, non-transferrable, non-sublicensable, non-assignable right to: (a) use and resell the Services solely as part of the managed services it provides to Beneficiaries for such Beneficiaries’ internal business use, (b) market and promote the Services, and (c) access and use the Service Documentation; in each case, solely in accordance with this Agreement and this Exhibit 1. For the avoidance of doubt, MSP may not resell the Services to third parties for further resale or redistribution.
- 4. Conditions on Use.** In addition to the applicable conditions set forth in the terms of the Agreement, as a condition to MSP’s use of the Services, MSP must not: (a) knowingly permit any Beneficiaries to take any action or to refrain from taking any action that would result in a breach of any of the conditions of the Agreement; or (b) use the Services for the provision of any services, other than the managed services, for the benefit of any third party. Further, prior to any use of the Services by MSP or its Beneficiaries, MSP shall enter into terms with the Beneficiary that are substantially similar to the Terms, including a data processing agreement and/or business associate agreement to the extent applicable so as to enable MAILSTORE and its sub-processors (as exist from time to time) to process personal data, and are at least as protective of MAILSTORE and its rights existing under this Agreement. MSP is jointly and severally liable to MAILSTORE for any breach of the Agreement resulting from the MSP’s acts and omissions or the act and omissions of its Beneficiaries and their End Users.
- 5. Partner Obligations.** MSP shall: (a) provide first line support for the Services to Beneficiaries prior to escalating support request to MAILSTORE or when applicable, to a third party providing support services directly to MSP ; (b) at its own cost and expense, (i) ensure that MSP and its Beneficiaries are running operating systems that support the Services; (ii) have sufficient knowledge of the industry and the Services (including, but not limited to, specifications, features and benefits) so as to be able to inform Beneficiaries of the differences between the Services and similar, comparable or competing offerings and

information on standard protocols and features of the Services; (iii) ensure that an adequate number of trained, capable, certified, and qualified technical personnel with sufficient knowledge of the Services are available to respond on behalf of MSP to technical support requests; and (iv) to the extent applicable to the Services purchased hereunder, operationalize and allow MAILSTORE access to the Services deployed at the Beneficiary's site for MAILSTORE's sole purpose of collecting anonymized usage statistics in order for MAILSTORE to invoice MSP.

6. Trademark License. Subject to the terms and conditions of the Agreement, each party ("**Mark Licensor**") hereby grants to the other party ("**Mark Licensee**") a non-exclusive, non-transferable, non-sublicensable, revocable license to use and reproduce its Marks for the sole purpose of marketing and distributing the Services in the agreed territory. Mark Licensor grants no rights in its Marks other than those expressly granted in this Section. As between the parties, Mark Licensor is the exclusive owner of its Marks. Mark Licensee (a) shall not take any action inconsistent with the Mark Licensor's ownership of its Marks and (b) shall cooperate, at Mark Licensor's request and expense, in any action that Mark Licensor deems necessary or desirable to establish or preserve its exclusive rights in and to its Marks. Mark Licensee will not adopt, use, or attempt to register any trademarks or trade names that are confusingly similar to the Mark Licensor's Marks or in such a way as to create combination marks with Mark Licensor's Marks. For the avoidance of doubt, MSP will not be entitled to incorporate any Marks of MAILSTORE and its affiliates into MSP's domain names without MAILSTORE's prior written approval. Mark Licensee shall use the Mark Licensor's Marks only in accordance with such guidelines as Mark Licensor may provide to Mark Licensee from time to time. At Mark Licensor's request, Mark Licensee will immediately modify or discontinue any use of the Mark Licensor's Marks.

7. Marketing Activities. MSP will use the Marks provided to it by MAILSTORE to identify the Services, the managed services, and in all materials used to market and promote the managed services in a manner acceptable to MAILSTORE and subject to the limitations and requirements in this Agreement and any guidelines provided to MSP by MAILSTORE. MSP will at all times conduct business in a manner that reflects favourably on the Services, the managed services, and the good name, goodwill, and reputation of MAILSTORE.

8. Compliance with Laws. MSP must at all times comply with all applicable laws and regulations in providing the managed services. MSP shall not engage in any deceptive or unethical practices that may be detrimental to MAILSTORE. MSP shall comply with the Foreign Corrupt Practices Act of the U.S., the Bribery Act of the U.K., and any applicable local laws or regulations (collectively, the "**Anti-Corruption Laws**") including their prohibitions regarding the direct or indirect payment or giving of anything of value to an

official of a foreign government, political party or governmental or non-governmental agency for the purpose of influencing an act or decision in their official capacity or inducing the official to use their or their organization's influence to obtain or retain business involving the Services. MSP shall not violate or knowingly let anyone violate the Anti-Corruption Laws with respect to the sale, licensing, and use of the Services. MSP warrants that none of MSP's principals, staff, officers, or key employees are government officials, candidates of political parties, or other persons who might assert illegal influence on MAILSTORE's behalf. MAILSTORE shall have the right to (a) audit MSP's books and records at any time to verify MSP's compliance with this Section; and (b) immediately terminate this Agreement for cause if MAILSTORE has reason to believe that MSP has violated its obligations under this Section. MSP agrees to maintain an effective program to comply with the Anti-Corruption Laws during the Subscription Term. MSP agrees to certify or recertify compliance within thirty (30) days of the date MAILSTORE requests such action.

9. Privacy. MSP acknowledges that in the course of providing managed services, MSP may have access to Beneficiaries' accounts and data, including personal data, and MSP shall be responsible for ensuring it has the right to access such accounts and data. MSP shall ensure it has a lawful basis, made all necessary disclosures, and has all necessary rights and permissions required (including with Beneficiaries and their End Users) for the processing of personal data by MAILSTORE (and its affiliates and third-party contracts, as may exist from time to time), including for international transfers. MSP shall not do anything by commission or omission that places MAILSTORE, its affiliates and third-party contractors in breach of its obligations under any applicable data protection and privacy laws. MSP shall only provide personal data to the extent reasonably required for MAILSTORE's provision of the Services (and procure the same from its Beneficiaries), and MSP is responsible for procuring the implementation and maintenance of privacy protections and security measures for components that MSP or Beneficiary (including the affiliates of any of these) provides or controls. To the extent that the provision of the Services by MAILSTORE involves the processing of personal data as a processor to MSP: (a) MAILSTORE shall process personal data (as between MSP as processor and MAILSTORE as MSP's sub-processor) in accordance with the data processing addendum and/or business associate agreement made part of this Agreement; and (b) MSP shall serve as a single point of contact for MAILSTORE and MAILSTORE shall not be required to provide information or notification to Beneficiaries.

10. Security. MSP confirms that it has implemented and shall maintain during the Subscription Term, industry-standard, physical, technical and administrative safeguards to protect its Beneficiaries' accounts and data from accidental loss and unauthorized access, use, alteration, or disclosure. MSP confirms and acknowledges that it shall not access, use, alter, or disclose any Beneficiary's account or data without the consent of

such Beneficiary. MSP shall promptly notify MAILSTORE of any breach of the security measures required to be put in place by law or this Agreement.

11. Warranties By MSP. MSP will not make or publish any representations, warranties, or guarantees concerning the Services that are inconsistent with any warranties made by MAILSTORE in this Agreement. MSP shall not make any representation to any party that MAILSTORE has endorsed, warranted or guaranteed any MSP products or services.

12. Indemnification By MSP. MSP will indemnify and hold harmless MAILSTORE and its affiliates and their respective directors and employees from and against all losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses, including attorneys' fees and costs (collectively "**Losses**") that arise out of or relate to: (a) any breach by MSP of any representation, warranty, covenant or other obligation of MSP in Sections 4 (Conditions on Use), 8 (Compliance with Laws), 9 (Privacy), 10 (Security) or 11 (Warranties By MSP) of this Exhibit 1; (b) any other services that MSP distributes, markets, installs, licenses or supports separately or in combination with the Services; (c) suspension or termination of MSP's and/or its Beneficiaries' access to the Services and deletion of any stored data in accordance with this Agreement; (d) any negligent acts or omissions of MSP or its Beneficiaries that may interfere with or adversely affect (i) any of MAILSTORE's intellectual property rights to the Services or the Marks, or (ii) a Beneficiary's use and/or access to the Services or result in deletion and/or corruption of Beneficiary's accounts or data. MSP shall reimburse MAILSTORE or its affiliates for any Losses within a reasonable period of time following notice from MAILSTORE regarding such Losses.

13. Indemnification By Mark Licensor. Mark Licensor will indemnify and hold harmless Mark Licensee from and against all Losses suffered by Mark Licensee as a result of a third-party claim against Mark Licensee alleging that Mark Licensor's Marks infringed that third party's United States, European Union and United Kingdom trademark rights existing as of the Effective Date. If Mark Licensor's Marks become, or in Mark Licensor's opinion are likely to become, the subject of an infringement claim, Mark Licensor will, at its option and expense, either: (a) procure for Mark Licensee the right to continue exercising the rights licensed to Mark Licensee in this Agreement; (b) replace or modify Mark Licensor's Mark so that it becomes non-infringing; or (c) terminate the Mark Licensee's license granted under Section 6 of this Exhibit 1 by written notice to Mark Licensee. THIS PARAGRAPH STATES MARK LICENSOR'S ENTIRE LIABILITY AND MARK LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR SUCH INFRINGEMENT CLAIMS AND ACTIONS.

END OF THE EXHIBIT ONE