

Incydr Evaluation Agreement

This Evaluation Agreement (the “**Agreement**”) governs the use of the Mimecast Incydr Services for evaluation purposes.

BY CLICKING ‘I ACCEPT’ YOU (i) AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH WILL FORM A BINDING CONTRACT BETWEEN MIMICAST AND THE CORPORATION, BUSINESS, OR ENTITY YOU REPRESENT (THE “CUSTOMER”); AND (ii) REPRESENT AND WARRANT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR YOU DO NOT HAVE THE POWER AND AUTHORITY TO ACT ON BEHALF OF AND BIND THE CUSTOMER, DO NOT PROCEED TO ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT OR CONTINUE WITH USE OF THE SERVICES.

1 EVALUATION SERVICES. Subject to Customer’s compliance with the terms of this Agreement, Mimecast will make the evaluation services (the “**Services**”) available to Customer for a period of 30 days or such other time frame as agreed between the parties including any extension thereto (the “**Evaluation Term**”) unless terminated earlier by either Party upon written notice. Services are provided “as is” with no warranty, guarantee, or representation implied, statutory or otherwise. Mimecast does not represent that the Services will achieve intended results, be uninterrupted or error free or meet Customer’s requirements. Customer acknowledges and agrees that analyses or similar information which may be provided as part of the Services, are based on information known to Mimecast at the time and provided for Customer’s internal business purposes only.

2 OWNERSHIP. Customer’s rights in the Services are limited to those expressly stated in this Agreement. Mimecast and its third-party licensors will retain all ownership interest and intellectual property rights in and to the Services, its documentation, and underlying systems. Customer hereby grants to Mimecast all necessary rights and licenses to process Customer Data for the purposes of providing the Services including without limitation, for the maintenance, improvement, and enhancement of the Services. Mimecast processes certain aggregated data derived from the Services, including usage data, such as utilization statistics, reports, and logs (“**Aggregated Usage Data**”). Mimecast owns all Aggregated Usage Data. 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.

3 USE OF SERVICES. Customer will use the Services (i) only for its own internal business purposes and will not transfer, resell, license, or otherwise make the Services, its documentation, or underlying systems available to third parties; (ii) as reasonably directed by Mimecast and will implement and maintain all reasonable and appropriate controls to manage and monitor Permitted Users and shall ensure that the Services are used in accordance with applicable law. Customer will not share any user authentication information with any third party. “**Permitted Users**” means individuals permitted by Customer to use the Services. Customer may not use or access the Services for the purpose of building a competitive service or comparative analysis or features; nor copy disseminate, allow unauthorized access to, disassemble, reverse engineer, or decompile the Services, or any components thereof. Customer is responsible for obtaining and maintaining any third-party licenses and/or equipment needed to connect to, access, or otherwise use or benefit from the software and/or Services. Customer shall, where appropriate, provide notice to all employees as to Customer’s use of the Services and obtain all relevant acceptance for such use. 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. Customer will not use, or permit the use of, the Services in any manner that may: (a) amount to an illegal activity, infringe or violate the rights of others, or violate 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) introduce, distribute or transmit any viruses, malicious code, vulnerabilities, weakness in the computational logic (whether known or latent) or any other items of a harmful nature; or (c) could reasonably be expected to interfere with, impair or disrupt the Services. Mimecast shall bear no responsibility or liability for Customer’s use of the Services in contradiction to this Section 3.

4 SECURITY AND DATA PROTECTION. “Customer Data” means the data provided by Customer for processing via the Services. Mimecast has no obligation to retain Customer Data related to the Services after termination or expiration of the Evaluation Term. Mimecast provides the Services and processes Customer Data in accordance with the Service

specific documentation set out in the Trust Center <https://www.mimecast.com/company/mimecast-trust-center/> (the “Trust Center”), which Mimecast may update from time-to-time. In the event Customer requires a specific agreement with regards to the processing of Personal Data (as defined in the applicable data protection law), the Data Processing Addendum available on the Trust Center shall be incorporated into and form an addendum to this Agreement. Customer will comply with its obligations under all laws applicable to it as an employer, the accountable organization, and/or data controller, including the responsibility for providing any requisite notices and obtaining any consents for such collection, processing and transfer of Personal Data, including international transfers. It is not intended that Customer shall collect or process biometric data through the Services nor make any employment-related decisions of its Permitted Users based solely on information obtained via the Services.

5 CONFIDENTIALITY. “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, but 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”); (ii) is in the Receiving Party’s prior possession; (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. Confidential Information is and will remain the exclusive property of the Disclosing Party. Receiving Party will: (i) use Disclosing Party’s Confidential Information solely for the performance of the activities contemplated by this Agreement; (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 herein; 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. Receiving Party may disclose Confidential Information of Disclosing Party where lawfully required to do so however will provide reasonable prior notice to Disclosing Party (where lawfully permitted) and will disclose only that information that is reasonably necessary to meet the applicable legal order or requirement.

6 LIABILITY. To the maximum extent permitted by law, Mimecast shall have no indemnification obligation or any liability of any type howsoever arising, with respect to the Services or this Agreement.

7 GENERAL. Mimecast shall mean the Mimecast entity providing the Services hereunder, including, without limitation, subsidiaries and/or affiliates of any Mimecast entity. All sections of this Agreement intended expressly or by implication to survive termination or expiry hereof, shall be deemed to do so. Any communications in connection with this Agreement may be provided by email. This Agreement represents the entire agreement between the parties and supersedes all other agreements whether written or oral, between the parties with regards to the Services. The parties acknowledge that no reliance is placed on any representation not provided in this Agreement. If any provision of this Agreement is held to be unenforceable, such provision will be amended as necessary to make it enforceable. Such holding will not impair the enforceability of the remaining provisions. This Agreement is entered into solely between, and may be enforced only by, Mimecast and Customer. No person who is not a party to this Agreement shall have any rights or remedies under or in connection with it. Notwithstanding any provision herein to the contrary, nothing in this Agreement is intended to limit Customer’s liability in the event of Customer’s violation of Mimecast’s ownership or intellectual property rights. Each party agrees to comply with all applicable laws and regulations with respect to the export and import of the Services.

8 GOVERNING LAW.

Country (Customer registered address)	Mimecast Entity	Governing Law
UNITED STATES MEXICO	Mimecast North America, Inc.	<p>This Agreement and any disputes hereunder will be governed by the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. Any litigation concerning this Agreement shall be submitted to and resolved by a court of competent jurisdiction in Boston, Massachusetts. Notwithstanding the foregoing, either party may seek equitable, injunctive, or declaratory relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction.</p> <p>Where applicable, each party hereby waives its respective rights to a jury trial of any claim or cause of action relating to or arising out of this Agreement. This waiver is intended to encompass any and all disputes that may be filed in any court and</p>

		that relate to the subject matter of this Agreement, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party further represents and warrants that it has consulted with legal counsel concerning this waiver and that it provides this waiver knowingly and voluntarily.
CANADA	Mimecast Canada Inc.	This Agreement 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 (i) waive any objection to the laying of venue of any action or any proceeding in such courts; and (ii) 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.
UNITED KINGDOM CENTRAL EUROPE (excluding GERMANY, NETHERLANDS) UNITED ARAB EMIRATES SAUDI ARABIA ISRAEL PHILIPPINES	Mimecast Services Limited	<p>This Agreement and any court proceedings shall be governed by the laws of England and Wales and held in England. Notwithstanding the foregoing, either party may seek equitable, injunctive or declaratory relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction.</p> <p>With regard to any dispute, action or claim arising from this Agreement any Customer in any Middle East territory, if 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 (“DIFC”). Where such a dispute relates to a claim for a sum within the limits specified by the DIFC Small Claims Tribunal, then the dispute may be referred to the said Tribunal.</p>
INDONESIA	Mimecast Services Limited	This Agreement shall be governed by and construed in accordance with the laws of Indonesia . The Indonesian courts shall have exclusive jurisdiction in relation to all disputes under this Agreement. Where applicable, to the extent permitted by applicable law, the parties hereby agree to waive any provisions under the relevant laws and regulations which require a court decision to terminate this Agreement
AUSTRALIA NEW ZEALAND	Mimecast Services Limited	<p>This Agreement 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. Any restriction herein on liability will apply only to the extent that they are consistent with non-excludable Australian laws and nothing in this Agreement limits 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.</p> <p>THE DISCLAIMER SET FORTH HEREIN 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</p>

		OPTION OF MIMECAS, THE RESUPPLY OF THE SERVICES OR THE PAYMENT OF THE COST OF DOING THE SAME.
SINGAPORE HONG KONG MALAYSIA	Mimecast Services Limited	This Agreement shall be governed by and construed in accordance with the laws of Singapore . The Singapore courts shall have exclusive jurisdiction in relation to all disputes under this Agreement. For these purposes each party irrevocably submits to the jurisdiction of the Singapore courts and waives any objection to the exercise of that jurisdiction.
REPUBLIC OF SOUTH AFRICA	Mimecast South Africa (Pty) Limited	This Agreement 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 Gauteng Division, Pretoria for the purpose of all or any legal proceedings arising from or concerning this Agreement.