

# Evaluation Agreement

This Evaluation Agreement (the “**Agreement**”) governs the use of the Mimecast 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 THE 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 the evaluation term (“**Evaluation Term**”) unless terminated earlier by either Party upon written notice. For certain Services, Supplemental Terms as set out in Appendix 1 shall apply. In the event Customer enters into a paid-for subscription to the Services, Mimecast general terms at <https://www.mimecast.com/contracts/> will apply. Subject to exception governed in Section 7 (Liability) below, the 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 individual customer’s requirements. Customer acknowledges and agrees that reports, graphs, 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. Mimecast will use reasonable efforts to provide accurate and up-to-date information but makes no guarantee as to the accuracy or completeness of the information provided.

**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, underlying systems, Mimecast APIs and to any training materials, video training modules, user surveys, and user assessments made available to Customer by Mimecast (“**Material**”). 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, logs and information regarding spam, viruses and/or other malware (“**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 howsoever, including without limitation where provided under a trial subscription, paid subscription, free of charge, early release, beta, pilot, or general acquisition.

**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, underlying systems, Mimecast APIs or Material 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 ensure that those accessing the Services are permitted to do so in accordance with Customer’s internal policy and applicable law. Customer will not share any user authentication information and/or any user password with any third party. “**Permitted Users**” means individuals employed by or otherwise under Customer’s control and permitted to use the Services. Customer may not use or access the Services for the purpose of building a competitive service or comparative features or comparative analysis; 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. “**Equipment**” shall include without limitation, equipment and ancillary services including, but not limited to, modems, hardware, services, software operating systems, networking, web 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. Mimecast shall bear no responsibility or liability for Customer’s use of the Services in contradiction

to this Section. To the extent that the provision of the Services requires download and/or installation of software components such as end-point agents, Customer shall ensure that such components are appropriately deployed to the Permitted Users and Customer hereby acknowledges that failure to do so may impact access to, and efficacy of, the Services. 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, or upload written, photographic, and/or videographic content or material which may: (a) amount(s) to an illegal activity, infringe(s) or violate(s) the rights of others, or violate(s) 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, or where Customer is prevented from transmitting certain information via the Services, or concerning unsolicited email; (b) is or may be defamatory, libelous, threatening or harassing in nature and/or is in violation of any applicable laws (including those laws relating to obscenity or pornography); (c) purports to be originated from a governmental agency; (d) introduce(s), distribute(s) or transmit(s) any viruses, malicious code, vulnerabilities, weakness in the computational logic (whether known or latent) or any other items of a harmful nature; or (e) could reasonably be expected to interfere with, impair or disrupt the Services. (In the event Mimecast receives notice from a third-party indicating customer is in breach of the restrictions herein Customer will immediately remove such collateral from the platform.

**4 MIMICAST APPLICATIONS, APIs AND THIRD-PARTY SERVICES.** Mimecast may make applications available via various online marketplace. Such applications are licensed, not sold, to Customer. The license is subject to Customer's compliance with this Agreement and any associated end user license agreement made available via the application/marketplace. For the avoidance of doubt, where made available, Mimecast applications fall under the definition of Services hereunder. Customer can enable certain APIs so that the Services work in conjunction with certain third-party services, systems, and/or applications. Where necessary for applicable Services, the process to gain access to the APIs will be made available to Customer upon request. For the avoidance of doubt, Customer's access and use of such any third-party APIs shall be governed solely by the terms and conditions of such third-party APIs. If a third-party modifies its APIs so that they no longer interoperate with the Services or imposes requirements on interoperability that are unreasonable for Mimecast, Mimecast may cease or suspend its provision of interoperability between the Services and the affected third-party API, without liability. Where Mimecast supplies Customer with a Mimecast API, all access keys, authentication procedures, and data to which Customer gains access or which is provided to Customer in connection with Customer's use of the API, excluding Customer Data, is the Confidential Information of Mimecast. Mimecast may revoke access to any API at any time without notice to Customer if Mimecast, in its reasonable discretion, believes necessary or appropriate. Customer is responsible for (i) ensuring that the information provided to Mimecast to enable any API, is and remains accurate and up to date; and (ii) ensuring it has valid licences for, and access to, all applicable third-party APIs necessary to access and derive benefit from the applicable Services. Customer acknowledges and agrees that Mimecast is not responsible for any third-party APIs; and/or the security of Customer Data until such time that the Customer Data enters the Mimecast environment. To the extent Customer Data is retrieved from or provided by Third-Party Services, Mimecast will not be responsible for nor makes any representations, warranties or commitments regarding any Third-Party services and shall not be liable for the condition of such Customer Data. Mimecast does not endorse, approve or recommend any particular third-party service for use with the Services. Customer hereby irrevocably waives any claim against Mimecast and its affiliates with respect to such Third-Party Services. **"Third-Party Services"** means third-party licenses, products, applications, APIs, web hooks, services, software, systems, directories, websites, databases, and information which Customer may connect to, permit connection to (including without limitation, where such connection is part of the Services provided), or enable in conjunction with Mimecast API connectors and/or the applicable Services. To the extent Customer or Permitted Users are exposed to third-party content in the use of the Services hereunder, Customer acknowledges and agrees that Mimecast shall not be responsible nor held liable in respect of any such content which may be considered offensive or violates the rights of another.

**5 SECURITY AND DATA PROTECTION.** "Customer Data" means the data provided by Customer for processing via the Services including without limitation, the contents of the files, emails or messages sent by or to a Permitted User. Mimecast has no obligation to retain Customer Data related to the Services after termination or expiration of the Evaluation Term. As part of the Service provision, Mimecast 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.

**6 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.

**7 LIABILITY.** Except in cases of liability for damages from injury to life, body or health, in the case of malice, intent or gross negligence on the part of Mimecast of its legal representatives or vicarious agents or to the extent as the Product Liability Act applies Mimecast shall have no indemnification obligation or any liability with respect to the Services or this Agreement.

**8 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, that 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 reformed to the extent necessary to make it enforceable, and 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.

## **9 GOVERNING LAW**

This Agreement and any disputes hereunder will be governed by the laws of the Federal Republic of Germany, without regard to its conflict of law principles, and any litigation concerning this Agreement shall be submitted to and resolved by a court of competent jurisdiction in Munich, Germany. Notwithstanding the foregoing, either party may seek equitable, injunctive, declaratory or other relief to enforce any of its intellectual property rights or rights in the Customer Data or Confidential Information in any court of appropriate jurisdiction.

## Appendix 1

### Supplemental Terms

The Supplemental Terms set forth in this Appendix 1 Apply in addition to the terms and conditions of the Agreement in relation to the specific Service offering(s)

**A Awareness Training Managed Service Offering.** Customer acknowledges that by subscribing to the Managed Service Offering it is enabling Mimecast to maintain an assigned role in the Customer's Mimecast account which will allow a Mimecast representative to have limited access to Customer's Awareness Training dashboard (i.e., read/edit rights). Customer acknowledges and agrees that the Mimecast representative providing the Managed Service Offering may be located in any jurisdiction where Mimecast maintains Support personnel. Customer will ensure that it has provided or obtained all necessary notices, consents and/or otherwise has a valid legal basis for Mimecast to access the Customer Data available via the Awareness Training dashboard. Customer will indemnify and hold Mimecast harmless in the event of any third-party claim arising from Customer's breach of the foregoing.

**B Web Security Services.** Due to the nature of the Web Security Services, Section 2 of the Agreement is not applicable to the Web Security Services. In addition to all other applicable restrictions in the Agreement, Customer will not disable or circumvent any access control, authentication process or security procedure established with respect to the Web Security Services.

**C Brand Exploit Protect Services.** Customer will not register any Domain with Mimecast for the BEP Services, unless said Domain is owned or legally controlled by Customer. Customer acknowledges and agrees that Mimecast will monitor for replications of Customer's Domains, and in the event of a discovered Domain replication Mimecast will seek confirmation from Customer that a discovered Domain is illegitimate and unauthorized by the Customer. With such confirmation, Mimecast will report the imposter Domain to third party blocking sites and approach third-party registrars to request that the imposter Domain be disabled or blocked (each, a "**Takedown**"). Customer may request a more advanced countermeasure ("**Countermeasure**") which includes but is not limited to, a regular Takedown. Customer shall be responsible for all confirmations provided to Mimecast with regards to Takedowns whether in writing or via confirmation within Customer's account or Mimecast administrative console. The subscription fee for the BEP Services includes a limited, non-exclusive, non-transferable usage license to a script that Customer may add to each Domain for Customer's internal business purposes only during the Evaluation Term (each, a "**Web Scraping Tracker**"). Customer is solely responsible for deploying the Web Scraping Tracker to Customer's website code. use of the web scraping tracker is at Customer's discretion and risk and customer is solely responsible for any damage to any domain caused by the web scraping tracker.