

# Software / SaaS Evaluation Terms and Conditions

---

 [digitate.com/evaluation-agreement-current](http://digitate.com/evaluation-agreement-current)

This evaluation agreement (“Agreement”) is entered into between the entity you represent (“Customer”) and Tata Consultancy Services Limited (“TCS”). You represent and warrant that you have legal authority to bind the Customer to the terms of this Agreement. By accessing, downloading, activating or using all or any part of the Software or SaaS Services or by clicking and/or checking an “I Agree” or any similar button or check box presented with this Agreement, Customer is consenting to agree and bound by the terms of this Agreement.

## 1. Definitions

a) **Customer Environment** means the hardware and software required for the operation of the Software or SaaS Services as described in the relevant documentation or OF.

b) **Evaluation Period** means 90 days from the acceptance of this Agreement by the Customer, unless a different period is agreed in an OF or during the registration process on the Software Store or at <http://www.digitate.com>, as extended by the parties in writing.

c) **Order Form or OF** means an order form placed by the Customer or by a Partner on behalf of the Customer referencing this Agreement and accepted by TCS. OF is only required if fees are payable for the evaluation or if the Customer has requested professional services from TCS.

d) **Partner** means a reseller or distributor that is authorized by TCS to resell the Software, SaaS Services and related services.

e) **SaaS Services** means the provision of access to the Software as a service and its administration, management, monitoring and related services for which Customer has registered on the Software Store or at <http://www.digitate.com>.

f) **Software** means i) software downloaded by the Customer from the Software Store, or for which Customer has registered on the <http://www.digitate.com>, or as specified in the applicable OF, including any software installed in Customer Environment to enable the connection to SaaS Services; ii) documentation relating to the Software or SaaS Services made available on the Software Store or otherwise; iii) updates, new versions or releases, modifications, customizations or other derivative works of the foregoing.

g) **Software Store** means the online software store made available by TCS or its agents.

## 2. Evaluation Terms

a) Subject to the terms and conditions set forth in this Agreement, and in consideration of the Customer's acceptance thereof, TCS grants to Customer a non-exclusive, non-transferable, non-sublicensable, right to use either (i) the Software in the Customer Environment or (ii) the SaaS Services, during the Evaluation Period, for fees (if any) set forth in the OF, solely for the purpose of Customer's internal evaluation and, as applicable, testing in a non-production environment, and not for any production use. The Software and SaaS Services may include a mechanism that may cause the Software or SaaS Services to become inoperable or inaccessible at the end of the Evaluation Period.

b) In particular, and without limitation, Customer represents, warrants and covenants that it shall not and shall not permit others to: (i) reverse engineer or modify the Software or the SaaS Services; (ii) circumvent any functionality or technical restrictions in the Software or SaaS Services; (iii) seek intellectual property protection on any inventions or other intellectual property learned from, relating to or derived from the Software or SaaS, anywhere in the world; (iv) use the Software or SaaS Services for creating a competing software or service, or in contravention of any law or regulation or the rights of others; (v) perform security testing that could disrupt the SaaS Services or Software, without TCS' prior written consent; (vi) remove, alter or render illegible any proprietary or confidentiality markings on the Software or SaaS Services; (vii) gain or attempt to gain unauthorized access to any software, data, computer systems or environments (including those of TCS' customers) via the SaaS Services, or interfere with the security of the SaaS Services including without limitation by monitoring, crawling, or transmitting any malicious code or viruses; and (viii) use the SaaS Services other than through the enabling software provided by TCS.

c) As between TCS and Customer, Customer shall be responsible for (i) acquisition and maintenance of, and compliance with the terms of, any third party software in the Customer Environment; (ii) complying with any laws or regulations applicable to Customer; (iii) administration and safeguarding of access to, and related credentials for, the users of the Software or SaaS Services, Software Store, including accounts, passwords or user names, and for all activities and transmissions that occur through such accounts, even if without Customer's knowledge or if done by third parties; and (iv) any Customer-provided material and data used with the Software or SaaS Services, including without limitation, for their accuracy, quality, backup and use.

### **3. Services**

a) Customer may avail professional services with respect to the evaluation of Software or SaaS Services, pursuant to an OF which will set forth the services, fees, service locations and other terms. If the Customer has ordered an evaluation through a Partner, Customer may only avail professional services from the Partner, and this Section 3 will not apply. An OF can only be modified pursuant to a change request executed by the parties. While at the Customer's facilities, TCS personnel assigned to perform the services shall abide by all applicable workplace policies provided to TCS in writing. TCS will be responsible to provide office space, general computing environment with standard tools and development environment at TCS' facilities, as reasonably necessary for the performance of services at such facilities. Customer is responsible to provide, at no cost to TCS, office

space, office facilities, computing equipment, desktop software, tools and development environment as reasonably necessary for TCS personnel to perform the services at Customer facilities. Customer agrees to grant access to relevant locations and systems, data media, documentation, data, information and computer programs reasonably necessary for the performance of services during its normal business hours. If any special equipment/software related to Customer's requirements are necessary in connection with the services, Customer is responsible for providing them and seeking appropriate consents for Customer's and/or TCS' use.

b) Customer agrees to defend, indemnify and hold TCS and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim, demand or expense, including reasonable attorneys' fees, arising out of or relating to any materials or data provided by Customer for TCS' performance of professional services or used with the SaaS Services.

c) During the term a TCS or Customer personnel is associated with the services hereunder and for a period of one year after such person ceases to be so associated, a party shall not, directly or indirectly through a third party provider, solicit for hire or knowingly hire or retain such personnel of the other party as an employee or independent contractor, except with prior written consent of the other party. This restriction shall not apply to the employment of any person who responds to any general recruitment advertisement in the normal course of business, without targeting or approaching the personnel of the other party.

#### **4. Confidential Information**

a) "Confidential Information" means any information disclosed by either party to the other party that is designated as "Confidential," "Proprietary" or similar designation, or that in the circumstances would be considered confidential. Confidential Information of TCS includes Software and SaaS Services (including the operation of or methods, techniques, tools or processes used in creating, developing, deploying, applying or maintaining the Products or the SaaS Services), pricing therefor, and any product plans or roadmaps provided by TCS. Confidential Information of Customer includes any data and materials of Customer that may be provided to TCS. The party receiving the information ("Recipient") shall not disclose or disseminate the disclosing party's ("Discloser") Confidential Information to any person other than those employees, agents, contractors, service providers and licensees of the Recipient, or of its affiliates, who have a need to know it in order to assist the Recipient in performing its obligations or exercising its rights under this Agreement. In addition, the Recipient (i) shall take all such steps to prevent unauthorized access to the Discloser's Confidential Information, as it takes to protect its own confidential or proprietary information of a similar nature, which steps shall in no event be less than a reasonable standard of care, (ii) shall not, and shall not permit others to, use the Discloser's Confidential Information for any purposes other than in connection with performing its obligations or exercising its rights hereunder, and (iii) shall require all persons and entities who are provided access to the Discloser's Confidential Information, to execute confidentiality or non-disclosure agreements containing provisions substantially similar to those set forth in this Section 4. The

provisions of this Section respecting Confidential Information shall not apply to the extent that such Confidential Information is: (a) already known to the Recipient free of any restriction at the time it is obtained from the Discloser, (b) subsequently learned from an independent third party free of any restriction and without breach of this provision; (c) is or becomes publicly available through no wrongful act of the Recipient or any third party; (d) is independently developed by the Recipient without reference to or use of any Confidential Information of the Discloser; or (e) is required to be disclosed pursuant to an applicable law, rule, regulation, government requirement or court order, or the rules of any stock exchange.

b) Customer acknowledges that the Software(s) and SaaS Services are not intended for use with or for processing personal data, personally identifiable information or any other information governed by privacy laws, and TCS shall have no liability, arising from use of any such personal information, including the risk of any inadvertent disclosure or unauthorized access thereto.

c) Customer consents to the collection and lawful use, disclosure, processing and transfer of Customer's billing and account information including user registration details, collected through the OF or the Software Store, by TCS, its affiliates, partners and their respective third party providers, solely for the purposes of processing Customer's order and/or payments under this Agreement. TCS will process any personal data included in such information, if any, in accordance with the privacy notice available on <https://digitate.com/trust-center/#Privacy>.

d) For SaaS Services, the information regarding cloud hosting providers utilized by TCS and their policies or guidelines are set out in the security policy at <https://digitate.com/trust-center/#Security> and privacy notice set forth above. Customer consents to processing by TCS, or transfer to, and processing by, such providers, of any Customer-provided materials and data in accordance with the foregoing policies.

## **5. Ownership and Proprietary Rights**

a) TCS and/or its licensors own and will own all intellectual property rights in or to the Software, the SaaS Services, and TCS' Confidential Information. TCS reserves all rights not expressly granted herein.

b) Customer and/or its licensors own all intellectual property rights in or to any Customer-provided materials and Customer's Confidential Information. Customer hereby grants to TCS a non-exclusive, irrevocable, worldwide, fully paid up and royalty free license to use, copy and display Customer-provided materials, if applicable, in order to provide the SaaS Services and professional services.

c) TCS shall have the right to collect, use, disclose, or otherwise exploit, without restriction or compensation to Customer, any technical data, or comments or feedback provided by the Customer, relating to the use of the Software or SaaS Services.

**6. Third party Software.** Notwithstanding anything contained in this Agreement, Customer acknowledges that the use of third party software, including open source software if any, contained in the Software or SaaS Services (“Third party Software”) shall be subject to the terms of the relevant third party proprietary or open source license agreement only. Information related to Third party Software is available at <https://digitate.com/open-source-software-main/> (as updated by TCS from time to time) or is provided in the relevant documentation. If mandated by, and subject to the relevant OSS license terms, an offer to provide source code of the OSS is hereby made by TCS and such source code shall be made available to Customer upon request. Customer acknowledges receipt of notices for the OSS for the initial delivery of the Software(s) or access to SaaS Services.

**7. Warranty Disclaimer and Limitation of Liability.** The Software and SaaS Services, including without limitation, Confidential Information and any Third party Software component (if any) is/are provided “AS IS” without any warranty of any kind, whether expressed or implied, including, but not limited to, any implied warranty of merchantability, non-infringement, fitness for a particular purpose, system integration, accuracy, reliability, error-free, un-interruption, support (unless otherwise specified), correction, repair, uptime, availability or otherwise. In no event shall TCS or any of its licensor or any third party be liable for any direct, indirect, incidental, special, exemplary or consequential damages suffered by Customer or any third party (including but not limited to, use or loss of use; loss or damage of data, lost profits, business, revenue, goodwill or anticipated savings; business interruption; procurement of substitute goods or services) however caused and on any theory of liability arising from or as a result of using the Software, SaaS Services or related professional services, even if advised of the possibility of such damage. With respect to an OF under which Customer pays TCS for the evaluation or any services, TCS’ shall be liable for direct damages which shall in no event exceed the total amount of fees paid or payable to TCS under such OF.

## **8. Termination**

a) This Agreement shall terminate upon expiry of Evaluation Period, unless terminated earlier in accordance with its term.

b) Customer breaches any provisions of this Agreement, TCS may terminate this Agreement with immediate effect upon notice.

c) Either party may terminate this Agreement for any reason upon notice to the other party.

d) Immediately upon the termination or expiration of this Agreement, Customer shall cease to use the Software, SaaS Services, and Confidential Information, and shall return and/or delete all copies thereof. Customer shall certify in writing its compliance with this paragraph to TCS within five (5) days of TCS’ request. The provisions of Sections 2(b), 2(c), 3(b), 3(c), 4, 5, 6, 7, 8(d), and 9 shall survive expiration or termination of this Agreement.

## **9. Miscellaneous**

a) All notices under this Agreement to TCS shall be deemed effective upon receipt, and shall be in writing and (i) delivered personally, (ii) sent by commercial overnight courier with written verification of receipt, or (iii) sent by certified or registered mail, postage prepaid and return receipt requested. Notices to TCS shall be sent to the attention of its Legal Department, 101 Park Avenue, NY 10178, with a copy to the General Counsel, TCS House, Raveline Street, Fort, Mumbai 400001, India. Notices to Customer shall be sent at the email address provided by Customer at the time of requesting use of the Software or SaaS Services.

b) This Agreement shall be governed by laws of the State of New York, USA, without giving effect to the conflicts of law principles thereof. Subject to the arbitration provisions below, courts in the city of New York shall have the exclusive jurisdiction over any matter arising out of or connected with this Agreement. All disputes or differences whatsoever arising between the Parties, out of or in relation to the construction, meaning and operation or effect of this Agreement or breach thereof, shall be exclusively settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules (the “Rules”) by a single independent and neutral arbitrator appointed by AAA within fifteen (15) days of reference of dispute in accordance with the said Rules and shall be attorney with at least fifteen (15) years’ experience or a former judge. The seat of arbitration and the arbitration proceedings shall be at New York. The award made in pursuance thereof shall be final and binding on the Parties. Neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both the Parties. Notwithstanding the foregoing and in addition to other remedies, either party may apply to any court of competent jurisdiction for equitable relief, injunctive relief or specific performance, without posting any bond or other security, in the event either party breaches or threatens to breach any of the provisions under Section 2, Section 4, Section 5 or to enforce this Section 9(b).

c) The relationship of the Parties is that of independent contractors. This Agreement supersedes all prior discussions and writings, and constitutes the entire agreement between the Parties, with respect to the subject matter hereof. No waiver or modification of this Agreement by a party will be binding unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. In the event that any of the provisions of this Agreement shall be held by a court or arbitrator to be unenforceable, the remaining portions hereof shall remain in full force and effect. The Section headings are for reference only and shall not affect the meaning of the language included therein. Customer may not assign this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of TCS, and any assignment in violation of the foregoing shall be void.

Version: Evaluation Agreement, December 2020

Release Date: December 18, 2020

